



Submission to the consultations on the  
**2005-2006 HUMANITARIAN PROGRAM**

February 2005

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## INTRODUCTION

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The Uniting Church in Australia, through its agency UnitingJustice Australia, and the Australian National Committee on Refugee Women (ANCORW) welcome the opportunity to comment on Australia's Humanitarian Program.

The Uniting Church in Australia seeks to bear witness to God's call for the continuing renewal and reconciliation of all creation through its worship, service and advocacy. In the Christian tradition of providing hospitality to strangers and expressing in word and deed God's compassion and love for all who are uprooted and dispossessed, the Uniting Church in Australia has been providing services to asylum seekers and refugees in the community and in detention for many years. The Uniting Church advocates for a just response to the needs of refugees that recognises Australia's responsibilities as a wealthy global citizen, upholds the human rights and safety of all people, and is based on just and humane treatment, including non-discriminatory practices and accountable transparent processes.

ANCORW is a lobbying, advocacy and research group which works with and for refugee women and their families in order to bring about change in the refugee system and to enhance their ability to rebuild their lives. ANCORW is committed to undertaking research into issues which adversely affect the lives of refugee women and their dependant children and to use this research to lobby for change. ANCORW regards refugee issues as human rights issues. Empowerment and the full achievement of all human rights for refugee women and their children are equally as important as protection. ANCORW is committed to empower refugee women to have control over their own lives.

In this spirit, the Uniting Church and ANCORW offer this submission to the consultation on the Humanitarian Program for 2005-06<sup>1</sup>.

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<sup>1</sup> This submission is informed by progress reports from research undertaken by Dr Eileen Pittaway, Linda Bartolomei and Rebecca Eckert, from the University of New South Wales, Sydney as part of a three-year longitudinal action research based study into the implementation of the Women at Risk Program and its effectiveness as a tool of international protection. ANCORW is a major partner in this research.

## THE HUMANITARIAN PROGRAM

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There is a compelling need for Australia and other wealthy nations to increase the number of resettlement places available and to encourage the international community, through UNHCR, to more effectively use resettlement as a tool of burden-sharing.

When the international system for coping with refugee populations was instituted it was not envisaged that there would be such large numbers of displaced persons, or that they would move to such poor countries. This places an awful burden on the countries least able to cope and allows the wealthier nations to avoid their fair share (based on resources) of the responsibility for refugees. Voluntary repatriation is the most desirable outcome for refugees and refugees should be supported so that they can return to their home country when it is safe. However, the long-term instability in many areas of the world and the plight of refugees who spend years in neighbouring countries unable to access effective protection, and without possibilities of local integration, is evidence that third-country resettlement needs to become more accessible to increasing numbers of refugees. The Uniting Church and ANCORW encourage the Australian Government to continue to cooperate with, and adequately fund, UNHCR in order to help ensure that resources are adequate to process protection claims, to build capacity for the provision of protection to refugees, and to assist refugees to access adequate protection and resettlement as appropriate.

The Uniting Church and ANCORW welcomed last year's increase in program numbers to 13,000 places and increase in the proportion of the intake allocated to refugees to 6,000. However, Australia's capacity to assist refugees and displaced people is far greater than the humanitarian migration places we make available each program year. Decisions about Australia's financial contribution and intake of refugees should involve consideration of Australia's relative wealth. We encourage the Government to make a more substantial contribution to global solutions. The Uniting Church, in its submission to consultations on the Humanitarian Program in previous years, has recommended that the Government increase the humanitarian program intake to 25,000. We again make this recommendation.

The Uniting Church and ANCORW support the Australian Government's ongoing commitment to offering a Humanitarian Program and affirm the program focus, in recent years, on refugees from international priority areas for resettlement in Africa including Sudanese refugees from the Kakuma camp in Kenya; and Liberian and Sierra Leonean refugees from the Laine Camp in Guinea. The Australian Government is encouraged to continue targeting Africa for the majority of resettlement places in the 2005-06 program year. Africa houses some of the world's largest refugee populations and many of Africa's refugees have suffered years – or even a decade – in camps with no hope of returning home in regions afflicted by protracted conflict.

### RECOMMENDATIONS

1. *encourage the international community, through UNHCR, to more effectively use resettlement as a tool of burden-sharing;*
2. *increase funding and human resources support to UNHCR to support work in refugee camps and help ensure that resources are adequate to process protection claims, to build capacity for the provision of protection to refugees, and to assist refugees access adequate protection and resettlement for those unable or unwilling to return home or for whom protection needs are unable to be met in the host country;*
3. *commit to increasing the Humanitarian Migration Program to 25,000 places by 2010:*
  - a. *with 15,000 places made available in the 2005-06 program year*
  - b. *followed by an additional 2,500 places in the following four program years;*
4. *maintain Africa as the primary regional focus of the program.*

## TARGETING THOSE IN GREATEST NEED

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The Australian Government is committed to offering a Humanitarian Program that helps those in greatest need of resettlement. However, there are a number of barriers to meeting this objective. The Uniting Church and ANCORW have identified two priority areas for reform, in order to overcome some of these barriers and better target those most in need:

- the public interest test *health requirement*, which is a barrier to access to resettlement for refugees with disabilities or who have HIV/AIDS; and
- the *Women at Risk* program, which is in need of increased resources through UNHCR, and expansion of the program and amended criteria in Australia in order to better meet the resettlement needs of vulnerable women.

## THE HEALTH REQUIREMENT

The *health requirement* is the term commonly used to refer to the public interest test relating to the potential health threats and costs of diseases or conditions suffered by a visa applicant. Under the *health requirement* an applicant must meet criteria including that they are free from tuberculosis; free from a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community; and that they:

- *do not have a disease or condition where they are likely to require health care or community services where the provision of the health care or community services relating to the disease or condition would be likely to result in a significant cost to the Australian community or prejudice the access of an Australian citizen or permanent resident to health care or community services.*<sup>2</sup>

Under the regulations, the Minister may waive *criteria 4007 (1) (c)* relating to the costs and access to health care and community services in Australia (*italicised above*). The waiver can only be exercised if the applicant satisfies all other criteria for the grant of the visa and the Minister is satisfied that the granting of the visa would be unlikely to result in *undue* cost to the Australian community or *undue* prejudice to access to health care or community services of an Australian citizen or permanent resident.<sup>3</sup> As a waiver, the power to decide whether a person with a disease or condition that could result in a significant cost will be admitted into Australia is discretionary and therefore lacks consistency, accountability, and justice in the decisions made. Australia commonly rejects applications for resettlement on health grounds, including because a person has a disability or because they have HIV/AIDS.

The idea that refugees with complex health needs place a burden on the Australian community that is outside what is reasonable for a resettlement nation to spend or provide in support of refugees goes against both the spirit of developed nations resettlement programs and the Australian Government's specific commitment to help those 'most in need'.

### Discrimination against Refugees with Disabilities

The *Migration Act* and any Regulations made under the Act are exempted from the *Disability Discrimination Act*. This means that the human rights and anti-discrimination standards relating to disability that have been enshrined in Australia are not applied in our dealings with people seeking to migrate from overseas. Visas can be rejected on the basis of a person's disability. The expense of medical treatment and specialised equipment required to meet the special needs of a person with a disability makes the health requirement difficult to pass.

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<sup>2</sup> Migration Regulations 1994, Schedule 4 Public interest criteria and related provisions, Part 1, Section 4007(1)

<sup>3</sup> Migration Regulations 1994, Schedule 4 Public interest criteria and related provisions, Part 1, Section 4007(2)

In the resettlement process, disabled refugees are frequently discriminated against. In addition, when one family member is denied permanent resident status on medical grounds, the entire family is denied. In extreme cases, families leave disabled members behind so the rest of the family may be resettled.

Refugees with disabilities are an especially vulnerable group in need of special attention. It has been estimated that there are between 2.5 and 3.7 million disabled refugees and internally displaced persons. In refugee camps, refugees with disabilities are often the last to receive food, water, and care. They are often viewed as a burden to be left behind. Displaced people with disabilities face challenges in finding safety, in activities of daily life, in discrimination on several fronts including education, access to services and rehabilitation; and are in some cases more vulnerable to physical attack. Gender and age can compound discrimination.

Many refugees became disabled as the result of a violent encounter. Factors that can cause debilitating impairments include: individual genetic makeup, conflict-related (intentional and accidental) injuries (including from land-mines), malnutrition, both infectious and non-infectious diseases, cultural or religious rites and practices, the refugee experience itself, emotional trauma associated with conflict and displacement, and the ageing process.

### **Amputees from Sierra Leone**

The Uniting Church and ANCORW are concerned that amputees from the conflict in Sierra Leone are being excluded from Australia's offshore program, as a result of the *health requirement*. Under Australia's public interest tests, amputees would generally require discretionary intervention in order to *not be excluded* from the Refugee intake. The Uniting Church and ANCORW believe that amputees from the conflict in Sierra Leone are some of those in greatest need of resettlement, and that this barrier must be removed. The conflict in Sierra Leone was characterized by systematic and widespread perpetration of gross human rights abuses against the civilian population. The rebels deliberately targeted civilians. The people of Sierra Leone had their limbs hacked off with machetes, eyes gouged out with knives, hands smashed with hammers, and bodies burned with boiling water. Women and girls were systematically sexually abused, and children abducted by the hundreds.<sup>4</sup>

Sierra Leone, situated on the Gulf of Guinea in Western Africa, is one of the poorest countries in the world. The country is recovering from a decade-long civil war (1991-2001) and severe humanitarian crisis. Since the civil war was declared over in January 2002, the internal situation has improved. However, the deep rooted issues that gave rise to the conflict - endemic corruption, weak rule of law, crushing poverty, and the inequitable distribution of the country's vast natural resources - remain largely unaddressed by the government.<sup>5</sup> Sierra Leone still has refugees remaining in neighbouring Guinea and Liberia and internally displaced people who have not been successfully reintegrated (the majority of refugees who fled during the civil war have returned to Sierra Leone or been reintegrated locally). Amputees are amongst the most vulnerable of these refugees, in an already highly vulnerable refugee community. The Uniting Church and ANCORW believe that Australia is well placed to respond to the needs of amputees. Australia possesses a robust public health care system.

### **HIV/AIDS**

Apart from a limited number of exceptions, most refugees who are identified as having HIV/AIDS are also excluded from Australia's offshore program because of the *health requirement*. This exclusion is of particular concern for many refugee women at risk. Sexual violence is endemic in conflict situations and in refugee camps and settlements. Women who are raped and then discover they have HIV/AIDS are dealt a further trauma when told they will

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4 Human Rights Watch "Sierra Leone: Getting Away with Murder, Mutilation, Rape" released July 1999 Vol.11 No 3(A)

5 Human Rights Watch Organization "Essential Background: Overview of Human Rights issues in Sierra Leone", released on January 26, 2004

often not be considered for resettlement by some countries because of this. The level of risk experienced by these women increases as they are often stigmatized and then ostracized from their communities not only because of their experiences of sexual violence but because they have HIV/AIDS. Medical facilities in camps are limited and in most cases refugees are not able to access the specialised treatment they require. These women and their families are among the most vulnerable groups in need of resettlement yet they are often those who miss out.

## **RECOMMENDATIONS**

- 1. repeal criteria 4007 (1) (c) of the health requirement for Refugees (including Women at Risk and In-Country Special Humanitarian visas), to ensure that refugees will be accepted for resettlement according to need, rather than anticipated costs to the public health system;*
- 2. set a quota for an intake of refugees from Sierra Leone who are amputees, to be met over staged successive intakes (including through the In-Country Special Humanitarian intake).*

## **WOMEN AT RISK**

The UNHCR Women at Risk (WaR) resettlement program strives to identify refugee women and their families who are most at risk and whose lack of protection warrants their urgent resettlement to a third country of refuge. A number of countries have introduced specific resettlement programs for women at risk, including Australia. For these women resettlement is often considered the only option to ensure their protection. Despite being a critical resettlement program for those most in need, the program has experienced significant obstacles and difficulties in implementation since it began.

Refugee women face considerable difficulties in accessing resettlement opportunities. They are frequently subject to extreme levels of physical and sexual violence, threats to their personal safety and that of their families. In refugee camps where resettlement officers are in place, it is often women who are denied the opportunity to access them. Seeking protection by waiting in 'queues' for resettlement officers or walking to UNHCR offices is often a risk they cannot take. Women's prospects for resettlement are often markedly reduced when they are positioned as 'risky' or 'dependent' candidates. Extensive health problems are common for many women, which are often complicated by their experiences of sexual violence and in some cases their HIV status. In their home countries they have often been denied education and employment, the pattern continuing in camps and settlements where women are usually the last to access such opportunities. Their role as caretaker and provider for their families often prevents women from accessing the resettlement opportunities they so urgently need.

UNHCR offices are regularly located long distances from camps and settlements, requiring refugees to make long and often unsafe journeys to seek resettlement opportunities. The situation is particularly precarious for women without protection who are left with little choice but to travel alone and are susceptible to harassment and violence. Women resettled to Australia as part of the WaR program have spoken of the many dangers women face. A woman from Sierra Leone seeking refuge in Guinea spoke of walking the same long and dangerous road to the UNHCR office for three years before she was finally able to apply for resettlement. In Pakistan, an Afghani woman was beaten, her hajib torn off as she attempted for the 45<sup>th</sup> day in a row to submit her papers for resettlement. She spoke of other women forced to pay with bribes of gold and often their own bodies as they are effectively raped for the chance to apply for resettlement. Some of the women who have encountered the most substantial difficulties in accessing resettlement opportunities have been resettled to Australia under the Women at Risk resettlement program.

## **Australia's WaR Resettlement Program**

As one of only three countries to provide a specific resettlement program for refugee women at risk, Australia plays a crucial role in providing resettlement opportunities to those women and their families. Initiated in 1989, Australia's WaR program has committed to providing priority settlement opportunities for refugee women who are in desperate need of resettlement to ensure protection for themselves and their families.

However significant, Australia's WaR program is not yet adequate. Women at risk are identified as those women who meet the refugee criteria under the UNCHR guidelines or who have been identified as persons of concern to UNHCR and are without the protection of a male relative. This narrow definition suggests that if a woman is accompanied by a man she will be protected and therefore not considered to be a woman at risk. UNHCR does not consider the absence of a male relative to be a criteria for acceptance under the WaR program. Australia's criteria fails to acknowledge the various circumstances which place women at risk, including the inability of the men around them to provide protection and incidences where the presence of a male increases risk.

### **The Women at Risk Quota**

Women at risk and their dependents comprise approximately 10.5% of the total refugee receiving quota for Australia. Although the resettlement quota for women at risk has been reached or exceeded in recent years, in the past the program has often failed to meet its quota. An increasing number of visa allocations have been made to dependent family members rather than to individual women at risk. The focus on resettlement from Africa where larger families are common and there is a tendency for women to assume a caretaker role for a large number of dependent family members means that for every one woman at risk admitted, the potential exists for any number of visa places to be taken by her dependents. Although greater numbers overall are being resettled, fewer individual women at risk may be resettled within this system.

Given the recognised quota limitations and the difficulties in determining eligibility for this program, it is not surprising that while increasing numbers of refugee women at risk are arriving in Australia each year, they are not all arriving under the WaR program. Consultations with service providers show that many women at risk are also being resettled under other visa programs on either Refugee or Special Humanitarian visas. While their status as women at risk remains unrecognised officially, their experiences both during and prior to resettlement mirrors those of women entering under the WaR program. Service providers have often expressed their view that the government does not provide a large enough quota for WaR, one worker commenting during recent consultations that "the small number assigned for women at risk is not enough, there are too many women". Since the program's inception numerous service providers, policy makers, researchers and refugee women alike have strongly advocated for an increase in the number of places for this important resettlement program. Despite moderate increases in the quota, there remain far too many women at risk who are never acknowledged as such by Australia's resettlement programs.

### **Urgent Resettlement?**

The processing times for women at risk continue to be of great concern. Although designed to be a 'priority' resettlement program, the majority of women at risk continue to remain in situations of unacceptable risk for extended periods of time while they wait for their claims for resettlement to be processed. While some at risk refugee women have been resettled relatively quickly, at times within a few months or a year of being interviewed, the majority of those resettled under the WaR program have spent many years in danger in their country of first asylum as they wait for resettlement opportunities. The WaR program remains substantially difficult for those women most at risk to access and the current timeline for resettlement is far from acceptable.

## **Failure of Settlement Services**

Research into settlement services in Australia is indicating that for some women, the lack of adequate protection continues after resettlement. Lack of adequate and targeted services prevents some women and their families from achieving successful resettlement and the risk and insecurity which provided the impetus for the move to Australia continues. The shattering of their hopes of safety and protection in resettlement then becomes an additional burden.

## **RECOMMENDATIONS**

1. *expand Australia's priority commitment to Women at Risk, and their dependent children, with a significantly increased quota of refugee places for this vulnerable group through:*
  - a. *an initial increase to 15% for the 2005-06 program year*
  - b. *and continuous staged increases over successive program years to meet a target of 25%;*
2. *contribute additional and specific funding and support to UNHCR, in cooperation with NGOs, for efforts to identify and process resettlement claims for Women at Risk;*
3. *amend the criteria for Australia's Women at Risk visa to define risk as lack of community support rather than lack of protection of a male relative;*
4. *ensure the provision of enhanced WaR case information to aid successful settlement and integration;*
5. *provide targeted intensive settlement support specific to the individual settlement needs of WaR and their families.*