

Background Paper

Migration of Refugees to Australia

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Introduction

Catholic social teaching is strongly supportive of the rights of migrants and refugees. Pope John Paul II (in his message for World Migration Day in 1995-6) argues that the Christian response to migrants and refugees is one of solidarity:

Solidarity means taking responsibility for those in trouble. For Christians, the migrant is not merely an individual to be respected in accordance with the norms established by law, but a person whose presence challenges them and whose needs become a responsibility. "What have you done to your brother?" (Gn 4:9) The answer should not be limited to what is imposed by law, but should be made in the manner of solidarity.

The plight of refugees runs deep in Christian experience and history. The story of the Holy Family fleeing to Egypt is an account of refugees fleeing persecution:

After the wise men had left, an angel of the lord appeared in a dream to Joseph and said, "Get up, take the child and his mother and go as fast as you can to Egypt, and stay there until further notice. Herod will soon be looking for the child in order to kill him'.

Joseph got up, took the child and his mother, and left that very night for Egypt; and he stayed there until the death of Herod. (Matt 2:13-14)

It is important to recall that, like the Holy Family, contemporary refugees have been forced to leave their homes in fear for their lives.

Christ's teachings show that he identified with the weakest as well as the outsider: "I was a stranger and you did not welcome me."¹ The Australian Catholic Bishops Conference noted that Jesus was a migrant and a refugee himself.² The Church in recent decades has expressed concern about the flight of refugees. Pope John Paul XXIII expressed the 'bitter anguish of spirit' he felt about refugees and stated in 'Peace on Earth' (1963):

there are countless thousands of such refugees at the present time, and many are the suffering – the incredible sufferings – to which they are constantly exposed.

¹ Mt 25:31-46

² Australia Catholic Bishops Conference, Statement on the Pastoral Care of Migrants and Refugees, May 2000, p.5

There are now 23 million refugees in the world and the challenge of the global movement of peoples is part of the challenge of globalisation. Pope John Paul II has spoken out strongly about the conflict caused by globalisation of capital but restrictions on the movement of peoples; the potential for living in harmony brought by globalisation and the accentuation of divisions:

On the one hand, globalisation accelerates flows of capital and exchanges of goods and services between people and inevitably influences human movement. Every important event that occurs in a specific part of the world tends to have repercussions on the entire planet, while the sense that all nations share a common destiny is increasing. The new generations have a growing conviction that the planet is now a 'global village', and they make friendships that transcend the differences of language or culture. Living side by side is becoming a reality for many people.

At the same time, however, globalisation produces new ruptures. Within the framework of liberalism without adequate controls, the gap between the 'emerging' and 'losing' countries is widening. The former have capital and the technologies to allow them to enjoy the world's resources at will, a possibility that they do not always use with a spirit of solidarity and sharing. The latter, instead, do not have easy access to the resources needed for adequate human development, and sometimes even lack the means of subsistence; crushed by debt and torn by internal divisions, they often end up wasting their meager wealth on war.³

The UN definition of a refugee – while written in technical language – reflects the reality of conditions that fuels the flight of peoples. A refugee is any person who:

Owing to a well-founded fear of being persecuted for reason of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable, or owing to such fear, is unwilling to return to it. [Article 33.1 of the Convention relating to the Status of Refugees].

The Church acknowledges the plight of contemporary refugees and its understanding corresponds with the UN definition:

In many regions of the world today people live in tragic situations of instability and uncertainty. It does not come as a surprise that in such contexts the poor and the destitute make plans to escape, to seek a new land that can offer them bread, dignity and peace. This is the migration of the desperate: men and women, often young, who have no alternative than to leave their own country to venture into the unknown. Every day thousands of people even take critical risks in their attempts to escape from a life with no future.⁴

³ John Paul II, Message for World Migration Day, November 1999.

⁴ John Paul II, Message for World Migration Day, November 1999.

Australia and Refugees

Pope John Paul II has stressed the importance of people having accurate facts about the situation of refugees, but as is suggested in this paper, this has not always occurred:

... it is very important that public opinion be properly informed about the true situation in the migrants' country of origin, about the tragedies involving them and the possible risks of returning.⁵

Australia has a proud tradition of assisting migrants: six million have come since the end of the Second World War and 600, 000 have been refugees. This tradition has prevailed over an earlier tradition, which maintained that Australia should be white and has been fearful about invasion from other parts of the world. In the former sense, Australia's response is in accordance with the story from Exodus about the ancient custom of welcoming the stranger:

When a stranger stays with you in your land, do him no wrong, He shall be to you as the native among you. Love him as yourself for you have been strangers in the land of Egypt. (Lev19:33-34).

Australia's humanitarian refugee program is made up of two parts: our obligation under the UN Refugee Convention to hear claims for asylum from refugees who seek asylum in Australia; and a non-obligatory resettlement program of refugees in UN camps.

There are 12,000 places in Australia's humanitarian program. The 12,000 is made up of three categories:

1. Approximately 4000 places are for refugees making asylum claims (which are assessed under the Refugee Convention criteria by the government). These claims are made by refugees who reach our shores with out papers.
2. 4000 are for resettlement of refugees from UN refugee camps (and are assessed by the UN under the UN Refugee Convention criteria).
3. A Special Humanitarian Program of 4000 places which allows organisations and individuals in the Australian community to sponsor people. Those sponsored have to be considered at serious risk in their home country (but not necessarily refugees under the Refugee Convention definition) as well as having a sponsor in the Australian community prepared to pay an airfare and administration costs. This often works as a form of de-facto family reunion.

Australia is generous in one particular aspect of assisting refugees. This is in provision of places for resettlement of refugees accepted for permanent settlement. We rank sixth out of ten countries, although the claim that we are second is only valid if we are measured on a per capita basis. The figure is capped at 4000 people per year.

⁵ John Paul II, Message for World Migration Day 1995-6, 'Undocumented Migrants, 25 July 1995 p.4.

In terms of hosting refugees, however, Australia is on the bottom end of the range. These figures show combined numbers of refugees and those seeking asylum living in different countries in 2000:

Australia (16,700); Britain (87,000); Germany (180,000); Thailand (217,000); Zambia (255,000); Sudan (385,000); Guinea (390,000); Yugoslavia (484,200); United States (481,500); Tanzania (543,000); Iran (1,895,000); and Pakistan (2,019,000).

Similarly, Australia is in the lower-middle range of countries in terms of refugee applications for asylum. In 2000, the following number of asylum applications were made:

Australia (9,496); Czech republic (8,549); Austria (20,096); Belgium (35,778); Canada (29,393); France (30,907); Germany (138,319); Hungary (11,499); Ireland (11,094); Italy (33,364); Netherlands (42,733); Norway (10,160); Switzerland (58,261); United Kingdom (71,145); United States (81,643).

What has alarmed the Government is the sudden rise from an average of 1000 unauthorised entrants per year to 4000 per year, which began two years ago. This is in line with the surge in numbers experienced in Europe over the same period, which vastly exceeds anything we are facing.

Moreover, such people are more likely to be refugees. According to the Minister for Immigration, 90 percent of the persons who had their cases finalised and had arrived by boat were granted refugee status.⁶

Nevertheless, this increase to 4000 people arriving each year to claim asylum has created great alarm. Why?

Politics and Public Perception

There have been two fundamental shifts in the Australian community since One Nation won one million votes in 1998. Some media analysts have suggested that the Coalition's policy stance on refugees has shifted to attract and absorb the One Nation vote by reflecting and amplifying the views of that part of the Australian community. The Government's hard stance has resonated strongly with sections of the community. Similarly, to avoid losing electoral ground, the ALP's policy on respecting the human rights of asylum seekers was ditched in pursuit of electoral survival as it sought to echo the Coalition's stance and appeal.

As a consequence we have politicians focusing on the supposed negative qualities of refugees behaviour, culture and being. Take these comments as examples:

*These people have behaved abominably right from the start. The disgraceful way they treat their own children. Any civilised person would never dream of treating their children in that way...[they are]...not welcome in our country;*⁷

Or -

⁶ Hansard 1 November, 2000, p.19462

⁷ Foreign Minister Alexander Downer, 10 October 200.1

...these uninvited and repulsive people only serve to harden the resolve of decent balanced Australians. Add to that sordid list of behaviour, the scuttling of the Indonesian fishing boats that carried these pathetic cargoes and one wonders where these wretched people would be acceptable.⁸

Such negative labelling can fuel fear of foreigners by playing up difference and suggesting that the differences between nationalities and cultures are greater than our common humanity which unites us. Pope John Paul II has warned against closing our hearts and minds to the stranger arriving and seeking aid in our land. It is beholden upon us to try and imagine why refugees flee. The Pope stated in 1995, that:

it is necessary to guard against the rise of new forms of racism and xenophobia behaviour, which attempts to make these brothers and sisters of ours scapegoats for what may be difficult local situations.⁹

Community Fears

The Pope's comments are relevant to Australia's situation if attitudinal research is to be believed. The second shift in the Australian community plays itself out on a deeper national level – it is a profound sense of insecurity about life. Politicians are, arguably, merely articulating and amplifying our fears and prejudices.

Recent focus group interview findings (commissioned by Oxfam Community Aid Abroad and prepared by the CCJDP) about community attitudes towards refugees (conducted the week before the election was called) reveal that Australians are feeling anxious about the dramatic social and economic changes of the past twenty years. Faith in many aspects of their lives, such as job security and a sense of peace and hope for the future, is fragile. This was true well before the collapse of Ansett and the atrocity of September 11. Many feel that Government has lost control over global economic processes that fails to provide employment and an equitable wealth distribution.

The interviews show that with people feeling that things are apparently out of control, it becomes paramount to *keep* control over whatever we can. This is no more important than in the area of policing our borders. The use of the Special Air Service (SAS) against defenceless refugees on the Tampa or the navy firing shots near refugee boats is seen not as a matter for national alarm and shame, but wins approval. The fact that Australia is currently imprisoning 653 refugee children is felt to be taking a firm stand.

Our fears and anxieties are being projected onto refugees. In terms of the national psyche, our desire to dispel our anxieties and regain control over an uncertain future is being played out in a tragic drama on our northern coastline where we are repulsing the unwanted outsider. Refugees have become a scapegoat for the insecurity of the nation. Against such emotional and irrational fears, facts have little chance of making headway. This is fertile ground for xenophobia – and worse.

⁸ Senator Ross Lightfoot, 11 October 2001.

⁹ John Paul II, Message for World Migration Day 1995-6, 'Undocumented Migrants', 25 July 1995 p.4.

The focus interviews found a deep lack of empathy for Afghani and Iraqi refugees and Muslims in general, who are stereotyped as violent, fanatical, and oppressive towards women. Refugees from the Middle East are viewed as being so fundamentally different as to never be able to "assimilate" into Australian life. Some interviewed were not just prejudiced but hostile. These beliefs are deeply held and reinforced by statements by politicians. Since politicians combined refugees with terrorism, refugees from the Middle East are viewed as a direct threat to our way of life.

As former Prime Minister Malcolm Fraser has written:

*We are witnessing a revival of the politics of White Australia, reinforcing a sense of insecurity, following on from September 11, with unrealistic appeals to a return to 'Fortress Australia.'*¹⁰

Such xenophobia is present in the wider community; arson attacks on mosques in Brisbane, Adelaide, and Sydney and racist graffiti scrawled on mosques in Melbourne are current examples of racial violence and intolerance in our society. The Equal Opportunity Commissions in several capital cities have recorded an increase in racially motivated incidents since September 11.

The Church challenges such acts of racism and discrimination:

*Working for the unity of the human family means being committed to the rejection of all discrimination based on race, culture or region as contrary to God's plan. It means bearing witness to a fraternal life based on the Gospel, which represents cultural difference and is open to sincere and trustful dialogue. It includes the advancement of everyone's rights to be able to live peacefully in their own country, as well as attentive concern that in every State immigration laws be based on recognition of fundamental human rights.*¹¹

Similarly, the Church teaches that integration of migrants and refugees takes time, respects the timeframe of the migrant and cannot be rushed. Integration into the host society will occur, "surely and effectively if it is done voluntarily and gradually without any compulsion and hindrance."¹²

Finally the Australia Catholic Bishops Conference observed that in the Last Judgement, the way that people have treated the stranger will become a measure of the judgement against them and whether they are placed amongst the blessed or the cursed [Mt 25:35-:43].¹³ The Old Testament points out that the Israelites, as a people liberated from slavery after they crossed the Red Sea, must view foreigners living amongst themselves as a reminder of that experience. Therefore they must treat the strangers as they treat themselves and must love them as they love themselves

¹⁰ Draft letter to editor sent to CCJDP.

¹¹ John Paul II, Message for World Migration Day, November 1999.

¹² *De Pastoralis Migratorum Cura*, Chapter 1, cited in Australia Catholic Bishop's Conference, Statement on the Pastoral Care of Migrants and Refugees, May 2000.

¹³ *Ibid*, p.5.

[Lev. 19:34]; and provide them with help and not to discriminate against them [Deut.10:17-18].¹⁴

Recommendation:

We need to speak out as much as possible about the commonalties between us as humans and as creatures of God and emphasise the importance of respect and understanding between peoples of different religions and cultures.

Border Control or Fortress Australia?

The Parliament passed seven bills in September 2001 which removed the rights of refugees in a variety of circumstances when they seek asylum in Australia. Collectively, the bills represented the most far-reaching changes to Australia's reception and treatment of refugees in forty years. The legality of the new legislation may be dubious and may be challenged in the High Court. One effect of the bills will be that the Australian navy will be able to intercept refugee boats and transfer them to quasi-prison centres on Nauru and other islands.

In an attempt to neutralise refugees and asylum seekers as an election issue, the ALP reversed its earlier opposition to three of the bills (which were introduced into parliament some years ago) and passed them. In doing so, the ALP curtailed a Senate Committee Inquiry, which was taking public submission into the effects of one of the bills, by voting with the government to fast-track it back to the House of Representatives. By doing so, the ALP ignored its own policy in its 2000 platform which states:

(92) Labor will ensure that Australia's international obligations towards asylum seekers and refugees are met, and Labor will positively promote the rights of refugees and asylum.

The passing of these bills without proper parliamentary debate, or an opportunity for public submission was a low point in Australian parliamentary process. The effect of the bills is to create an unjust order for treatment of refugees. The new pieces of legislation are awaiting promulgation and are:

- *Migration Legislation Amendment Bill (No. 1) (2001);*
- *Migration Legislation Amendment (Judicial Review) Bill 1998 (2001);*
- *Migration Legislation Amendment No.6;*
- *Migration Amendment (Excision from Migration Zone) Bill (2001).*
- *Border Protection (Validation and enforcement Powers) Bill 2001; and Migration Amendment (excision from Migration Zone) (Consequential Provisions) Bill (2001).*

¹⁴ Ibid, p.5.

The Government's proposed Bill for retrospective legislation to cut out the Christmas, Cocos and Ashmore isles from the migration act is a dubious one. The Government should not be seeking to abolish human rights standards being applied in different parts of Australian territory. Such a move goes against our obligations under the UN Convention on the Status of Refugees to assess refugee claims made on Australian territory. It is a dangerous precedent. Professor Guy Goodwin-Gill, Chair of International Refugee Law at Oxford University, says of the legislation, "There is no way international law can ignore what happens in fact in the jurisdiction of the state, irrespective of how the state classifies its pieces of territory." This means – in the Professor's opinion - that the Refugee Convention and the human rights of refugees to claim asylum on Australian territory remain despite the legislation.¹⁵

Another of the Governments legislation narrows the definition of 'persecution'; while another effectively removes access to judicial scrutiny of Refugee Tribunal decisions. It is vitally important to retain unhindered judicial scrutiny by the Federal Court to ensure the integrity and transparency of what is essentially an administrative system with decisions about people's lives being made primarily by public servants. The Refugee Appeal Tribunal has single members acting as both interrogator and adjudicator over cases (without guidance from common law) and thus judicial oversight by the Federal Court is crucial.

The Government's revised Border Control Bill has practical implications for refugees, which have not been addressed. Refugees are still going to flee persecution and war and seek refuge in Australia. The image of the Australian navy turning back some of most desperate and defeated people in the world is shameful. Common humanity would have us assist those coming in distress as we have done in previous decades and to process refugee claims, as is global practice. Pope John XXII has stated,

*Refugees are persons and all their rights as persons must be recognised. Refugees cannot lose these rights simply because they are deprived of citizenship of their own states.*¹⁶

Border Control and the Queue

Australia's best interests are served when justice is implicit in public policy. For this to occur in refugee policy and quotas, we need to dispense with the 'queue' myth, which obscures facts, inflames emotion and mitigates against sensible policy-making. Additionally, we need to look at the impact on people of policies designed to deter refugees such as three-year temporary protection visas (TPVs).

Introduced to the public as a concept in 1996, the 'queue' has been a successful piece of spin doctoring. It is premised on Australians' sense of fairness, and belief that there ought to be a proper process. Many now believe the fallacy that there are

¹⁵ Peter Mare, 'A Pacific Solution: Reflections on the Tampa Affair and September 11', *Eureka Street*, Vol.11, No.9, November 2001.

¹⁶ John XXII, 'Encyclical Letter on establishing Universal Peace in Truth, Justice, Charity and Liberty, *Pacem in Terris*, ' 11 April 1963, p.105.

legitimate refugees that play by fictional rules and who wait to be resettled; and refugees who come directly to claim asylum and are rule breakers. But has this always been the case?

The pejorative branding of refugees making asylum claims did not occur with refugees who arrived by boat - without visas - from Indo-China in the 1980s. It has always been Australia's responsibility (and properly recognised international process), since we signed the Convention Relating to the Status of Refugees in 1954, that we would assist refugees claiming asylum (i.e. those arriving without visas) by hearing their claims. The 'queue jumper' is a more recent invention.

The 'queue' gives a false portrayal of an orderly process. As mentioned earlier, there are 21 million refugees but only 90,000 places offered by western countries for resettlement through the United Nations High Commission for Refugees (UNHCR) in 2000. Australia offers to take 4000 of this 90,000. Nevertheless, refugees can wait up to five years to be processed and accepted for resettlement. Refugees struggle to survive for years in a lottery, waiting to be accepted and for an offer to resettle. We have no immigration officials hearing claims in Iraq or Pakistan. Pakistan has over three million Afghan refugees, but according to a UN official in Pakistan, Australia allowed only 21 to resettle through the 'queue' in 2000. Overall Australia gave Afghans only 124 permanent protection visas in 2000 - many of them would have been people who arrived by boat and claimed asylum.

The 'queue' obscures urgent needs in different parts of the world at certain times. Given that 45.6% of refugees coming to Australia came from Europe and only 6.4% from South-west Asia in 2000, an adjustment in the number of people we receive from South-west Asia (Afghanistan and Iraq) is urgently required. The responsibility is greater too, since we are participating in a war which is exacerbating refugee flows from Afghanistan.

People Smuggling

The frugal number of places available internationally fuels people smuggling. Common sense would indicate that the best way to undercut demand for the people smugglers is to work for a global increase in the number of places for resettlement. Similarly, it is unrealistic to argue that refugees should halt in Indonesia (a poor country with one million internally displaced people) and apply for asylum there. Recognition by UNHCR as a refugee does not mean automatic safety and resettlement in a country like Australia. Thirty refugees, recognised by UNHCR in Jakarta, were amongst the 350 who drowned recently, showing that the international program for resettlement failed them because countries like Australia refused to take extra people waiting in the 'queue'.

TPV visas prohibit families reuniting for over three years and compel fathers to send for their wives and children via people smugglers (a new variation on this visa prohibits some refugees ever being able to reunite with families). This is why children ended up in a situation where they drowned and we had the images of grief stricken parents – refugees on temporary protection visas, crying in Sydney – their lives torn asunder.

This lesson is reinforced by the words of Pope John Paul II in his message for World Migration Day 2000, when he said:

States with a relative abundance tend to tighten their borders under pressure from public opinion disturbed by the inconveniences that accompany the phenomenon of immigration. Society finds itself having to deal with the 'clandestine' men and women in illegal situations, without rights in a country that refuses to welcome them, victims of organized crime or of unscrupulous entrepreneurs.

Australia has maintained a quota of 12,000 since 1991. It has remained at that level firstly because of the recession of the early '90's and secondly, arguably, because the advent of One Nation in the middle nineties made it more difficult for Government and the Opposition to talk about population increase. In the past, our refugee quota was higher: 16,000 in 1989 and 20,000 in 1980; and there is no reason why it could not be so again. (Budgetary objections against increases should be viewed in the light of the \$150 million alone, spent on the Tampa incident). An incremental increase, phased in over two to three years to reach a quota of 25,000 per annum, would go a long way to solving the current crisis. The Heads of Churches – including Archbishop Frank Carroll, President of the Catholic Bishop's Conference called (in November 2001) for an increase in the quota to 25,000 in the next financial year. The increase needs to be incremental to allow for a corresponding expansion and planning of settlement services.

The current offshore program of resettlement should be de-linked from the on-shore program which handles asylum claims. This linkage has only been the case since 1996. The result of de-linking the two programs would be that an increase in use of onshore places through successful asylum claims would not be offset by a decrease in places in the resettlement program, as is currently the case. There would be more places for resettlement and would be, therefore, less incentive to take the people smuggling option. An immediate option is to increase the resettlement program to encompass all of the current 12,000 places providing an extra 4,000, and then a notional allocation of an extra 3-5000 places for onshore asylum claims

Recommendations:

We need to:

- ***have a phased increase of the overall numbers of our Humanitarian Program aiming for 25,000 in several years;***
- ***de-link the onshore and offshore program;***
- ***increase the offshore resettlement to 12,000 in 2002-3 and on-shore asylum claims to be a flexible quota sitting separately from re-settlement programs. A corresponding increase in funding to settlement services should be phased in.***
- ***increase the proportion of resettlement numbers from SW Asia; and***
- ***stop demonising those who do come and claim asylum.***

Temporary Protection Visas¹⁷

Refugees who have arrived in an unauthorised manner outside of an 'excised zone'¹⁸ are eligible for three year Temporary Protection Visas. This visa is valid for three years after which time an applicant's claims to refugee status are re-assessed. If the applicant is still found to be a refugee, they are eligible for a Permanent Protection Visa and family re-union. However there is no right to family re-union for the three years in which they hold temporary visas. On the other hand, an unauthorised arrival who arrived in an 'excised zone' is limited to successive temporary visas and is permanently prohibited from family re-unification.

The restrictions on family re-union will lead inevitably to a high rate of mental illness and psychological breakdown amongst TPV holders. The importance of the family unit as an aid to assist integration or settlement in the host country is crucial. The Australian government's policy will create an underclass of disillusioned and psychologically fragile refugees in Australia. Whilst this might serve the government's short term campaign against unauthorised arrivals, it is likely that many TPVs will remain in Australia for long periods of time, either as permanent residents or on successive temporary visas. The short-sightedness of this policy will become apparent in years to come with increased costs and strain placed on the social system, including health care and counselling services. The quality of protection offered is thus seriously reduced.

It is likely that many family relationships will break down over the course of a three-year separation. The Australian government contends that refugees who place a high value on the maintenance of the family unit will not leave their family behind. It takes no account of the motivations of many spouses (invariably husbands) who take action to try and secure a non-persecutory future for their family.

A three-year separation may well prove fatal for a spousal relationship. There may be pressures on the remaining spouse to re-marry or find a male partner who is able to provide physical support. A three-year separation from minor children will be distressing for all parties and will inevitably cause some breakdown in the parental relationship. The separation will result in feelings of guilt from the refugee in Australia, feelings of anger from the spouse left behind and feelings of alienation by children whose father has left them for an extended period. The Government may argue that these stresses and strains are part and parcel of many refugee situations. Whilst this may be so, this is generally the result of factors that cannot be controlled, not deliberate government policy.

The bar on family re-union has resulted in a 'pull factor' of family members travelling to Australia by boat in an unauthorised manner. A greater number of refugee women and children have begun to arrive by boat in Australia as the only way of being re-united with their spouse.

¹⁷ The following section is reproduced in whole from the Refugee Immigration and Legal Centre, Submission on Family Unity and Refugee Protection.

¹⁸ 'excised zones' include Christmas Island and Ashmore Reef where the majority of asylum seekers have landed by boat in recent years.

The UNHCR Guidelines on Reunification of Refugee Families consider the situation where members of the same family have reached different countries of temporary asylum. This must now be (unfortunately) considered to be the case when unauthorised arrivals are accepted as refugees in Australia and receive variants of temporary refugee visas. UNHCR advise that if reunification to the same country of permanent asylum cannot be facilitated, “Field Officers should where possible promote the reunification of family members in one of the countries of temporary asylum while awaiting a durable solution.”

Most refugees who receive Temporary Protection Visas in Australia have family members in overburdened and underdeveloped host countries of first asylum (primarily Pakistan and Iran). In these situations (and consistently with UNHCR Guidelines) it must be recognised that Australia is the most suitable country for family reunification whilst family members await a durable solution. UNHCR Guidelines advise that when the ‘settlement’ country imposes long waiting periods or refuse altogether to authorise certain types of family re-unification, such difficulties should be reported to Headquarters.¹⁹ Current Australian practices actively impedes the UNHCR mandate on refugee family re-unification.²⁰

Recommendation

Conditions on Temporary Protection Visas should be amended to permit family re-unification and to adhere to UNHCR guidelines and principles of international law.

Successive Temporary Visas – no prospect of family re-union

The most unfortunate category of refugees that arrive in Australia are those who arrive in an unauthorised manner at an ‘excised place’. They are not eligible to apply for asylum in Australia, are transferred to either Nauru or Papua New Guinea and are eligible only for Offshore Entry Visas (subclass 447).

Offshore Entry Visas contain criteria additional to the question of whether or not the applicant is a refugee. There is no guarantee that a refugee who has arrived in Australia and been transferred to Nauru or Papua New Guinea will ever be accepted as a refugee in Australia. Instead they may be granted an Offshore Entry Visa if they meet additional requirements and depending upon the number of places Australia makes available for these visas. Offshore entry Visas are three-year temporary visas which can be successively ‘rolled over’ for additional periods of three years. An Offshore Entry Visa holder has no right to permanent residence or family re-union whatsoever.

This regime dooms a refugee to be permanently denied of their right to family re-union if they wish to remain in Australia.

Arguably, the Governments TPV regime does not stand up to the Church's principles used to test public policy as it undermines the primacy of the family:

¹⁹ UNHCR Guidelines on the Reunification of Refugee Families, 1983, ‘exit visas’, 10.(i), & (v)

²⁰ See EXCOM Conclusion No 9(xxviii) on Family Reunion, 1977, also EXCOM Conclusion No 24 (xxxii), on Family Reunification, 1981

[T]he individual, the family and society are prior to the State, and...the State exists in order to protect their rights and not stifle them.²¹

. In particular, the TPV policy fails to respect:

- the social nature of human beings, created in the image of a loving God;
- the Gospel imperative to love thy neighbour, especially those in need;
- the end of all social arrangements is to enhance the human dignity of individuals
- justice must be enacted in a spirit of love to create a society marked by genuine solidarity.²²

Detention

Australia and Turkey are alone in the western world in having mandatory detention of asylum seekers. New Zealand, England, Canada and many European countries only use detention for a limited period immediately upon arrival and then release asylum seekers into the some form of community care while their claim is assessed. This is just, because asylum seekers are not criminals. Other countries assess that once asylum seekers are interviewed and make their claim (and as long as they are not found to have any criminal record), they cease to be illegal as they have been officially recorded and can move into an assessment process and be released into the community.

Australia has employed mandatory detention for all those arriving without papers only since 1992. The indo-Chinese asylum seekers of the late 1970s and early 1980s weren't incarcerated but welcomed, and housed in migrant hostels. Detention is a policy that was designed to discourage unauthorised arrivals despite the lack of evidence that it does that. Asylum seekers are generally unaware of our policy. People smugglers are not known for respecting our borders. So asylum seekers are coming regardless. Is punishment by detention the appropriate response?

Pope John Paul II points out that refugees however they might arrive – illegal or not, asylum seekers still have their human rights:

His irregular legal status cannot allow the migrant to lose his dignity, since he is endowed with inalienable rights, which cannot be violated nor ignored.²³

The Pontifical Council for Pastoral Care of Migrants and Itinerant People warned that:

A person applying for asylum should not be interned unless it can be demonstrated that he or she represents a real danger, or there are compelling reasons to think that he or she will not report to the competent authorities for

²¹ 'Catholic Social Welfare', Australian Catholic Social Welfare Commission, Vol.1, No.1, July 1992.

²² 'The Principles of Catholic Social Teaching': A Summary of Part 1 of ACSWS publication: [Towards a Practical Theology of Welfare: Guiding Principles for Catholic Social Service Agencies](http://www.acswc.org.au). www.acswc.org.au

²³ John Paul II, Message for World Migration Day 1995-6, 'Undocumented Migrants, 25 July 1995 p.2.

*due examination of his or her case. Moreover such people should be helped with access to work and to a just a rapid legal procedure.*²⁴

Australia has ratified the UN Convention on the Status of Refugees. Article 31 of the Convention says that the "State shall not impose penalties, on account of their illegal entry or presence, on refugees ...provided they present themselves without delay to the authorities." Boat people invariably turn themselves in, yet Australia penalises them with months – or years of incarceration.

Such detention is open ended, and a person may only be released when they are either granted refugee status or deported. There is a small but significant group of people whose claim has failed, and have exhausted the appeals process, but cannot be deported due to a lack of administrative arrangements between Australia and the person's country of origin eg. Iraq. They remain incarcerated indefinitely. Of the 2887 people in detention in Australia in August 2001, 969 were 'awaiting removal' from the country. Of that group 165 had been in detention for more than 18 months.²⁵

The total number of refugees and other detainees in Australian detention centres in 2000 was 8107 (although DIMA states that some may be counted twice due to transfers). In 1999/2000, 1571 refugees were held in mandatory detention for period 6-9 months. 834 refugees were held in detention for 9-12 months. 192 were held for 12-24 months. 27 were held for 24-36 months; and 11 were held for more than 36 months. In 1999-2000, people in detention have been collectively held for 929,210 detainee days or 2545 years.

"Detention of asylum seekers is inherently undesirable" states the United Nations High Commission for Refugees 'Guidelines on Detention of Asylum Seekers'. The Guidelines expressly warn against detaining women, children, and those with special psychological needs. In 2000, the Australian government found that 85% of asylum seeker claims were genuine. Do not these refugees have a psychological need to be believed?

Dr Kerryn Phelps, President of the Australian Medical Association, has stated that asylum seekers are highly traumatised people with a high risk of depression, anxiety and post-traumatic stress disorder. Imprisoning such people is a clear case of injustice.

Nowhere is this more apparent than with the imprisonment of children. 1147 minors were held in detention in 2001. Their crime: that they or their parents sought asylum in Australia. Perhaps no other feature of Australia's response to asylum seekers challenges us more than this penalisation of innocent children.

The costs to the taxpayer of this damaging system of detention is spiraling out of control. It costs at least \$104 a day, according to the Government's figures, to keep

²⁴ *'Cor Unum'*: Refugees: A Challenge to Solidarity, 1992, 11.

²⁵ Peter Mare, 'A Pacific Solution: Reflections on the Tampa Affair and September 11', *Eureka Street*, Vol.11, No.9, November 2001.

an asylum seeker detained. The average cost per person at Melbourne's Maribyrnong Detention centre is \$168 per day.²⁶

The total cost to the taxpayer in 1999 - 2000 was \$ 96,650,701. It is costing around \$730 per week to keep each asylum seeker imprisoned. With new temporary facilities planned, that cost will increase. The cost of all the barbed wire, security walls, and guards are high because of the isolated locations of most of the centres. It is borne by the taxpayer primarily because asylum seekers did not arrive with a visa.

In summary, several elements of the Australian Immigration Detention System breach international human rights treaties that Australia has ratified, which are monitored by the Human Rights and Equal Opportunity Commission (HREOC) and do not follow UNHCR guidelines on detention of Asylum Seekers (despite Australian membership of UNHCR Executive Committee and being a signatory to the 1951 Refugee Convention). Ongoing detention and the associated violation of human rights are the critical issue for Catholics and require reform of the existing system. The Pontifical Council for the Pastoral Care of Migrants and Itinerant People, argues that:

*Protection is not a simple concession made to the refugee: he is not an object of assistance, but rather a subject of rights and duties. Each country has the responsibility to respect the rights of refugees and assure that they are respected as much as the rights of its own citizens.*²⁷

Specific concerns about the human rights of detained refugees are:

1. Prolonged Detention

- The UNHCR guidelines relating to Detention of Asylum Seekers state that detention of asylum seekers is inherently undesirable.
 - Detention of asylum seekers who come "directly" in an irregular manner (such as unlawful non-citizens) should apply only pending determination of their status and only be imposed... for a minimal period.
- In Australia in 99/00, more than 2,500 asylum seekers were held between more than 6 months in mandatory detention.

2. Case Review

- The UNHCR guidelines reinforce Article 9 of the International Convention on Civil and Political Rights (ICCPR) to which Australia is a signatory, arguing that "*detention must be subject to judicial or administrative review to ensure that it continues to be necessary in the circumstances.*"
- The Australian system does not provide for regular case review for the need and appropriateness of detention.

3. Detention of minors

²⁶ Hansard, Questions taken on Notice 44, 20 February 2001, Senate Legal and Constitutional Affairs Committee, Immigration and Multicultural Affairs Portfolio, Additional Budget Estimates Hearing.

²⁷ 'Cor Unum': Refugees: A Challenge to Solidarity, 1992, 11.

- UNHCR expressly warns against the detention of children in its Guidelines on Refugee Children (CROC): "*Minors who are asylum seekers should not be detained.*"
- Article 37 of the Convention of the Rights of the Child (ratified by Australia) requires States to ensure that detention of minors shall be used only as a measure of last resort and for the shortest possible time.
- 1147 minors were held in detention in Australia in 2000.

4. Access to Mental Health Services

- The Standard Minimum Rule 22 of the Immigration Standards states that psychiatric care should be a standard service available to detainees.
- '*Appropriate mental health care services are not readily available to detainees.* (Human Rights and Equal Opportunity Commission 1998).

Recommendations:

We must advocate for reform of the existing detention system to respect the human rights of refugees.

Children should not be detained and should be released along with their parents into community care.

On-going detention should be prohibited by legislation preventing open ended detention and detention monitored by judicial review.

A special visa class is required for those people 'awaiting removal' to allow them to live in the community under a parole model (as suggested by the Conference of Leaders of Religious Institutes²⁸) where no extradition treaty exists between their country and Australia.

Psychological assessment and review should be provided in all detention centres and those at risk of psychological harm released into the care of community organisations.

²⁸ CLRI (NSW), Policy Proposal for Adjustments to Australia's Asylum Seeker Process, 13 June 2001.