



AUSTRALIAN
COUNCIL
FOR
INTERNATIONAL
DEVELOPMENT

Submission to the Expert Panel on Asylum Seekers

July 2012

About ACFID

ACFID is the peak council for international aid and development NGOs in Australia. We have 86 member organisations¹ which operate in over 100 developing countries. ACFID members work with refugee communities in approximately 15 countries around the world. In 2009-10 the Australian not-for-profit international aid and development sector raised \$1.2 billion for international humanitarian and development work, with over \$850 million of this donated by the Australian public. Over 2 million Australian households donate to our member organisations each year and a further 94,000 individuals gave their time as volunteers to the sector. A full list of our membership is included.

ACFID also administers a rigorous Code of Conduct for the not-for-profit aid and development sector. The ACFID Code of Conduct is internationally recognised as a leading Code in the development sector and includes over 150 obligations to which our members commit, covering a range of areas including governance, financial reporting, transparency and good development practice. The Code includes an independent complaints mechanism to address non-compliance.

The Australian Council for International Development (ACFID) welcomes the opportunity to make this submission to the Expert Panel on Asylum Seekers.

Our submission seeks to address the Terms of Reference:

- source, transit and destination country aspects of irregular migration; and
- short, medium and long term approaches to assist in the development of an effective and sustainable approach to asylum seekers

ACFID recommends:

1. The Australian Government initiate a parliamentary inquiry into the prospects for peace and prosperity in Afghanistan.
2. The Australian Government should clearly articulate a plan of how it will work with other like minded states to accelerate changes in policy and practice of the Sri Lankan Government in regards to; a) reducing its military presence in the north of Sri Lanka, b) reducing discrimination, c) helping people resettle and register land titles, d) explaining why election in the north of Sri Lanka were postponed, e) initiating peace programs and f) promoting economic investment.
3. Utilising a human rights based approach to address the situation of refugees.

¹ 76 members, 8 provisional members and 2 affiliates.

4. All parties recognise that Australia pushing back boats at sea will contribute to a deterioration of regional human rights, weaken Australia's and other states diplomatic representations around safety at sea in regards to refugee reception, and over time may lead to a greater number of deaths at sea in the region.
5. Further strengthening the whole of government approach to interventions designed to address the root causes of flight and onward movement. A whole of government approach could be supported in part through the Australian Aid Program by such measures as:
 - a. Commit to building peace and security as a cornerstone of addressing root causes through supporting development programs of the Australian Government which take into account regional geography and the particular susceptibility of the Pacific, and South and South East Asian nations to the effects of conflict and post conflict situations;
 - b. Create a *Forgotten Emergencies Fund* to provide financial support for non-government organisations and multilateral agencies to work in protracted crisis situations which also comprise the majority of protracted refugee situations.

Supporting information

In working with vulnerable people in source countries and refugee communities around the world, ACFID members have observed the root causes of this issue. Though poverty, unemployment, conflict and persecution causes many people to leave their homelands, asylum seekers by definition are fleeing due to a well-founded fear of persecution.

ACFID notes that 49 per cent of the world's asylum seekers are women and girls who often face sex-specific dangers and have specific concerns, even after reaching an apparent place of safety². Women also have particular strengths, when properly consulted and given the proper resources, and their capacities can be harnessed to great effect in improving their lives and the lives of their children, families and communities.

ACFID also notes with concern the large number of children who are asylum seekers and who are at specific risk and need particular attention as a result of their vulnerability to physical and mental trauma, their dependence upon adults to survive, and the developmental needs that must be met to ensure normal growth and development.

This submission will focus on the root causes in two countries, where people seeking asylum in Australia have originated and where ACFID members work, Afghanistan and Sri Lanka.

Afghanistan

Recommendation 1:

The Government initiate a parliamentary inquiry into the prospects for peace and prosperity in Afghanistan (see proposed Terms of Reference below).

² UNHCR *Global Trends 2011: A Year of Crisis* pg. 1 <http://www.unhcr.org/4fd6f87f9.html>

UNHCR has a case load of 2,664,436 Afghan refugees, and 447,547 internally displaced people. This is the largest group of any nationality in the world.³ According to Department of Immigration and Citizenship (DIAC) the largest number of asylum seekers who arrived by boat in 2010-2011 were from Afghanistan (1612 people or 31%)⁴. Of these, the majority are from the Hazara ethnic group.⁵

ANU's Professor William Maley's detailed statement of the situation of the Hazara minority in Afghanistan highlights that despite improvements in the representation of Hazaras, they continue to face attacks, and a 'fear of being persecuted would not be ill founded'⁶. ANU's Professor Clive Williams' also believes that if control in the south and east of Afghanistan is returned to the Taliban after 2014, more Hazaras will inevitably be forced to seek asylum abroad.⁷

Hazaras who flee to neighbouring countries face continued persecution. According to Human Rights Watch, Hazaras have been the targets of killings in Pakistan while the Pakistani Government has failed to hold the perpetrators responsible.⁸ The Hazaras therefore face persecution in their own country and in neighbouring countries where they may seek refuge.

ACFID also notes that Australia has been engaged in the decade long conflict, from which Afghan citizens are fleeing. On 8 July the Australian Government also committed to increase Australian Official Development Assistance (ODA) from \$165 million in 2011-12 to \$250 million per year by 2015-16.⁹ This increase is welcome.

What is striking is the contrast between the Australian Government's role as combatant in Afghanistan and its reluctant response to Afghan refugees over the last decade and the Australian response to Indochinese refugees at the end of the Vietnam War, where Australia had also been a combatant. Arguably public attitudes were no more favourable to refugees in 1979-81, but there was also a far greater political recognition of the role Australia played in the conflict, the consequence of conflict being flows of refugees, and the need to find durable solutions for refugees in the region. It is our observation that there has been a political failure with both major parties failing to draw the obvious connection to conflict that Australia has been involved in and the root causes of refugees and internally displaced people in the region.

Expert opinion has focused on a number of scenarios for the future political and military situation in Afghanistan, namely: a) continuation of the ruling oligarchy with attendant corruption; b) accommodation with insurgents including elements of the Quetta Shura Taliban; c) civil war; and d) return of the Taliban. Consideration of these scenarios is

³ UNHCR *Global Trends 2011: A Year of Crisis* pg 10. <http://www.unhcr.org/4fd6f87f9.html>

⁴ DIAC *Asylum trends- Australia- Annual publication 2010-11*.

⁵ Country Guidance Unit, On Shore Protection Branch, DIAC *Afghanistan Country Guidance Note*. March 2011

⁶ Professor William Maley, *On the Position of the Hazara Minority in Afghanistan*. December 2011.

www.ajustaustralia.com/downloads/Maley-Hazaras-Opinion-1.doc

⁷ Professor Clive Williams, *How can we stop the boat people? Look to the source*. July 2012.

<http://www.canberratimes.com.au/opinion/how-can-we-stop-boat-people-look-to-the-source-20120711-21w15.html>

⁸ Human Rights Watch, *Pakistan: Protect Shia Muslims*. December 2011.

<http://www.hrw.org/news/2011/12/03/pakistan-protect-shia-muslims>

⁹ AusAID, *Securing the Future of Afghanistan*. July 2012.

<http://ausaid.gov.au/HotTopics/Pages/Display.aspx?QID=736>

essential to ascertaining the future viability of the state of Afghanistan, and for understanding any subsets of the security environment and push factors for refugees, and interventions that might mitigate such factors, for areas such as the delivery of ODA.

The drawdown of troops and reduction in International Security Assistance Force (ISAF) is anticipated to have far reaching impacts on the Afghan society. These will include women's rights; the economy; and disarmament demobilisation and reintegration of ex combatants. In turn each of these issues will affect the sustainability of security in Afghanistan. For example, consideration of the main sources of wealth generation is essential for sustainable development and security. An increase in opium production, which provides 9% of Afghan GDP and is source of 90% of the world's heroin, is a real threat and viable measure to counter this trend should be identified. If there is no viable economy for ex combatants to be reintegrated into, the prospects for a secure Afghanistan will be slim.

The Senate Foreign Affairs Defence and Trade Committee has recently announced it is holding an Inquiry into 'The administration, management and objective of Australia's overseas development programs in Afghanistan in the context of the 'Transition Decade'.¹⁰

We welcome the Parliamentary Inquiry which is significant because it is the first such Inquiry in a decade of Australia being a combatant in Afghanistan. We note the Terms of Reference of the Parliamentary Inquiry are an examination of Australian ODA. However the focus on ODA is simply too narrow. A more useful scope of the Inquiry in our view would be to have considered scenarios for the transition and prospects for peace, the impacts on the Afghan economy, the wider context of the impact of conflict and transition and their effect on the root causes for refugees, and internally displaced people to come to Australia.

ACFID therefore recommends to the Expert Panel that the Terms of Reference of such an Inquiry include:

Security issues in the context of transition:

1. How will the quality and quantity of Afghan National Security Forces (ANSF) training affect the post-transition environment?
2. How will the ANSF fulfil their international human rights obligations to all people, including vulnerable groups, in Afghanistan? How will Australia support civil society in its role of protecting and promoting human rights?
3. What progress has been made towards a secure Afghanistan including the arrangements for the transfer of responsibility for security to the Afghan National Security Forces? How well has the transfer worked in those areas where it has already taken place?
4. How sustainable is the ANSF? What considerations have been made for disarmament, demobilisation and reintegration of ANSF personnel impacted by the eventual settling of security force numbers?

¹⁰ See the Inquiry website for more information:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=fadt_ctte/afghanistan/index.htm

5. What progress has been made towards a political settlement that involves Afghan women and includes plans for Australia's continued involvement in Afghanistan after 2014 as well as that of NATO and other allies including the long-term funding and other continued support of Afghanistan?
6. Can Australia work with other donors to "tackle the root causes of instability and the effects of insecurity" and what is the scope for building bridges with opposition and insurgent groups to do this?
7. What will be the role of any Australian Defence Force personnel or police remaining after 2014, and how will they be supported?

Development issues in the context of transition:

1. Examine prospects for IDPs and Refugees to return to their homes and have sustainable livelihoods, and assess push factors for refugees and IDPs and any measures to ameliorate these.
2. How can the potential negative economic impacts of the military draw-down be mitigated through Australia's ongoing relationship with Afghanistan?
3. How can Australia continue to strengthen a cohesive approach to the planning, delivery, monitoring and reporting of Official Development Assistance, across government, with other donors and with multilateral organisations?
4. How will Australia contribute to reducing poverty, increasing economic stability, creating sustainable jobs, and increasing investment and tax revenues?
5. How is Australia meeting its guidelines on working in conflict affected states, particularly with regard to protracted and cyclical humanitarian needs?
6. What progress has been made in Afghanistan toward the Millennium Development Goals (MDGs)?

Sri Lanka

Recommendation 2:

The Australian Government should clearly articulate a plan of how it will work with other like minded states to accelerate changes in policy and practice of the Sri Lankan Government in regards to; a) reducing its military presence in the north of Sri Lanka, b) reducing discrimination, c) helping people resettle and register land titles, d) explaining why election in the north of Sri Lanka were postponed, e) initiating peace programs and f) promoting economic investment.

UNHCR has a case load of 136,605 refugees and 138,401 internally displaced people.¹¹ According to DIAC, Sri Lankans made up the fourth number of asylum seekers were from Sri Lanka (362 people).

Despite the official end to the Civil War, discrimination against the Tamil minority in Sri Lanka remains. According to Human Rights Watch, some deported Tamil asylum seekers have been subjected to arbitrary arrest and torture upon their return to Sri Lanka. This includes eight cases in which returned Tamil asylum seekers face torture on their return and

¹¹ UNHCR *Global Trends 2011: A Year of Crisis* pg. 44. <http://www.unhcr.org/4fd6f87f9.html>

a further five cases in which they were subjected to torture by government security forces, most recently in February 2012.¹² ACFID also notes that local elections in the north of the country have been postponed.

Given this reality, we draw the Expert Panel's attention to the recent report by the International Crisis Group, *Sri Lanka's North I: The Denial of Minority Rights*, (16 Mar 2012)

“Deepening militarisation and the lack of accountable governance in Sri Lanka’s Northern Province are preventing a return to normal life and threaten future violence. Scene of the most bitter fighting in the civil war, the Tamil-majority north remains under de facto military occupation, with all important policies set by Sinhala officials in Colombo. The slow but undeniable movement of Sinhala settlers into the fringes of the north and other forms of government-supported “Sinhalisation” are reigniting a sense of grievance and weakening chances for a real settlement with Tamil and other minority parties to devolve power. The international community, especially those governments and aid agencies supporting the reconstruction of the area, should demand a fundamental change of course and should structure their assistance so as to encourage the demilitarisation and democratisation of the former war zone and full respect for minority rights.”

Given this reality, it is likely that push factors for Tamils will continue for the foreseeable future. We note Sri Lanka is hosting CHOGM in 2013 and this is a key opportunity to heighten scrutiny on Sri Lanka's human rights and reconciliation record.

Human Rights Based Approach

Recommendation 3:

Utilising a human rights based approach to address the situation of refugees.

ACFID emphasises the importance of a human rights based approach to addressing the situation of refugees. A human rights-based approach involves integrating the norms, standards and principles of the international human rights system into the policies, programmes and processes of development and humanitarian actors and will enable more effective responses to the situation of refugees. Human rights-based approaches mean that both the approach to, and outcomes of, development and emergency activities enable individuals and communities with which we work to have greater enjoyment of their human rights. It is based on an understanding that action based on human rights will more effectively ensure everyone enjoys a life of dignity and equality.

¹² Human Rights Watch, *UK suspends deportation of Tamils to Sri Lanka*. May 2012, <http://www.hrw.org/news/2012/05/29/uk-suspend-deportations-tamils-sri-lanka>

Strengthening Regional Human Rights

Recommendation 4:

All parties recognise that Australia pushing back boats at sea will contribute to a deterioration of regional human rights, weaken Australia's and other states diplomatic representations around safety at sea in regards to refugee reception, and over time may lead to a greater number of deaths at sea in the region

We express grave concern at the Coalition proposal to 'push boats back when safe to do so' noting that if implemented, Australia will set a dangerous example of policy practice within the South East Asian region, and will contribute to the weakening of future international efforts to prevent states, who are not signatories to the 1951 UN Refugee Convention, from taking similar courses of action. For example, according to Human Rights Watch, Thai authorities at least twice "pushed back" boats carrying ethnic Rohingyas from Burma and Bangladesh in 2011 despite allegations that such practices led to hundreds of deaths in 2008 and 2009. After providing basic supplies of food and water, Thai authorities towed the boats far out into international waters before cutting the boats adrift. A large international outcry occurred in 2009, and Thai actions towards refugees on boats remains a human rights concern. Australia adopting similar practices of boat push backs will lead to a race to the bottom in terms of regional state responses to people fleeing persecution. Over time, it will contribute to a greater number of deaths at sea of refugees within the region than would otherwise occur if Australia took a principle position and continued to respect the law of the sea and the Refugee Convention.

Building Peace and Security

Recommendation 5a:

Committing to building peace and security as a cornerstone of addressing root causes through supporting development programs of the Australian Government which take into account regional geography and the particular susceptibility of the Pacific, and South and South East Asian nations to the effects of conflict and post conflict situations.

In addition to addressing situations of chronic, protracted, or slow onset crises, ACFID recommends a more strategic, whole of government focus on building peace and security. The Independent Review of Australia's Aid Program reported that while donors acknowledge that countries experiencing conflict will be left behind in development progress, still there is an under-investment in efforts to end violence¹³. In fact, for Australia, approximately 60% of our bilateral aid programs are in conflict-affected and fragile states¹⁴ compared with only 3% of funding to conflict prevention and resolution, peace and security programs. Addressing the need for building peace and security in conflict-affected states should be undertaken through a whole of government approach.

¹³ Independent Review of Aid Effectiveness, April 2011, p.167

¹⁴ 2010 Federal Budget Statement, 11 May 2012, p.29

Forgotten Emergencies Fund

Recommendation 5b:

Create a Forgotten Emergencies Fund to provide financial support for non-government organisations and multilateral agencies to work in protracted crisis situations which also comprise the majority of protracted refugee situations.

At present there is no systematic analysis or review to guide Australia's contributions to countries experiencing chronic, protracted, or slow onset crises from which the majority of asylum seekers flee. Strengthening a whole of government approach to finding durable and long-term solutions to these situations will require creative and mixed-mode engagements which not only use resettlement as a strategic tool to unlock other durable solutions, but also use principled and structured aid engagements as a tool to addressing the long term causes of vulnerability from which people flee.

As a response, ACFID is proposing a *Forgotten Emergencies Fund*, the primary purpose of which would be to provide funding support to chronic and protracted crises which are often underfunded or under-addressed by donor governments, including Australia. Such humanitarian support could be leveraged to address a range of the root causes of flight and onward movement such as improving access to livelihoods and self-reliance, enhancing support and protection of vulnerable and at-risk groups, including women, children and people with disabilities, and supporting community capacity building for further information on ACFID's proposal, please see our ACFID's 201-2013 Budget Submission.¹⁵

¹⁵ ACFID, *Helping people overcome poverty – ACFID's 2012-13 Budget Submission*. January 2012
http://www.acfid.asn.au/resources/docs_resources/docs_submissions/helping-people-overcome-poverty-acfid-2012-13-federal-budget-submission