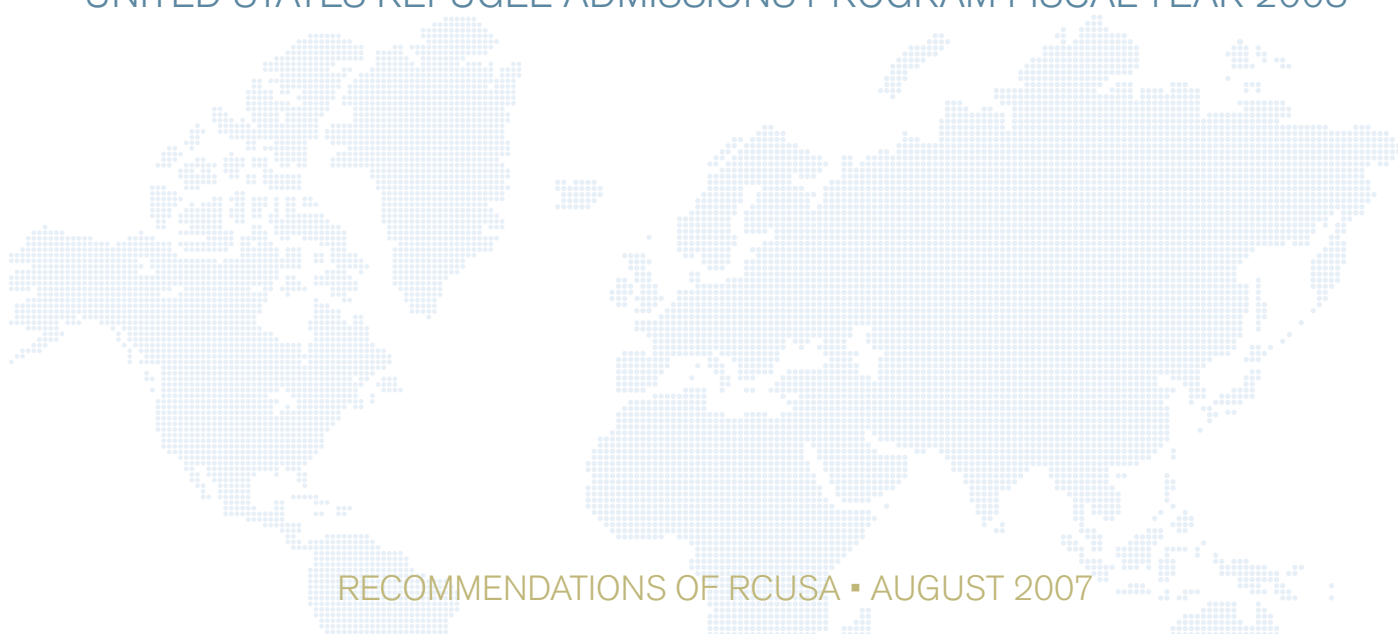




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UNITED STATES REFUGEE ADMISSIONS PROGRAM FISCAL YEAR 2008



RECOMMENDATIONS OF RCUSA • AUGUST 2007

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The Following Member Agencies Endorse This Report

- Arab American and Chaldean Association
- Chaldean Federation of America
- Church World Service/Immigration & Refugee Program
- Episcopal Migration Ministries
- Ethiopian Community Development Council
- Hebrew Immigrant Aid Society
- Hmong National Development
- International Catholic Migration Commission
- International Rescue Committee
- Jesuit Refugee Service/USA
- Jubilee Campaign
- Kurdish Human Rights Watch
- Lutheran Immigration and Refugee Service
- Mapendo International
- Migration & Refugee Services/U.S. Conference of Catholic Bishops
- Southeast Asia Resource Action Center
- U.S. Committee for Refugees & Immigrants
- Women's Commission for Refugee Women & Children
- World Relief

Front Cover: Refugees from Darfur living in Chad
Photo courtesy of Megan McKenna,
Women's Commission for Refugee Women & Children

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Executive Summary and Recommendations

Fiscal year 2008 (FY08) is the Administration's last opportunity to work with the 110th Congress and the international community on refugee protection, including the United States' resettlement of refugees who cannot return home and who cannot find protection in their countries of asylum. Resettlement, the best solution for a small percentage of refugees, can be used strategically to secure more rights for greater numbers of refugees, including those not being resettled, and can facilitate the crafting of more comprehensive responses to refugee situations. Refugee Council USA (RCUSA) hopes to contribute to our government's continued planning to help refugees around the world rebuild their lives in our country by proposing legislative and policy changes for refugee children, refugee women, stateless persons and specific groups of refugees in Africa, the Americas, Asia, Central Asia, Europe, South Asia and the Middle East.

1.1 Legislative Recommendations

RCUSA Recommended Amendments to the Immigration and Nationality Act (INA)

- Amend the INA to ensure that refugees who have been forced to provide support to armed groups are not excluded from asylum, resettlement consideration, or any immigration benefit if they are otherwise eligible for such protection.
- Amend the INA to modify the overly broad definition of "terrorist organization."

- Amend the INA to provide for the admission of refugees as legal permanent residents.
- Amend the INA to provide for continued refugee movements notwithstanding a delayed annual Presidential Determination (PD).
- Amend the INA to allow the President to designate specific classes of persons to be admitted as refugees, with legal permanent resident status, without individually applying the refugee definition in U.S. law.
- Pass the Widows and Orphans Protection Act.

RCUSA Recommended Amendment to the Millennium Challenge Act of 2003 (MCA)

- Amend the MCA to add "refugees" as persons to whose human and civil rights eligible countries must have a demonstrated commitment.

1.2 Policy Recommendations

RCUSA Recommendations Regarding Family Reunification

- No nationality restrictions on the resettlement of refugees who wish to be resettled under the family reunification or priority three (P-3) category.
- Remove the recent restriction on who can file family reunification through the P-3 process, restoring it to include anyone lawfully admitted or paroled into the U.S.

- Refugee and asylee family reunification should be expanded to include siblings, adult children, grandparents and grandchildren.

RCUSA Recommendations Regarding Group Referrals for Resettlement

- The U.S. Department of State, Bureau of Population, Refugees, and Migration (DOS/PRM) should encourage and support the United Nations High Commissioner for Refugees (UNHCR) and non-governmental organizations (NGOs) to make assessments of particular groups for group referral for U.S. refugee resettlement.
- In preparing group referrals, UNHCR submissions should focus on providing facts and legal analysis about the group that will facilitate expeditious decision making that is under the authority of both the Department of State and Department of Homeland Security (DHS), who will be carrying out the adjudications.

RCUSA Recommendations Regarding Managing the Refugee Program

- The number of admissions set in the annual Presidential Determination (PD) should be treated as a target, not a ceiling.
- The offices of the Secretary and Deputy Secretary of DHS should have explicit authority to resolve internal disputes over immigration and refugee-related guidance and policy, particularly disputes which have implications for both enforcement and services.

- The Department of State and DHS should adopt standard operating procedures that clarify lines of authority and accountability.
- The government agencies involved need to assure continued full staffing of the security advisory opinion (SAO) process so that all initial reviews will be completed within 45 days and should set an early deadline for closing old cases that became mired in the system in 2002 and early 2003, making a firm decision on clearance.
- Upon completion of the larger SAO reform process, the SAO processing for refugees should return to the State Department's Bureau of Consular Affairs.

RCUSA Recommendation Regarding Refugee Protection and Development Aid

- USAID and other humanitarian relief agencies should ensure that refugees benefit along and on par with nationals of countries receiving U.S. foreign assistance.

RCUSA Recommendations Regarding Refugee Children

- The Department of State should establish trained teams of child welfare specialists who can be rapidly deployed to identify, register, provide care, and determine outcomes for children in fragile situations.
- Best interest determinations (BID) should be used to assess the immediate protection and care needs of unaccompanied and separated children and others in vulnerable situations as well as inform decisions about durable solutions for such children.

- Family tracing should begin as soon as possible after a child's arrival in a camp, and unsuccessful tracing should not prevent a child from accessing a durable solution if the effort has been underway for two years or more.
- The Department of State should institute a separate priority category to enable U.S. based unaccompanied and separated children to petition for family reunification when a best interest determination recommends such reunification.
- The details of BIDs for all children resettling in the U.S. should be shared with the resettlement NGO in order to increase its capacity to care for these children.
- The U.S. should increase the number of unaccompanied children it resettles in fiscal year 2008.

RCUSA Recommendations Regarding Refugee Women

- The U.S. should establish a woman-at-risk priority category for resettlement.
- The U.S. government should encourage group resettlement referrals from UNHCR and NGOs based on the particular claims and circumstances of women, including single women and girls heading households.

RCUSA Recommendation Regarding Stateless Persons

- The U.S. government should establish a resettlement priority category that encompasses the situation of de jure and de facto stateless persons, including both internally displaced and those who have crossed international borders seeking protection.

RCUSA Recommendations Regarding African Urban Refugees

- The U.S. government should provide adequate financial assistance to UNHCR and to NGOs to increase its capacity to identify and/or establish programs to assist urban refugees.
- The U.S. should accept individual and group referrals from NGOs and UNHCR that reflect the need to protect urban refugees, including at-risk urban refugee women and children.

RCUSA Recommendations Regarding Specific Refugee Populations

Burundians in Tanzania

- In addition to offering resettlement to the estimated 8,000 "1972 Burundians," the United States should designate Burundians in Tanzania, who were forced to provide support to the FNL or face being erroneously associated with the FNL upon return to Burundi, as a group of humanitarian concern to the United States and as a priority two (P-2) group.
- The U.S. should accept the above-mentioned Burundians as group referrals from UNHCR or NGOs.

30,000 Congolese (DRC) in Burundi

- Of the 30,000 Congolese refugees in Burundi, the United States should process directly as a P-2 category all Congolese Banyamulenge refugees who cannot return to the DRC and other DRC refugees in Burundi who were targeted by the Mobutu regime, without requiring a referral from UNHCR.

61,000 Congolese (DRC) in Zambia

- The United States should process directly eligible Congolese refugees in Zambia who were UDPS activists and human rights activists for U.S. resettlement as a priority two (P-2) group.
- The U.S. should process directly Congolese survivors of gender-based persecution in Zambia for U.S. resettlement as a P-2 group.

15,000 Mauritani-ans in Senegal

- The United States should offer resettlement to the 15,000 Mauritanian refugees in Senegal, particularly the sensitive political cases involving activists and former members of the military and individuals who may be considered stateless.

Over 10,000 Colombians in Panama

- The U.S. should encourage NGOs and UNHCR to make group referrals from the over 10,000 Colombian refugees in Panama that take into account the particular vulnerabilities of Afro-Colombian leaders, adolescents who are forcibly recruited into armed groups, women who are the victims of sexual violence and the residents of the department of Choco in Colombia.

1,300 Haitians in the Dominican Republic

- The U.S. should resettle the 1,300 Haitian asylum seekers in the Dominican Republic registered by Jesuit Refugee Service (JRS) as of the end of 2006.
- The U.S. should encourage NGOs and UNHCR to make group referrals that take into account the particular vulnerabilities of women-headed households and children/adolescents susceptible to forced recruitment into the armed groups in Haiti.

40-50,000 Burmese Chin in India

- Burmese Chin refugees in India should be allowed to apply directly to the U.S. refugee program as a priority two group of special humanitarian concern to the United States.

12,715 Burmese Rohingya in Malaysia and 21,000 Burmese Rohingya in Bangladesh

- The U.S. government should encourage UNHCR or NGOs to make a group referral of Burmese Rohingya Muslim refugees in Malaysia for resettlement consideration.
- A P-2 should be considered for Burmese Rohingya in Bangladesh and in the meantime the most vulnerable cases should be referred on an individual basis.

Over 100, 000 Burmese Karen and Karenni in Thailand

- The U.S. should accept group referrals of Karen and Karenni refugees for resettlement consideration.
- The U.S. should continue to press for fully operational Thai Provincial Admissions Boards (PABs).

Lao Hmong in Thailand

- The U.S. should undertake diplomatic efforts to ensure that international NGOs and UNHCR can address immediate humanitarian needs and assess the refugee claims of the Lao Hmong in Thailand.

Hemshins, Batumi Kurds, Yezids and Abkhaz Georgians in Russia

- The U.S. should offer resettlement to the estimated 1,500 Hemshins, 1,500 Batumi Kurds, 5, 500 Yezids and the 10-15,000 Abkhaz Georgians in Krasnodar Krai in the Russian Federation as priority two (P-2) groups.
- The U.S. should work with UNHCR's Statelessness Unit to make greater efforts to monitor access to registration and citizenship specific to Hemshins, Batumi Kurds and Yezids in Krasnodar Krai and should hold the Russian Federation accountable for the lack of progress on this issue.

Three million Afghans in Pakistan

- The U.S. should accept group referrals from UNHCR and NGOs that take into account the particular vulnerabilities of single women, women-headed households, separated children, certain Pashtuns, the disabled and those from areas of Afghanistan not controlled by the central government.

750,000 Iraqis in Jordan

- The U.S. should resettle at least 25,000 Iraqis in Jordan by the end of fiscal year 2008.
- The U.S., without a UNHCR referral, should directly register and admit refugees who are former employees of the United States, coalition or multinational forces, international organizations, NGOs, and U.S. companies in Iraq who fear persecution due to this association.
- The U.S. should accept presumptive determinations by UNHCR regarding groups of Iraqis who meet the refugee definition and are in need of resettlement, without requiring individual case preparations from UNHCR.
- The U.S. government should support UNHCR's recommendation regarding the registration of Iraqis in countries of asylum that includes the issuance of documents to prevent forced return to Iraq.

Refugee Council USA (RCUSA) hopes to contribute to our government's continued planning to help refugees around the world rebuild their lives in our country by proposing legislative and policy changes for refugee children, refugee women, stateless persons and specific groups of refugees in Africa, the Americas, Asia, Central Asia, Europe, South Asia and the Middle East.

- The U.S. government should support the Iraqi government with its pledge to provide displaced Iraqis with appropriate documentation.

15,000 Palestinian Refugees in Iraq

- Iraq should fully integrate all Palestinians in Iraq who are currently de facto stateless, as they were never granted citizenship.
- The Iraqi government and the multinational forces should ensure the safety of Palestinian refugees.
- For those Palestinian refugees in or fleeing from Iraq, who are not receiving adequate protection in the region, the United States should consider urgent resettlement and encourage other countries to do the same.

2,350 Sabaeen Mandaean Families from Iraq in Jordan and Syria

- The U.S. should accept a group referral from UNHCR and NGOs of Sabaeen Mandaean families in Jordan and Syria.

Religious Minorities in Iran

- The current U.S. funding allowing for the admission of 5,000 Iranians should be increased to provide an opportunity for the resettlement of an estimated 11,000 Iranian religious minorities who may be eligible for resettlement.



2 Introduction

Refugee Council USA advocates that fiscal year 2008 (FY08) be a time when a generous refugee admissions program is revived after several years of low arrivals and missed opportunities. Refugee resettlement, the best solution for a small percentage of refugees, should be used strategically to help secure more rights for greater numbers of refugees, including those not being resettled. Often host governments may agree to protect and integrate more refugees, or at least grant refugees the freedom of movement and the right to work, if other refugees from the same population are able to be resettled. Host governments may be more willing to protect refugees when there is greater responsibility sharing among states. Resettlement should always be part of a comprehensive protection response to any number of situations worldwide.

The report begins by highlighting legislative and policy reforms needed to enhance U.S. responses to refugees. The next section highlights categories of persons—children, women, stateless, and urban refugees, who deserve special attention due to their particularly vulnerable circumstances and also because their situations highlight most pointedly the U.S.—strategic interest in and commitment to responding to such groups. This section is followed by regional refugee admissions recommendations for FY08. These recommendations are not exhaustive but instead highlight a few key groups to better illustrate the continued need of resettlement as a protection tool for refugees. A number of factors helped to determine which groups should be selected for consideration in this report:

- A group for whom there is credible, detailed information from a significant cross section of non-governmental, governmental and international sources showing that they are not protected based on a minimum refugee and human rights standards;
- A group on whose behalf RCUSA has been advocating for some time, but for whom more meaningful progress is needed in accessing a durable solution;
- A group whose resettlement would create “protection dividends” or other opportunities for refugees who are not resettled; and
- A group that meets the above three criteria and is in a country of asylum where the government would likely cooperate with the U.S. in order to provide access to the refugees to determine their eligibility for resettlement.

Each recommendation includes a brief cultural, ethnic, and historical overview of the refugee population, the refugee claims—why they left and cannot return, conditions in the country of asylum that may warrant resettlement as an appropriate response, proposed ways the U.S. can help, and anticipated political opportunities and challenges. Finally, the report concludes by offering a list of groups that may warrant special consideration in planning responses to refugee needs in fiscal year 2009 in light of the legislative and policy changes we recommend.

3

Reforms to Enhance the U.S. Response to Refugees

3.1 U.S. Security Laws and Refugee Protection¹

The USA PATRIOT Act of 2001 and the REAL ID Act of 2005 were intended to protect Americans from terrorists and those who support terrorist organizations. Unfortunately, the way the U.S. government has interpreted these laws has had unintended consequences for refugees and asylum seekers and has diverted resources from rooting out real terrorists. Many deserving refugees and asylum seekers have been barred from finding a safe haven in America. Some refugees and asylees already living here have been unable to become legal permanent residents and to bring their families to join them in the United States. As a result, many refugees, asylum seekers, asylees and their families are living in limbo because of an overly broad interpretation of material support.

The Administration has interpreted “material support” to mean the following:

- Any amount of assistance, even if given many years ago, and even if the support was coerced;
- ransom paid to kidnappers;
- household chores done for rebels threatening sexual violence;
- support to groups resisting governments that are enemies of the United States; and

- support to a resistance group that has U.S. government support.

While waivers may be available for some forms of material support, members and combatants of “freedom fighting” organizations supported by the United States are not eligible for a waiver. Moreover, in asylum and refugee proceedings, there is still no process—other than political pressure—for getting eligible groups considered for a waiver. Although we are greatly encouraged by the fact that 14,000 Burmese refugees are likely to be admitted to the U.S. this year because of the waivers, refugees who fought against the Burmese regime are not being considered for entry into the United States. In addition, because the waiver authority is completely discretionary, there is no mechanism for reviewing the government’s decisions to not issue waivers in particular cases.

Because of the unintended consequences of the material support provisions, thousands of deserving refugees continue to languish in refugee camps and urban ghettos around the world. Hundreds of asylum seekers in the U.S. face indefinite delays in receiving protection, and hundreds of refugees and asylees are denied reunification with their families as green card applications and family unity requests are put on hold.

Too many individuals in several of the groups highlighted in this report have been unjustly determined to have provided material support to terrorists, thus denying them resettlement in the U.S. Examples of affected cases clearly show that instead of our government using its resources to protect us from real terrorists, they are wasting resources on revictimizing individuals who have refugee cases that compel protection. For example, a businessman in Bogotá learned that his father, a medical doctor, had been kidnapped by the leftist guerilla group FARC, which demanded a ransom of 50 million pesos. After raising the money and securing his father’s release, the man and his family began to receive death threats. They fled to Costa Rica and then to Spain where they were referred to the U.S. resettlement program. The family was not admitted to the United States because payment of money under duress is considered “material support.”

The unintended consequences of the material support bar contradict U.S. foreign policy and our nation’s tradition of welcoming victims of oppression and persecution. As noted by Professor Margaret Stock of the U.S. Military Academy at West Point, the material support provisions represent “one of the stranger and more embarrassing legal conundrums arising out of recent efforts...to tighten...laws relating to terrorism.”²

The administration must be commended for issuing waivers that have allowed certain refugee populations to escape the unjust consequences of our security laws. At the same time, although the administration has expressed a willingness to consider waivers for individuals who have been forced to provide support to certain designated groups or organizations with which the U.S. has security concerns (for examples Tier I and Tier II groups/organizations), processing these waivers has proven to be burdensome and has added additional bureaucratic steps to refugee laws that already address security issues. As a result, no waivers have been issued to date for anyone who was forced to provide money or services to a Tier I or Tier II group. It remains clear that waivers are only a partial solution and that a legislative fix to this problem continues to be required.

Recommendations for Legislative Changes

A legislative solution is needed to address a number of issues. Legislation is clearly needed to ensure that refugees or individuals who fear persecution and have been forced to provide support to armed groups are not excluded from asylum, refugee resettlement consideration or any immigration benefit if otherwise eligible for such benefits. Legislation should also modify the overly broad definition of “terrorist organization.”

Too many individuals in several of the groups highlighted in this report have been unjustly determined to have provided material support to terrorists, thus denying them resettlement in the U.S.

3.2 Admission of Refugees as U.S. Legal Permanent Residents³

Currently, the requirement that refugees apply to become legal permanent residents after one year in the United States, INA section 209 (a), creates an additional burden for them and requires that the DHS process tens of thousands of lengthy applications each year. It should be noted, however, that there was substantial support during the congressional consideration of the Refugee Act for admitting refugees as U.S. legal permanent residents. In fact, the Senate Judiciary Committee reported its version of the Refugee Act with such a provision.

¹See Refugee Council USA, *U.S. Refugee Admissions Program for Fiscal Year 2006 and 2007*, the Impact of the Material Support Bar, September 2006 at <http://www.refugeecouncilusa.org/RCUSA2006finpostbl-w.pdf> for a comprehensive analysis of the material support bar; See RCUSA posting of April 2007 information on waivers of the material support bar at http://www.refugeecouncilusa.org/ms-refwaiv-tier1_11-4-27-07.pdf.

²Margaret Stock, “Providing Material Support to a Foreign Terrorist Organization: The Pentagon, the Department of State, the People’s Mujahedin of Iran, & the Global War on Terrorism,” *Bender’s Immigration Bulletin* 11 (June 1, 2006).

³Many of the recommendations in these sections are based on the 2005 work on refugee admissions of Professor David Martin, former General Counsel of the Immigration and Naturalization Service and now Professor of Law at the University of Virginia School of Law.

⁴Senate Committee on the Judiciary, “The Refugee Act of 1979,” S. Rep. No. 96-256, June 21, 1979 at 7.

In Professor David Martin's 2005 study, *The United States Refugee Admissions Program: Reforms for a New Era of Refugee Resettlement*, he recommends that the Department of Homeland Security (DHS) study the cost-effectiveness of the process that refugees currently undergo to apply for legal permanent resident status. "The original rationale for [the current] procedure was to assure a second look at an admitted refugee and to allow enforcement action [(e.g. deportation or removal proceedings)] if new negative information came to light."⁵ Martin observes though that this very same negative information could be the basis for removing a legal permanent resident from the United States. "A refugee who commits a crime of virtually any degree of seriousness within the first few years of admission would be fully subject to removal, even if initially admitted as a legal permanent resident."⁶ He thus infers that our current law may not be cost-effective when he questions whether "the nature and quantity of information gained in a handful of cases is worth the large volume of additional and largely duplicative work."⁷ "Eliminating the [current] refugee adjustment process would potentially eliminate tens of thousands of filings each year, thus freeing up substantial resources for the broader effort [of timely processing of all immigration benefit applications]."⁸

Eliminating the current refugee adjustment process would also address long-standing concerns about the burdensome processes associated with work authorization that have slowed refugee arrivals and integration. The card showing legal resident status is recognized nation-wide and overseas as a valid form of identification and of course authorizes work. The "Enhanced Border Security and Visa Entry Reform Act of 2002" made a significant contribution to addressing concerns about refugees not

having identification documents nor the means to begin rebuilding their lives by requiring the provision of work authorization documents to refugees immediately upon arrival at the U.S. port of entry. However, its implementation led to restrictions on the numbers of refugees who could arrive on each flight to the United States. A legislative change which admits refugees as legal permanent residents will give the Executive branch an important tool to assist it in humanely implementing immigration laws that will carry out the legislative intent of protecting more refugees.

Recommendation for Legislative Change

We recommend an amendment to the Immigration and Nationality Act that provides for the admission of refugees as legal permanent residents.

3.3 Family Reunification Resettlement for All Refugee Nationalities

One of the core values of our immigration policy is the right to the unity and protection of the family.⁹ Currently, U.S. refugee resettlement policy limits family unity by designating certain nationalities as being eligible to apply for U.S. resettlement through its family reunification or priority 3 (P-3) category¹⁰ which is open to spouses, minor children and parents of individuals who have been admitted to the U.S. as refugees or asylees.¹¹ Under current policy, refugees outside the U.S. cannot be resettled under the P-3 category if their U.S. citizen or legal permanent resident spouses, parents or children entered as immigrants or parolees. It is further required that the applicant have his or her own independent refugee claim and be outside the country of origin. The family reunification process begins with the filing of a required, but non-official form, the Affidavit of Relationship (AOR), by

the "anchor relative" in the United States. None of these requirements is found in U.S. immigration law but are in internal guidelines and in the annual report to Congress submitted by the Departments of State, Homeland Security and Health and Human Services.¹²

Recommendation for Policy Change

In order to protect adequate numbers of refugees and to provide more flexibility to those who must implement our refugee laws, we recommend that there be no nationality restrictions on the resettlement of refugees who wish to be resettled under the family reunification or P-3 category. We further recommend that DOS/PRM remove the recent restriction on the "anchor relative" who can file family reunification through the P-3 process, restoring it to include anyone lawfully admitted or paroled into the U.S.

By reforming P-3 resettlement as outlined above, the U.S. government would be upholding the right to protection from persecution and the right to family unity. Expanding the category must also be accompanied by reforms to the processes in place for reuniting refugees and asylees with their spouses and minor children.

Finally, we urge that there are instances, such as the current situation with refugees who have fled Iraq, where U.S. citizens and legal residents should be permitted to reunite with family members who have fled persecution and strife. In 2006 the case of Otto Frank, the father of Anne Frank, detailed his unsuccessful struggle with the State Department to escape Nazi persecution and reunite with his wife's brothers in the United States. As the world knows, the Frank family was never provided with the opportunity to reunite with their family in the U.S. and all but Otto perished in Nazi death camps. The

Frank file is a compelling reminder of the need for family reunification beyond spouse, minor unmarried children and parents. The last such family reunification initiative was applied to the victims of ethnic cleansing from Bosnia. It is time to consider promoting broader family reunification for siblings, adult children, grandparents and grandchildren.

3.4 Refugee Group Referrals¹³

Given the U.S. policy of DHS officials carrying out in person interviews to approve refugees for U.S. resettlement, UNHCR should devote more resources to identifying groups in need of resettlement, rather than preparing labor-intensive individual cases, at least when it intends to refer cases to the U.S. program. Some of the resources which UNHCR devotes to conducting individual case preparations could be redirected to addressing broad refugee policy issues, getting the host government on board with supporting registration and facilitating the strategic use of resettlement.

Recommendations for Policy Changes

The U.S. Department of State should encourage UNHCR to make group assessments for those needing resettlement. In preparing group referrals, UNHCR's submissions should focus on providing facts and legal analysis about the group that will facilitate expeditious decision making that is under the authority of both the DOS/PRM and DHS staff who will be carrying out the adjudications. Thus, UNHCR should be relating human rights, humanitarian and logistical issues to legal principles both in international and U.S. law which DHS officers would be applying to individual cases. If UNHCR only focuses on the humanitarian needs without relating them to refugee law principles, its assessments would only be of limited value to DHS which must apply U.S. immigration and refugee law. In fact, there will be occasions when UNHCR's legal assessment would be different from the U.S. government's, but laying out the relevant legal principles along with the other issues of concern to the Department of State would help DHS better prepare for adjudications without the need for individual case assessments.

UNHCR group referral submissions should cover the following:

- Summaries of the common refugee claims in the particular group being referred, including the particular persecution feared, the basis for the fear, the characteristics of the persecutor(s), the capacity of the persecutor(s) to carry out the feared persecution upon return and presumptions regarding legal issues and credibility;
- Identification of reasons for excluding particular individuals or sub-groups from refugee protection or resettlement;
- Identification of resources in the country of asylum for carrying out the interviews of refugees in the group being referred;
- Identification of logistical and political challenges and opportunities associated with pursuing resettlement for the referred group; and
- Proposals for addressing the inherent challenges and opportunities.

⁵ See David Martin, *The United States Refugee Admissions Program: Reforms For a New Era of Refugee Resettlement*, 2005 at 110.

⁶ See David Martin at 110.

⁷ See David Martin at 110.

⁸ See David Martin at 111.

⁹ See Article 16 (3) of the 1948 Universal Declaration of Human Rights and Article 23 of the 1966 International Covenant on Civil and Political Rights which provide that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

¹⁰ Currently, the following nationalities are eligible to apply for refugee resettlement under the P-3 category: Afghanistan, Burma, Burundi, Colombia, Congo (Brazzaville), Cuba, Democratic People's Republic of Korea (DPRK), Democratic Republic of Congo (DRC), Eritrea, Ethiopia, Haiti, Iran, Iraq, Rwanda, Somalia, Sudan and Uzbekistan.

¹¹ There is another way for spouses and minor children to follow to join a refugee applicant through the "Visas 93 process," but it is the experience of refugee organizations that bringing in relatives through the P-3 category is more reliable even if it is more restrictive in several respects. According to David Martin's 2005 study on refugee admissions, many U.S. consulates do not understand the Visas 93 process and thus this creates confusion and delays.

¹² See Department of State, Department of Homeland Security, Department of Health and Human Services, *Proposed Refugee Admissions for Fiscal Year 2007: Report to Congress*, 2006 at www.state.gov/g/prm/rls/rpt/2006/73619.htm.

¹³ In an October 16, 2003 internal memorandum that is on file with UNHCR, "Methodology for the resettlement of groups" (IOM/FOM 67/2003), UNHCR introduces the general concepts, procedures and materials to be used when considering the resettlement of groups. Further guidance is subsequently provided in UNHCR's *Resettlement Handbook*.

Most of the above recommendations and many more issues related to group resettlement are covered in UNHCR's internal guidance in the *Resettlement Handbook*, but there are important differences to highlight. UNHCR's guidance on the preparation of group submissions is based on a framework which requires labor-intensive missions to provide detailed information, including information on processing logistics. RCUSA recommends that the U.S. government request a streamlined approach from UNHCR that produces at least an initial assessment that is based on sound legal analyses of the refugee claims. We further recommend that the U.S. government not require of UNHCR an elaborate analysis of how to carry out processing before it can begin considering a group.

3.5 Refugee Identification and Arrivals Management

The above-proposed reforms would contribute to better management of the refugee program, increased numbers of eligible refugees in the pipeline for resettlement consideration, and accelerated self-sufficiency for refugees; however, the overarching issue of the coordination that is required among the agencies which carry out responsibilities under the Refugee Act must be addressed in order to support more specific reforms. Problems associated with identification of groups in need of resettlement and managing the pace of arrivals often occur because of coordination problems or disagreements among the Departments of State, Homeland Security and Justice. The involvement of many agencies also makes it a challenge to address issues of accountability. One example is the challenge of coordination among the departments with regard to the application of 2001 and 2005 security laws which prevented entire groups from entering the United States or having their asylum claims granted. David Martin's recommendations in this area are very helpful in addressing

long-standing concerns regarding the coordination needed among the agencies responsible for U.S. refugee policy and programs and we endorse them.

Recommendations for Policy Changes¹⁴

The number of admissions set in the annual Presidential Determination (PD) should be treated as a target, not a ceiling. It should therefore provide a firm benchmark for accountability of the offices that have a role in access decisions and management of the system, including not only the Bureau of Population, Refugees and Migration (PRM) of the State Department and U.S. Citizenship and Immigration Services (USCIS) of Homeland Security, but also the regional bureaus of the Department of State and the enforcement bureaus of the Department of Homeland Security. Treating the PD as a firm target by which performance will be measured will help counter a long-standing tendency to give undue weight to the disadvantages of a proposed initiative.¹⁵

The DHS should place a high priority on developing a system for prompt resolution of internal disputes over immigration- and refugee-related guidance and policy, a problem that arises when a given issue has implications for both enforcement and services. The system must assure that services-related perspectives are given a full airing and are not trumped by enforcement concerns. Such a system will likely require more active coordination from the office of the Secretary or Deputy Secretary, the only officials who have direct authority over both the enforcement and services units of the DHS. The Department should also move promptly to resolve currently pending matters for which a decision or clearance has been requested by other departments.

The agencies involved need to assure continued full staffing of the security advisory opinion (SAO)

process so that all initial reviews are completed within the stated time frames (currently forty-five days), and so that when cases are flagged, the issues are promptly resolved. All agencies involved should set a deadline for closing old cases that became mired in the system in 2002 and early 2003, making a firm decision on clearance and promptly notifying those whose cases have been pending. Eventually, SAO processing for refugees should return to the Bureau of Consular Affairs — certainly no later than completion of the larger SAO reform process — but with full provision for efficient completion of refugee cases.

Recommendations for Legislative Changes¹⁶

The Immigration and Nationality Act should be amended to provide for continued refugee movements at the beginning of the fiscal year, even if the Presidential Determination is delayed. The Immigration and Nationality Act should be amended to allow the President to designate specific classes of persons to be admitted as refugees without individually applying the Convention refugee definition.

3.6 Integrating Refugee Protection with Humanitarian and Development Aid

The United States played a leading role in developing the 2003 Stockholm Conclusions on good humanitarian donorship, which 15 leading donor nations and the European Commission also endorsed. These nations enshrined protection among their key objectives and concretely set forth bridging the relief-to-development gap through restoration of normal livelihoods—an impossible task for refugees without their basic rights under the 1951 Convention. The basic rights in the 1951 Convention include the right to work (Arts. 17 and 24), to practice professions (Art. 19), to run businesses (Art. 18), to own property (Arts. 13 and 14), to move about freely and to choose a place of residence (Arts. 26, 28, and 31),

and to enjoy public relief and education at least on par with nationals (Arts. 20-23).

There is wide agreement that development aid cannot produce economic growth or poverty reduction where policies hinder economic liberty, access to markets, and the provision of human rights. Congress and the Administration designed the U.S. Millennium Challenge Account (MCA) to condition development assistance along these and other criteria in its 16 indicators. Although Congress gave the Millennium Challenge Corporation (MCC) a mandate to include human rights and economic freedoms, including those of refugees, under its Civil Liberties and Regulatory Quality indicators, it has generally failed to do so. The MCA relies exclusively on Freedom House reports and analysis which, in most cases, take no account of refugee rights. The MCC relies on the measures of the World Bank Institute based on reports that do not take into account regulatory restrictions against the livelihoods of refugees or most other vulnerable populations. In its guidance documents, MCC uses citizen-centric language which gives candidate countries the impression, as expressed by the Tanzanian Ministry of Finance, that “MCA has nothing to do with refugees.”

The USAID and other humanitarian relief agencies should ensure that refugees benefit along and on par with nationals of countries receiving U.S. foreign assistance. Where this is not the case due to our own policies, we should change them.

Recommendations for Policy Changes

The USAID and other humanitarian relief agencies should ensure that refugees benefit along and on par with nationals of countries receiving U.S. foreign assistance. Where this is not the case due to our own policies, we should change them. Where host government policies are in the way, the United States should raise concerns about these policies to those governments and include programs to facilitate policy environments in those countries for appropriate policy changes, including human rights advocacy as necessary.

MCC should use a broader array of sources for its Civil Liberties and Regulatory Quality ratings to include those with a particular focus on refugee protection, such as the Gaps Analysis of UNHCR's Strengthening Protection Capacity Project, the performance-graded updates in the U.S. Committee for Refugees and Immigrants' (USCRI) *World Refugee Survey*, and others. MCC should revise its guidance documents to expressly include refugee rights and replace citizen-centric language with more inclusive references.

In its foreign assistance reform process, the Administration should not relegate refugee policy exclusively to the humanitarian assistance function. Under the Gov-

erning Justly and Democratically function, it should explicitly include the human rights of refugees under the 1951 Convention relating to the Status of Refugees and other instruments because they are pervasively violated. The Administration should expressly include the integration of refugees in development programs under the Investing in People function because, unlike most vulnerable populations, refugees are not nationals of the countries where they reside and such plans generally exclude them or segregate them into parallel aid structures. When promoting enabling policies under the Economic Growth function, the Administration should give visible attention to the restrictions on livelihoods of refugees and their economic interactions with host populations. The Peace and Security function should not only include durable solutions for refugees as a goal and as a metric of success, it should include the training of security forces to respect the rights of refugees while they await such solutions.

Recommendation for Legislative Change

Congress should pass a technical amendment to the Millennium Challenge Act of 2003¹⁷ to expressly add “refugees” as persons to whose human and civil rights eligible countries must have a demonstrated commitment.

¹⁴ See David Martin at 119-124.

¹⁵ See Martin at 119.

¹⁶ See Martin at 106 and 111.

¹⁷ Pub. L. 108-199.



4

Admissions Recommendations for Fiscal Year 2008

4.1 Special Refugee Groups

Among the groups of refugees highlighted in this report, for resettlement, particular attention is given to the vulnerability of children, women, and stateless persons. While there are a range of reasons why these particular refugees experience heightened vulnerability, many emanate from governments that delegate to other agents their responsibility for protecting these persons. With regard to stateless persons, their claimed home countries ask them to look for protection from other governments and entities who often refuse to take any responsibility, leaving stateless persons not only in legal and life-threatening limbo but also largely invisible. With regard to women and children, the government often delegates its protection role to the family, usually patriarchs and more traditional male community leaders, relegating women and children to the private sphere away from public scrutiny and government accountability. For many urban refugees in Africa who are often required by governments to live in camps, the governments often delegate their protection to those officials working in the camps.

4.1.1 Refugee Children

According to UNHCR's *Refugee Children: Guidelines on Protection and Care*, 2-5% of any refugee population consists of unaccompanied children. Given the current estimate of 8.4 million refugees in the world, we can assume there are 168,000 to 420,000 refugee children currently in serious danger of

exploitation and abandonment. For certain refugee caseloads the percentage of children is particularly high. According to the NGO statement at the April 2007 international conference on Iraq in Geneva, an estimated 50% of Iraqi refugees are children and some 550,000 of them are of school age.

When looking more broadly at "children in fragile situations," we can presume this group to constitute at least 5% of the total refugee population. Members of an already vulnerable group, these children are the most in danger of mistreatment and neglect, as they are the least prepared to advocate for themselves and are often unable to access the care and protection they so urgently need. Much to its credit, the United States is a leader in addressing the needs, including resettlement, for this most vulnerable group of refugees.

Refugee children in fragile situations include those who are completely alone (unaccompanied) and those who are separated from parents or customary caregivers but attached to their extended families or other adult care providers (separated). In addition to these more commonly recognized categories of vulnerable minors, children in child-headed households, children living with siblings or other adults not much older than they are, children who have ill or elderly caregivers, and who have tenuous ties to their caregivers are also at risk of being neglected and exploited, both in countries of asylum and after they are resettled to a third country.

Adolescent girls in these types of situations are particularly vulnerable, and have a higher likelihood of being forced into marriage, particularly among groups for whom the dowry a girl can bring is a powerful incentive for the girl's family members. Pregnant and parenting girls, especially when this condition is a result of rape, can face considerable stigma in addition to the burden of carrying out adult responsibilities in difficult situations without adequate protection.

Because refugee children in fragile situations may not have an adult caregiver to protect or advocate for them, they are more likely to be overlooked by service providers. A recent report by one of our member agencies reveals that, due to inadequate identification and documentation procedures, unaccompanied children are often not registered in camps. As a result of this, they may suffer from insufficient access to food, medical treatment, education and other basic needs.

These children are also susceptible to various forms of coercion, including forced labor, prostitution, military conscription, and trafficking.¹⁸ Nonetheless, vast numbers of them continue to languish in refugee camps with inadequate protection, care, and advocacy, and without any durable solutions in sight.

Time and again we have seen that the needs of refugee children in fragile situations are not addressed sufficiently or promptly. In addition to being overlooked in the registration process, they are often left out of resettlement planning. Decisions about their living situations are usually made in an ad hoc and informal way, and there is rarely ongoing assessment and monitoring of their living situations. Contributing to this problem is the fact that the best interest determination (BID) is often seen only as a resettlement tool. For this reason, examination of the relationship between separated children

and those caring for them in the camps often does not happen until a resettlement effort is underway. This important evaluation is usually then conducted in a rushed and cursory manner and, at times, by staff without the requisite experience or qualifications. Moreover, children may be left in dangerous or abusive situations in refugee camps if BIDs are not conducted until resettlement is considered. If resettlement is never considered, as is the case for the majority of these children, their plight will likely never be discovered or addressed. Taking these children into account from the earliest stages of a registration effort would allow ample time to make informed decisions about their futures.

Recommendations for Policy Changes

There are a number of actions that can be taken to better protect and care for these children, both overseas and in the U.S. Foremost among them is increasing UNHCR's ability to identify vulnerable children and link them with the protection and services they need. Unfortunately, UNHCR does not have the staff and resources needed to adequately identify children in fragile situations and assess their need for resettlement. DOS/PRM could assist UNHCR by establishing trained teams of child welfare specialists who can be rapidly deployed to identify, register, provide care to, and determine outcomes for children in fragile situations. Without specialized personnel tasked to focus on children, it is certain that children in need will continue to slip through the cracks.

In contrast to current practice, BIDs should be used as a tool for assessing the care needs of unaccompanied and separated children and others in vulnerable situations as well as making decisions about durable solutions. All too often, these valuable evaluations are utilized only when resettlement is being considered. Rather, as rec-

ommended in UNHCR's BID guidelines, they should be a part of the earliest planning stages for vulnerable children in refugee situations regardless of the durable solutions available.

Family tracing should also begin as soon as possible after a child's arrival in camp. However, unsuccessful tracing should not prevent a child from accessing a durable solution if the effort has been underway for two years or more. We have found that resettlement programs, particularly the unaccompanied refugee minor foster care program, continue tracing after a child's arrival in the U.S. In some cases, these children and the agencies working with them have found it easier to locate family members once they have been resettled and have access to more advanced communication technology.

Ongoing monitoring of current care arrangements in refugee camps and urban areas is vital to ensure the protection of unaccompanied and separated children. Deployed child welfare specialists could ensure that these mechanisms are in place to protect vulnerable children from exploitation and abuse while their durable solutions options are reviewed.

An obstacle to family reunification for vulnerable children who qualify for resettlement in the U.S. is the current priority system. Those with non-parental family members in the U.S. cannot be reunited with those family members under the current system. Additionally, children in refugee foster care in the U.S. cannot reunite with siblings or other close relatives who are located via tracing in refugee camps overseas; these siblings or other relatives may be the only family these children have. We recommend that the Department of State institute a separate priority category to enable U.S. based unaccompanied and separated children to petition for family reunification when a best in-

terest determination recommends such reunification.

Since children may be resettled while still in a fragile situation, it is necessary to ensure that these children will have access to adequate services and care in the US. In order to do this, the U.S. refugee program should enhance the capacity of resettlement NGOs to ensure positive outcomes for these children once they are resettled in the U.S. If the BID determines that it is best for a child to be resettled with a particular caregiver but identifies some areas of concern, this should be shared with the resettlement agency. A positive development in recent years is that BIDs are shared with resettlement NGOs for children being referred to the U.S. for foster care. We recommend that BIDs for all children resettling in the U.S. be shared with the relevant NGO.

The U.S. is the only resettlement country that welcomes and accords specialized treatment to unaccompanied minors on an on-going basis. We commend these admirable efforts and encourage the U.S. to deepen this commitment by accepting a greater number of vulnerable minors in FY 2008.

The Burmese refugee population, significant numbers of whom have benefited from registration, may be considered for some of the above recommended policy changes. There are an estimated 8,000 Burmese refugee children in Thailand alone, according to UNHCR; the living situations of these children who are in fragile situations ought to be examined through best interest determinations, and regardless of whether they are being considered for resettlement. There are no accurate estimates of Burmese children in Malaysia. However, a report by one of our member agencies details the precarious situation of refugee children in Malaysia, including the inability to access

education and a lack of legal status leading to a risk of arrest and deportation. These children are in desperate need of protection; given the lack of local integration prospects and the danger of return to Burma, resettlement ought to be actively explored for this group.

Recommendation for Legislative Change

RCUSA recommends passage of the Widows and Orphans Protection Act.¹⁹

4.1.2 Women-Headed Households²⁰

According to UNHCR, in any refugee population, approximately 50 percent of the uprooted people are women and girls.²¹ Based on UNHCR's 2006 statistics, there are 4.2 million refugee women and girls. Stripped of the protection of their homes, their government and often their family structure, females are often particularly vulnerable. They are even more vulnerable when they are the single head of a family. UNHCR has recognized women or girls who are single and heading a household as being at risk in many countries of asylum.

Like other refugees, refugee women and girls may face physical and legal protection problems in the country of refuge. But they may also face unique or gender-related forms of persecution or violence, as a result of their sex. Gender-related forms of persecution include rape, domestic violence, harmful traditional practices, forced marriage and so-called "honor killings," which are discussed in further detail in the sections of this report on Afghan and Iraqi refugee women. The protection challenges faced by women and girls often require specific responses—this is the reason why some resettlement countries and UNHCR have a specific resettlement category of women-at-risk.

In a given refugee context, women refugees may be more vulnerable than other refugees, finding themselves separated from their family members or traditional support mechanisms, or isolated from their communities. They may have to assume new roles and status as a result. In addition to coping with the reasons for their flight, they may be confronted with new challenges, such as providing for themselves and their children in situations of

¹⁸ In UNHCR's May 2003 *Sexual and Gender-Based Violence Against Refugees, Returnees and Internally Displaced Persons* it specifically identifies separated refugee children, adolescents, girl mothers and working children as being particularly vulnerable to gender-based and sexual violence. It also identified the following forms of sexual and gender-based violence used against refugee children: trafficking, harmful traditional practices and sexual exploitation and abuse by persons having unhindered access to the children.

¹⁹ The Widows and Orphans Protection Act of 2003 was first introduced in June 2003 in the senate by Senator Sam Brownback (Republican-Kansas) and was re-introduced as S. 644 in March 2005 by Senator Brownback for himself and three co-sponsors, including Senator Christopher Dodd (Democrat-Connecticut). The Act provided for an amendment to the INA to allow at risk women and children to relocate to the United States in order to complement protections already provided through the U.S. resettlement program. Since we currently have a new Congress, the Widows and Orphans Protection Act needs to be re-introduced in order for Congress, and ultimately the president, to consider it.

²⁰ See generally UNHCR, *Resettlement Handbook*, November 2004; UNHCR, *Sexual and Gender-Based Violence Against Refugees, Returnees and Internally Displaced Persons*, May 2003; and UNHCR, *Guidelines on the Protection of Refugee Women*, July 1991.

²¹ See UNHCR, *Refugee Women*, at www.unhcr.org/protect/3b83a48d4.html.

particular hardship in the country of refuge because they have challenged the social norms regarding the “proper” role for a woman.

Flight from persecution to a new country often results in the shift of gender roles where women must fend for themselves and their families outside their homes. Shifts in cultural values may lead to clashes within the refugee’s family or the extended community and this often results in instances of serious domestic violence or stigmatization of the refugee woman by her community.

Refugee women have suffered and may continue to suffer from a wide range of threats to their personal security, including rape, sexual harassment, domestic violence, abuse, torture, trafficking for the purposes of sexual slavery or exploitation or forced labor, and other forms of exploitation. Such threats may come from the host community, local government or military, other armed elements, or from within the refugee community itself. Members of her family or community may prove unable to address her concerns, or may even be unwilling to offer assistance due to social or cultural attitudes, which do not recognize the human rights of women. The victimization and stigmatization of women victims of rape, abuse, or other forms of violence, is not uncommon, and can require the immediate removal of such victims, possibly by way of third country resettlement.²²

Recommendations for Policy Changes

While resettlement opportunities for women exist equally under all of the U.S. resettlement priority categories, the complexity of their individual situations and/or the particular nature of their protection needs require a specific response, including a woman-at-risk category for resettlement. Such a change in U.S. resettlement policy would be consistent with U.S. asylum case law and policy which recognize and provide guidance on granting

the unique asylum claims that are based on gender.²³

The U.S. government should encourage group resettlement referrals from UNHCR and NGOs based on the particular claims and circumstances of women, including single women and girls heading households. Such a policy change would support UNHCR’s assessment that resettlement for women and girls should be considered when:

- they face precarious security or physical protection threats as a result of their gender;
- they have specific needs arising from past persecution and/or trauma (e.g. urgent and expert psychosocial counseling not available in the country of asylum);
- they face circumstances of severe hardship resulting in exposure to exploitation and abuse, rendering asylum untenable; and
- there is a change in the social norms, customs, laws and values resulting in a lack of support or protection.

Recommendation for Legislative Change

RCUSA recommends passage of the Widows and Orphans Protection Act.

4.1.3 Stateless Persons²⁴

Several groups highlighted in this report are determined to be stateless persons. They are individuals without a nationality or a legal tie to any government.

The exact number of individuals affected by statelessness is not known. Refugees International (RI) believes the low-end estimate to be over 11 million. According to RI, they are found throughout the world. In Europe, they include individuals from the former Soviet bloc, including Meskhetian Turks

and the Roma. In Asia, they include some of Thailand’s ethnic groups, the Bhutanese in Nepal, Muslim minorities, like the Rohingyas, in Burma and Sri Lanka and the Bihari (stranded Pakistanis) in Bangladesh. In other areas around the world, they include some Palestinians, the Bidoon in Kuwait, Bahrain, Saudi Arabia, and United Arab Emirates, denationalized Kurds in Syria, Arab Shiites, ethnic minorities such as the Batwa ‘Pygmy’ and Banyarwanda of the Great Lakes Region of Africa and Zimbabweans of Indian descent or with links to Malawi and Mozambique. RI also has expressed concern regarding the problems that Dominico-Haitians in the Dominican Republic and Mauritians in Senegal have had in accessing a nationality. The refugees in this report who are in need of the durable solution of resettlement and whom some experts consider to be stateless include some of the DRC Banyamulenge, some Mauritians in Senegal, some Haitians in the Dominican Republic (particularly the children), the Burmese Rohingya and certain ethnic minorities in the Russian Federation, including the Hemshins, Batumi Kurds, Yezids and Abkhaz Georgians in Krasnodar Krai.

The Universal Declaration of Human Rights provides that every person has the right to a nationality. Yet statelessness continues to be a fundamental cause of discrimination, exploitation, and forced displacement in all regions of the world, according to RI. Statelessness is a highly complex legal and often political issue with a disproportionate impact on women, children, and ethnically mixed families. It has serious humanitarian implications for those it affects, including no legal protection or the right to participate in the political process, travel restrictions, social exclusion, physical and sexual violence, and inadequate access to healthcare and education.

According to UNHCR, a link between statelessness and dis-

placement has been established for some time, given that statelessness often, though not necessarily, occurs in the context of refugee flows. Thus, ultimately, the prevention and reduction of statelessness contributes not only to the promotion of human rights, an improved quality of life for affected individuals, and increased overall human security, but it also aids in the reduction of forced displacement and refugee flows.²⁵

UNHCR has the mandate to protect stateless persons who are not refugees and stateless refugees. According to UNHCR, in the refugee context, it has to be acknowledged that stateless refugees, because of their lack of nationality and absence of future availability of national protection, may be more vulnerable than refugees who have a nationality. UNHCR undertakes resettlement of stateless refugees, when advisable and under stipulated conditions.

In its General Conclusion on International Protection No. 95 of 2003, the Executive Committee of UNHCR recommends that governments also consider the resettlement of non-refugee stateless persons under certain exceptional circumstances. Conclusion No. 95 provides that exceptional circumstances include when a “person’s situation in the present host country or other country of former habitual residence remains precarious.”

UNHCR has identified at least two categories of stateless non-refugees who may need resettlement. According to UNHCR, one category consists of stateless persons who are persecuted on the grounds provided by the 1951 Convention but have not left the country of origin and cannot therefore be formally recognized as refugees [under international law]. Another category consists of stateless persons for whom it is clear that no country will grant national-

ity or allow that person to live in a manner in which his or her basic rights are guaranteed. It is UNHCR’s position that, ideally, the status given to resettled non-refugee stateless persons should be similar to that of resettled refugees.

Recommendation for Policy Change

RCUSA recommends a resettlement priority category that encompasses the situation of de jure and de facto stateless persons, including both internally displaced and those who have crossed international borders seeking protection.

4.1.4 Urban African Refugees

According to UNHCR, in 2002, 18 percent of all persons of concern to UNHCR lived in urban areas, a figure which is up from 13 percent in 2001 and 1 percent five years earlier. The official number of such people in 2002 is over 2.4 million, excluding refugees who have not declared themselves to UNHCR or the host government.²⁶

Urban refugees live mostly in economically disadvantaged neighborhoods, where they face many challenges, including public health hazards, urban violence, and lack of housing, education and health services. In many countries, urban refugees get very little or no assistance. In countries like Kenya, Tanzania and Guinea, for example, government policies require refugees to be in refugee camps to qualify for UNHCR protection, assistance and access to durable solutions, including resettlement in

a third country. In Africa as a whole, these challenges are heightened as levels of domestic migration and urbanization almost invariably outpace job creation and improvements to urban services and infrastructure.

In many instances, even though refugees are issued documents designating their refugee status and right to residence, these do not ensure protection. In contrast with camp-based refugees, urban refugees depend on civil servants who may be unfamiliar with, or simply do not respect their documents. Moreover, full access to education, housing, employment and financial services often requires documents not always available to refugees, such as professional qualifications, school or banking records and birth certificates. Without these, urban refugees are hindered in accessing services and markets and are vulnerable to exploitation, police abuse, attacks, arbitrary arrest and deportation.

Refugees in South Africa

In February 2006, UNHCR estimated that South Africa hosts approximately 29,000 recognized refugees and 110,000 asylum seekers, the majority of whom are in urban areas. They come from all over Africa. Refugees in South Africa confirm that they live in deplorable situations, are harassed by the police and continue to be victims of xenophobic attacks and hate crimes.²⁷ For example, UNHCR reports tensions between Somalis and South Africans as recently

²² See UNHCR, *Resettlement Handbook* at IV/17.

²³ See generally Immigration and Naturalization Service, *Considerations for Asylum Officers Adjudicating Asylum Claims from Women*, May 26, 1995 (on file with United States Citizenship and Immigration Services of the Department of Homeland Security).

²⁴ See UNHCR, *Resettlement Handbook* at V/1-V/4; See also Maureen Lynch, Refugees International, *Lives on Hold: the Human Cost of Statelessness*, February 2005.

²⁵ See *Lives on Hold: The Human Cost of Statelessness* at 2.

²⁶ See generally Ellen Miamidian and Karen Jacobsen, “Livelihood Interventions for Urban Refugees”, February 20, 2004.

²⁷ See generally Refugees International, January 2006 Update on South Africa

as April 11 when Johannesburg's inner city regeneration program led to the eviction of more than 100 refugees and asylum seekers from homes where they had lived for years.²⁸

Somali, Ethiopian and Eritrean Refugees in Kenya

According to Refugees International, in 2004, Kenya hosted approximately 220,000 refugees from neighboring countries, mostly Somalis, Ethiopians and Eritreans. Approximately 4,000-5,000 registered African refugees in Kenya lived in urban settings, mainly in Nairobi. It is also estimated that over 15,000 urban refugees are not registered. Unregistered refugees are subjected to arrest and threats of deportation by Kenyan authorities. Their physical security is endangered by various abuses, including deportation, extortion, harassment, arbitrary arrest and detention, and sexual abuse.

Somali Refugees in Yemen

The United Nations estimates there are nearly 100,000 Somalis in Yemen, but Yemeni officials estimate that there are between 300,000 and 800,000 Somalis. Since the beginning of 2007, the Yemeni government has begun taking action against new refugees and threatening them with deportation. Many are also subjected to racial discrimination and abuse despite their immigration status, according to the Ethiopian Community Development Council (ECDC).

African Refugees in Moscow

The situation for many African refugees in Moscow has not improved, according to ECDC and the Moscow Protestant Chaplaincy. In a May 2006 report, *Violent Racism Out of Control*, Amnesty International describes the violence, including deadly attacks, against refugees and foreigners carried out by Russian citizens and tolerated by officials. UNHCR continues to give identification cards to refugees, but the police and municipal authorities mostly refuse to accept

these cards, leaving refugees without access to registration, social services or employment, according to the Moscow Protestant Chaplaincy.

Eritrean Refugees in Malta

Malta continues to experience a continuous increase in the number of refugees from the Horn of Africa, especially Eritreans. At present, approximately 700 immigrants live in detention centers, while another 1,700 are open center residents who have more freedom of movement than detainees. The high incidence of African immigration has caused suspicion, detention and hardship for many African refugees, compelling the international community to respond. According to the Malta Media News, around 200 refugees will be resettled in the United States, and there are plans for the U.S. government to resettle 200 immigrants from Malta every year through an initiative steered by UNHCR. We commend the United States for responding to the situation in Malta.

Recommendations for Policy Changes

While it is understandable that the nature and environment of urban refugees render their situation complex and difficult for targeted assistance and/or resettlement, the fact remains that the longer they stay in this limbo condition, the more dire and complex their situation becomes. As such, we recommend increased access to resettlement for those in need through various changes.

The U.S. government should provide adequate financial assistance to UNHCR and to NGOs to increase their capacity to identify and/or establish programs to assist urban refugees. The U.S. should accept individual and group referrals from NGOs and UNHCR that reflect the need to protect urban refugees, including at-risk urban refugee women and children.

4.2 Regional Recommendations

4.2.1 Africa

4.2.1a Burundians in Tanzania The People

The majority or 85% of Burundi's 8 million people are Hutu and 14% are Tutsi. This land-locked Central African country borders Tanzania, Rwanda and the Democratic Republic of the Congo. During the colonial period, Belgium used Central Africa's existing monarchical structures and exploited ethnic differences in a manner that ensured the political and economic dominance of the minority Tutsi ethnic group over the Hutus.²⁹ Following independence in 1962 from Belgium, Burundians lived under a series of repressive regimes dominated by the minority Tutsi group. One particularly horrific episode of repression occurred in 1972 when an estimated 300,000 Burundian civilians were massacred, a majority of whom were Hutu.

Burundian politics has long been dominated by a rivalry between the Unity for National Progress (UPRONA), a predominantly Tutsi party that held power in Burundi from independence until 1993, and the Burundi Democratic Front (FRODEBU) described by the United Kingdom as the most important of a number of Hutu political parties. In 1993, Burundi's first democratically elected President, a Hutu, was assassinated by the Tutsi-dominated army within a few months, triggering a long-running conflict between the army and Hutu rebel groups which led to an estimated 200,000 to 500,000 deaths. In September 2006, the new government, led by President Pierre Nkurunziza, signed a ceasefire with the last Hutu rebel group, in cooperation with the Hutu-led National Liberation Front (FNL) with the involvement of the governments of South Africa and Tanzania, but the U.S. government reports that it still faces challenges. In fact, the United Kingdom reported in January 2007 that FNL fighters "remain in the field." As of January 1, 2007, the United Na-

tions Integrated Office in Burundi (BINUB) started its operations for an initial period of one year after the United Nations peacekeeping mission (ONUB) ended its mandate on December 31, 2006.

As recently as 2004, there were approximately 800,000 Burundian refugees in countries of asylum with most of them being in Tanzania. In June 2006, UNHCR reported that there are 193,857 Burundian refugees in Tanzania. Among these refugees are approximately 8,000 Burundian refugees who have been in Tanzania since 1972 or are the dependents of Burundians who have been in Tanzania since 1972. UNHCR reports that these "1972 Burundians" have suffered multiple displacements, have no prospects for local integration, have limited ties to Burundi and have limited access to their land.

The Refugee Claims

Burundians who meet the refugee definition have a well-founded fear of persecution on account of political opinion, including imputed political opinion, or membership in a particular social group. Under U.S. law, the laws of other countries and international law, persecution has been defined as a significant threat to life or freedom or a serious violation of human rights. Many of the Burundians who fled in 1972 and their dependents claim past persecution or a well-founded fear of future persecution on account of political opinion or membership in the Hutu ethnic group. The issues related to access to land in this densely populated country where there are many land disputes and land values are quickly rising add another dimension to their claims—particularly for the "1972 Burundians."

Other Burundian asylum seekers claim a fear of persecution on account of perceived involvement with the Hutu armed rebel group, the National Liberation Forces/

Front (FNL). Members of the FNL who persecuted others do not deserve refugee protection, but individuals who are targeted by the government or non-state entities on account of an erroneous determination that they were members of the FNL do deserve protection as refugees. The Burundian government has been cited for gross violations of human rights as it has attempted to root out armed rebel groups. In June 2006 Human Rights Watch (HRW) reported that the Burundian government used children to carry munitions and to assist in locating FNL combatants and supporters, a practice HRW described as a form of compulsory recruitment for use in armed conflict and as a violation of the Worst Forms of Child Labor Convention (No. 182)³⁰ and the Convention on the Rights the Child.

Conditions in the Country of Asylum: Tanzania

Shortly after achieving independence from Britain in the early 1960s, Tanganyika and Zanzibar merged to form the nation of Tanzania in 1964. As of January 1, 2007, this East African nation of 37 million was hosting more than 278,000 refugees, according to UNHCR and as recently as 2003 was hosting more than 500,000 refugees, more than any other African country. These numbers do not include recent media reports of Tanzania government estimates of an additional 300,000 to 500,000 mostly Burundian and DRC refugees who have settled outside of refugee camps in villages in Tanzania over the years. This religiously diverse and relatively stable country has had a history of generously hosting refugees, but has increasingly experienced the hosting of refugees as overwhelming and has

responded by passing restrictive laws and forcibly returning certain refugees.

In June 2006, UNHCR reported in its "Projected Resettlement Needs 2007" that refugee rights and freedoms have been increasingly restricted in Tanzania since the passage of the 1998 Refugees Act and the introduction of the National Refugee Policy in 2003. The Act places severe restrictions on a refugee's freedom of movement and employment. The Tanzanian 2003 National Refugee Policy introduced a number of measures that UNHCR considers to be inconsistent with international refugee law. Refugees are required to live in designated areas and if they fail to get a permit from the government if they want to travel further than four kilometers from the refugee camp, they must pay either a fine of 50,000 Tanzanian shillings or serve six months in prison.

According to a September 2003 study by the University of Dar Es Salaam, the following are the main assertions of Tanzanian society and government regarding the impact of refugees: refugees are a threat to external and internal security; they cause environmental degradation; they destroy physical and social infrastructure; they are an excessive burden on local governance and administration and they delay economic development in refugee affected regions. The study acknowledged and found that the presence of refugees had a number of negative impacts, including military confrontations between Tanzania and the country of origin of some of the refugees, including Burundi, but also highlighted the positive impact of refugees. For example, it appeared that

²⁸ See generally UNHCR, *UNHCR Global Appeal 2007*, November 2006.

²⁹ See U.S. Department of State, Bureau for African Affairs, "Background Note: Burundi," March 2007 at <http://www.state.gov/r/pa/ei/bgn/2821.htm>.

³⁰ This Convention was unanimously adopted by the member states of the International Labor Organization.

the social service sector benefited from the presence of refugees and that refugees increased business opportunities, revenues from taxes and provided low-cost labor.

The findings of this and similar studies though have not been reflected in Tanzania’s policies. Tanzania increasingly responds to refugees by focusing on the return of refugees—a complete change from its refugee policies of the 1960s through the 1980s which focused on integration.

How the U.S. Can Help

In addition to offering resettlement to the estimated 13,000 “1972 Burundians,” the United States should offer resettlement to Burundians who were forced to provide support to the FNL or face being erroneously associated with the FNL upon return to Burundi. This should be done through a priority two (P-2) designation (as a group of humanitarian concern) or a group referral from UNHCR or an expert NGO.

Opportunities and Challenges

Currently, there is a fragile peace accord in Burundi and there exists many challenges associated with returning refugees and internally displaced persons having access to their property. UNHCR reported that as recently as 2006, about 70 percent of returning IDPs and refugees found that they no longer had houses or found them destroyed. In order to deal with land and property issues resulting from years of conflict, the Burundian government set up a National Land Commission in July 2006.

Resettlement could help with the very challenging work of resolving land disputes by creating space for difficult negotiations on this sensitive issue. The strategic use of resettlement would contribute significantly to the efforts currently being undertaken by the refugee producing and hosting countries in the Great Lakes region. The strategic use of resettlement could

remove certain groups who have experienced such past persecution that they cannot return and other groups who are particularly vulnerable to persecution such as children who were forcibly recruited into armed groups.

4.2.1b Congolese (DRC) and Congolese Banyamulenge in Burundi

The People

The Democratic Republic of the Congo (DRC) has a population of over 62 million, representing over 200 ethnic groups, of which the majority is Bantu. Banyamulenge Tutsis have been in the DRC since the 17th century when they migrated to the area now known as South Kivu province where they lived peacefully alongside their Bantu neighbors for hundreds of years until the recent war.³¹ Since colonialism, violations of human rights against the Banyamulenge and their fellow DRC compatriots have been reported.

Established as a Belgian colony in 1908, the Republic of the Congo gained its independence in 1960. Col. Joseph Mobutu seized power in a November 1965 coup, changing the name of the country to Zaire. Ethnic strife and civil war, touched off by a massive inflow of refugees in 1994 from fighting in Rwanda and Burundi, led in May 1997 to the toppling of Mobutu by a rebellion backed by Rwanda and Uganda and fronted by Laurent Kabila. Kabila renamed the country the Democratic Republic of the Congo (DRC), but in August 1998 his regime was challenged by a second insurrection backed by Rwanda and Uganda. A ceasefire was signed in July 1999 by the DRC, Congolese armed rebel groups, Angola, Namibia, Rwanda, Uganda, and Zimbabwe.

Laurent Kabila was assassinated in January 2001 and his son, Joseph Kabila, was named head of state. In October 2002, the new president negotiated the withdrawal of Rwandan forces occupying eastern

Congo after concluding agreements with several warring parties. In December 2006, Joseph Kabila was inaugurated as president, following national elections.

The Refugee Claims

Banyamulenge view the 1994 influx of Rwandan genocidaires as the cornerstone of the ethnic violence that has forced perhaps more than one hundred thousand Tutsis to flee their home.³² As the ex-Rwandan army forces and Interahamwe rearmed in the DRC, Mapendo International asserts that they incited the Congolese population to target Tutsis.³³

In 1996 President Mobutu declared that all Tutsis must leave the DRC, and the violence which ensued led to the ascension to power of Laurent Kabila. President Kabila backed Hutus in eastern DRC and abroad, a move which led to the 1998 Rwandan invasion of the DRC and re-ignited anti-Tutsi killings for years.

Banyamulenge Tutsis from the DRC who meet the refugee definition have a well-founded fear of persecution on account of membership in a particular social group. The status of Banyamulenge Tutsis as Congolese citizens has been heavily politicized and manipulated over the past 25 years. The issue of statelessness of the Banyamulenge might appear to have been solved by the 2004 nationality law in the DRC, but this has not yet produced any tangible results. There are no examples of cases of Banyamulenge who have obtained Congolese nationality.

The situation of the Banyamulenge is complex. Some experts claim that Banyamulenge are in a vulnerable and insecure position in the eastern Kivu provinces and face discrimination amounting to persecution throughout DRC, but others point to the repatriation of others. It is significant to point out, however, that the United Kingdom’s Immigration and Nationality Directorate advises its adjudicators that if it is

established that an asylum applicant is of Banyamulenge origin, a grant of asylum is likely to be appropriate.

Conditions in the Country of Asylum: Burundi

As of mid-September 2006, there were approximately 30,000 Congolese and 5,000 Rwandan refugees residing in the country, according to UNHCR. In addition to the camp-based refugees, there were more than 20,000 refugees locally integrated in urban centers.

The State Department reports in its *Country Reports on Human Rights Practices 2006* that Burundian law provides for the granting of refugee status or asylum in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol. Burundi is also a party to the Organization of African Unity Convention Governing Specific Aspects of Refugee Problems in Africa. The State Department reports that in 2006, the government established a system for providing protection to refugees and granted refugee status and asylum to some persons during the year. According to UNHCR, the government fulfilled all of its obligations to provide asylum and refugee protection and cooperated with all international organizations involved in refugee issues in 2006; but given the recent insecurities, violations of human rights and killings of refugees in this country of asylum, it has been the conclusion of Mapendo International that the Banyamulenge cannot return to the DRC and cannot stay in Burundi.

On August 13, 2004 over 150 Congolese Banyamulenge refugees staying at the Gatumba refugee camp in Burundi were killed. In addition, 105 Banyamulenge refugees were wounded. Human Rights Watch and Mapendo International report that the FNL with the assistance of groups like the Interahamwe and Mayi Mayi

militia deliberately bypassed other refugee camps and those areas of the Gatumba camp where non-Tutsi Congolese refugees lived with the intent of killing the Congolese Banyamulenge Tutsis. The State Department reports that in April 2005, the Burundi minister of justice informed the UN Mission that a report on the Gatumba massacre was complete, but as of the end of 2006, it had not yet been released.

After taking office in August 2005, the government of President Nkurunziza sought to address the problem of refolement which plagued the transitional government. However, there continue to be issues associated with the capacity of the Burundian government to make determinations regarding refugee status, to ensure the security of refugees in the country, and to ensure that refugees are not forcibly returned to persecution.

How the U.S. Can Help

The United States should designate all Congolese Banyamulenge refugees in Burundi, not only those who were in the Gatumba camp in August 2004, as a priority two group for resettlement as well as other DRC nationals who were targeted by the Mobutu regime. Additionally, many of the children who survived the Gatumba camp attack have become orphaned or are in fragile situations, and would benefit greatly from special consideration for the best durable solution, including resettlement. As the United States conducts its own detailed interviewing, it should not require UNHCR to prepare labor-intensive individual case files that include UNHCR individual determinations of refugee status for the Congo-

lese Banyamulenge or other Congolese targeted by Mobutu in order to consider them for resettlement. This group is therefore an ideal candidate for direct processing by the United States as a priority two (P-2) group of special humanitarian concern to the United States.

Opportunities and Challenges

The continued security concerns in Burundi make it a challenge to have U.S. officials travel to Burundi, including the capital Bujumbura, to conduct interviews required for the determination of U.S. resettlement eligibility. But given the history and potential for national crises to quickly become horrific regional crises in the Great Lakes region, the U.S. has an interest in building on its previous humanitarian interventions on behalf of Congolese Banyamulenge in 2000 and 2001. The U.S. can do this by not only resettling Banyamulenge, but also resettling other Congolese who were targeted by Mobutu by 2008.

4.2.1c Congolese (DRC) in Zambia

The People

For a description on Congolese refugees, see 4.2.1b in the above section.

The Refugee Claims

The DRC, a nation endowed with vast potential wealth, is recovering from two decades of decline, according to the U.S. Central Intelligence Agency’s World Factbook entry on the DRC. The most recent major conflict, which began in August 1998, resulted in the deaths of perhaps 3.5 million people from violence, famine, and disease.³⁴ Many DRC asylum seekers claim

³¹ See Mapendo International, “Rescue proposal: Banyamulenge Tutsi survivors of Gatumba Camp,” December 2004 at 3.

³² See Mapendo International at 3.

³³ See Mapendo International at 4.

³⁴ U.S. Central Intelligence Agency, *World Factbook 2007*.

a fear of persecution by the DRC government, because of the asylum seeker's political activities, membership in or association with a former rebel group.³⁵

Those DRC asylum seekers, who have been or are perceived to be opponents of the government, have a well-founded fear of persecution on account of political opinion or membership in a particular social group. For example, experts have determined that there is a real risk of persecution for Union for Democracy and Social Progress (UDPS) activists, specifying that in the eyes of the DRC authorities, UDPS supporters are assimilated with supporters of the Congolese Rally for Democracy (RCD/Goma) movement because of the alliance reached in 2003 even if later officially ended.³⁶

In 2005 and the first half of 2006, it was reported that human rights defenders in DRC continued to work in conditions of extreme danger, especially in eastern regions. Congolese activists have previously been victims of torture, extra-judicial execution and arbitrary arrest. Local authorities are hostile to the work of local NGOs as they fear that they may expose their involvement in human rights violations.³⁷

According to February 2007 information from Refugees International (RI), the national army (the FARDC), continue to extort food and labor, and rape and sexually assault women and children. In March 2007, RI reported that gender-based violence remains a particularly severe threat to the vulnerable civilian population. More than 40,000 women have been raped in eastern Congo since 1998, and upwards of 70% of all women have been raped within particular internal displacement camps and communities according to UN surveys. Furthermore, RI reports that all parties to the conflict in the DRC have illegally recruited, abducted and used child soldiers. The armed factions have forcibly recruited between 20,000 and

40,000 children, including young girls, into armed combat, forced labor and sexual servitude.

Conditions in the Country of Asylum: Zambia

As of 2006, there were over 61,000 Congolese refugees in Zambia, a country of 11.5 million people. In addition, there were over 75,000 Angolan refugees and over 5,500 Rwandan refugees. The law does not provide for the granting of refugee status or asylum in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol. However, the U.S. State Department reports that the government has established a system for providing protection to refugees. For example, the government provided some protection against the return of persons to a country where they fear persecution and assisted in the resettlement of 192 DRC refugees to third countries.

Zambia adopted the 1951 Convention with an exception for Articles 26 and 28, which cover the freedom of movement and the right to travel documents. Refugees are restricted to camps, unless they obtain a specialized work permit, a permit for medical or security reasons or to study at an institution of higher learning. The government offers 30- and 60-day travel permits for refugees wishing to take their crops to market.

Zambia's Refugee Act dates back to 1970 and continues to be interpreted to restrict refugees, their children and grandchildren to refugee camps. Protestant church leaders in Zambia have publicly expressed their concern that many innocent refugees are arrested and detained for indefinite periods for minor violations of the regulations restricting movement.

Zambia also included an exception to Article 17, Section 2 of the 1951 Convention, which guarantees refugees with more than three years tenure in a country the right to work on par with nationals. Exceptions include medical personnel, of which Zambia has a shortage, and those who are can afford to make a \$50,000 investment in a small business.

The Zambian government's refugee policy over the years has been to provide some minimal protections for refugees in anticipation that they will return to their countries of origin. The most recent focus of the Zambian government on finding durable solutions for refugees has been on voluntary repatriation for Angolans and other refugees. But there have also been reports of forcible returns of Congolese refugees.

The one notable positive aspect of the Zambian government policy has been the attempt to develop self-sufficiency among some refugees in the rural refugee camps through the Zambia Development Initiative Program, started informally in 2002 with Angolan refugees, which was designed to help both refugees and Zambians. This program permitted refugees, who are not allowed to own land, to farm land and sell their produce on the market. As a result of this program, many refugees no longer needed assistance from the World Food Program (WFP) and, in fact, became suppliers of maize to the WFP.

However, these attempts at self-sufficiency were restricted to certain refugees, mostly Angolans, in rural areas and did not include urban refugees. Most importantly, self-sufficiency in the context of this particular program and in Zambia in general does not amount

to the durable solution of integration in Zambia and protection from persecution in the country of origin.

How the U.S. Can Help

The United States should consider offering resettlement to eligible Congolese nationals who were UDPS activists and human rights activists who have a well-founded fear of persecution in the DRC. In addition, the U.S. should consider offering resettlement to DRC survivors of gender-based persecution. In order to minimize unnecessary strains on UNHCR resources and avert processing delays, such groups should be eligible for direct processing by the U.S. refugee admissions program through a priority two (P-2) designation.

Opportunities and Challenges

The robust voluntary repatriation of Angolan refugees and the economic/political revival of Angola provide an opportunity for Zambia to feel relieved of some of its refugee responsibilities. This period through 2008 may be opportune for continuing discussions with UNHCR and the Zambian government on the strategic use of resettlement for Congolese refugees.

**4.2.1d Mauritians in Senegal
The People**

Independent from France since 1960, The Islamic Republic of Mauritania, with a population of over three million, was the last nation in the world to officially ban slavery in 1980. Nonetheless, the institution reportedly persists, with thousands of Haratines, the Arabicized Africans known as black Moors, held in involuntary servitude. There are other black Mauritians of various ethnic groups who were never held in involuntary servitude and some have organized to advocate against what they have experienced as race-based discrimination.

The majority of the population is made up of nomadic and semi nomadic persons of Berber, Arab, Tuareg, and Fulani descent. Those of Berber, Arab, and mixed Berber-Arab background are commonly referred to as white Moors (many of whom, however, are dark-skinned after centuries of intermarriage with Berbers and sub-Saharan African groups). White Moors constitute 30% of the population and black Moors constitute 40% of the population. Another 30% of the population consists of black Africans mostly belonging to the Tukolor (Pulaar or Fulani), Soninke, Bambara, and Wolof ethnic groups. The country has a complex social caste system, with those considered to be white Moors usually in positions of power in the government and business and black Africans often at the bottom of the social ladder.

The Refugee Claims

In 1990, Amnesty International (AI) reported that the violations of human rights which have taken place in Mauritania over the last four years have been largely aimed at the Pulaar or Fulani, the black African ethnic group which inhabits most of the fertile land near the Senegal border in a country which is mostly desert. Some Pulaars viewed a decree of June 1983 on the re-organization of land ownership as an attempt by the government and the Moor community to seize the land of the traditional inhabitants of the valley.

In 1990 AI reported that following the mass expulsion of tens of thousands of black Mauritians in 1989, including seizure of their identity documents and property, the government settled Haratines (the black Moors) in villages in the south and on land belonging to the indigenous population who had been expelled from the country. Some Mauritanian refugees who were expelled from villages and fled to Senegal from the late

1980's to early 1990's organized crossings back to Mauritania to attempt to recover property and to protect villagers fleeing Mauritania for fear of extrajudicial execution and other abuses by security forces.

There were several organized, mostly Pulaar, groups which were active in these border crossings and in opposing the government's treatment of black Africans, including the African Liberation Forces of Mauritania (FLAM). FLAM was set up in 1983 and was responsible for drawing up the document, "The Manifesto of the Oppressed Black Mauritanian" which censured the government for its marginalization of black Mauritians.

Various black ethnic groups, including the Pulaar, have been targeted for extrajudicial executions, disappearances, torture and arbitrary detention by the National Guard, the gendarmerie, the army and unofficial black Moor militias which were set up by the government, often using coercion during recruitment for these militias. Over the years, it would appear from some official statements that the authorities are justifying the repression of black Mauritians as a legitimate fight against insurrection or outside aggression. However, Amnesty International has concluded that the actions of the security forces seem to be directed at unarmed civilians, resulting in one community using the resources and power of the state to wage war against another community.

Government targeting was not restricted to unarmed civilians, but also included the killing, torturing and maiming of over 500 mostly Pulaar and Soninke members of the Mauritanian military from 1989 to 1991. Over ten years after this horrific episode, the U.S. State Department reported in 2000 that while there were a few pensions paid to the documented widows of some of the targeted members

³⁵ See United Kingdom Immigration and Nationality Directorate, "Operational guidance note: Democratic Republic of the Congo" at 6.

³⁶ See United Kingdom Immigration and Nationality Directorate, "Operational guidance note: Democratic Republic of the Congo" at 8.

of the military, a 1993 amnesty law precluded any legal pursuit of those responsible for these crimes. The government did not acknowledge responsibility or wrongdoing nor did it provide compensation to the families of those killed.

As recently as 2007, the State Department reported that racial and ethnic minorities faced governmental discrimination. The government continues to pursue various policies of “Arabization” in the schools and in the workplace, including making the use of Arabic compulsory and conveying the attitude of the superiority of Arab culture and language over other cultures and languages. Ethnic rivalry significantly contributes to political divisions and tensions, with individual political parties being associated with specific ethnic groups.

The non-issuance of identification cards showing Mauritanian nationality continues to disproportionately impact black Mauritians. The inconsistent issuance by police of these identification cards effectively disenfranchised numerous members of southern minority groups, particularly black Moors and Afro-Mauritians during parliamentary elections in 2006, according to the U.S. State Department. In fact there are Mauritians who have been back since 1995 and still have no Mauritanian identification cards.

Mauritians in Senegal who meet the refugee definition have a well-founded fear of persecution on account of race, membership in a particular social group or political opinion. Among the groups that have been targeted over the years by the Mauritanian government have been black Mauritanian owners of fertile land in the south, black Mauritanian intellectuals who have advocated for equal treatment among the ethnic groups, including FLAM, black members of the military and black Mauritanian university student leaders.

The persecution in Mauritania consists of state-sponsored

deprivation of property with no compensation and no nationality based on race, membership in a particular social group or political opinion. There are some Mauritanian refugees whose past persecution, including torture, is so severe that they should not be expected to return to Mauritania even if conditions changed there.

Conditions in the Country of Asylum: Senegal

As of the end of 2006, UNHCR estimated that between 15,000 and 20,000 Mauritanian refugees from the 1989-91 crisis remained in Senegal. The Republic of Senegal, a nation of 11 million, has been independent from the French since 1960. Senegal has had a policy of recognizing all Mauritians who had been expelled from their country as prima facie refugees. The Mauritians, many of whom share cultural, religious, ethnic and familial ties with Senegal, have enjoyed a great deal of support in the government and among the public. But many Mauritians have not been able to officially exercise their right to return to their country of nationality, including through voluntary repatriation. The government of the Islamic Republic of Mauritania has refused to discuss an official voluntary repatriation program with Senegal and UNHCR because to do so would acknowledge that the expulsions, killings, land seizures and confiscation of identification documentations that started in the late 1980s created refugees.

Although a significant number of Mauritanian refugees received documentation from Senegal showing their status as refugees, which allowed them to remain in Senegal and enroll in school and universities, many Mauritians have lived for over fifteen years in Senegal in the informal sector, including in border camps. The validity period of many of their Senegalese documents has lapsed and the documents have not been renewed.

How the U.S. Can Help

The United States should offer resettlement to Mauritanian refugees in Senegal, particularly the sensitive political cases involving activists and former members of the military and individuals who may be considered stateless because the Mauritanian government will not recognize them as nationals and issue them identification documents.

Opportunities and Challenges

Senegal and Mauritania are undergoing some major economic changes and are both considering new alliances in light of these changes. Senegal, widely considered one of the most stable democracies in Africa and with a strong intellectual class, is attracting many investors from Asia and the European Union. Mauritania, widely seen as culturally divided between west and north Africa, continues to pursue stronger ties with Arab Gulf states, including through economic cooperation. Substantial oil production in and exports from Mauritania began in early 2006.

In March 2007, in what was considered the country's fairest election, Mauritians elected a new civilian president, Sidi ould Cheikh Abdalahi, after living through Mauritania's latest military coup. In his first press conference, the president elect referred to expulsions of the late 1980s and early 1990s, saying that he would work to build a peaceful democracy “founded on tolerance,” but he provided no specifics about refugees, including compensation, land titles and issuance of identification documents. An additional thorny issue will be how Mauritians will share the country's newly found oil wealth.

The U.S. has an opportunity to build on these positive developments so that the Mauritanian refugee issue does not hamper effective collaboration between Senegal and Mauritania on a host of other issues that have global implications. Both Senegal and Mauritania are in a geo-

graphic area from where increasing numbers of individuals travel to enter Europe. In fact, the U.S. government has put Mauritania on the Tier 2 Watch list for its failure to show evidence of increased efforts to combat trafficking, particularly in the area of law enforcement. It is in the interest of the United States to contribute to international and national initiatives of Senegal and Mauritania that involve migration and peace-building, including the use of resettlement for some of the Mauritanian refugees in Senegal. Resettlement will open the door for Mauritania's national reconciliation and will contribute to the stability of the region.

4.2.2 Americas and Caribbean

This section focuses on Colombians in Panama and Haitians in the Dominican Republic for the reasons outlined in the introduction about the factors considered in deciding to include particular groups in this report. However, it should be noted, that there are hundreds of thousands of Colombian refugees, mostly in neighboring countries in South America, and thousands of Haitian refugees, mostly in the Bahamas. Many of these other Colombian and Haitian refugees are also in need of the durable solution of resettlement.

4.2.2a Colombians in Panama The People

According to UNHCR's Global Appeal 2007, there are 10, 470 Colombians of concern in Panama. A total of some 500,000 Colombians of concern to UNHCR are in countries of asylum, including Venezuela, Ecuador, Costa Rica and Panama. They have fled a country which UNHCR has described as the worst humanitarian tragedy in the western hemisphere and the country with the largest population globally of concern to UNHCR.³⁹ UNHCR reports that, according to Colombia government figures, the

casualty rate from landmines in Colombia is now the highest in the world.

Colombia, independent since 1813,³⁹ is rich in natural resources and has an ethnically diverse population of 46 million. The current ethnic make up of the population reflects the legacy of colonialism and slavery. Two percent of the population is indigenous, 8% is Afro-Colombian, 20% is Caucasian, and over half is Mestizo (mixed Caucasian and indigenous).⁴⁰

Three million people are internally displaced. The indigenous and Afro-Colombians are disproportionately impacted by the violence and so are a disproportionately high percentage of the displaced population.

For the past four decades, civilians have been the victims of violence perpetrated by the government, guerillas and paramilitaries. The violence exists throughout the country, affects every social strata⁴¹ and is carried out for both political and huge economic gain. Colombians are caught between a government with many laws on the books, but limited capacity to implement them and organized, wealthy and influential non-government entities who victimize anyone who stands in their way of carrying out drug and human trafficking or other economic pursuits. These economic pursuits mean power which means for them the control of land and territory by displacing govern-

ment authorities and either using the services of the communities occupying land or displacing these communities.

There is a significant Colombian diaspora. The Migration Policy Institute estimates that in 2003, there were over 2 million Colombians in the United States. The Inter-American Development Bank estimates that in 2006, Colombians in the diaspora sent \$4.2 billion to their families in Colombia. This amount is more than five times the amount of U.S. foreign assistance to Colombia in 2006.⁴²

The Refugee Claims

Colombians who meet the refugee definition have a well-founded fear of persecution for reasons of political opinion or membership in a particular social group. In Colombia, persecution has taken the form of extortion, forcible recruitment of civilians, including boys and girls, into armed groups, sexual violence and killings.

Much of the persecution in Colombia is carried out by non-governmental entities that the government of Colombia is unable to control. There have also been reports of local government authorities facilitating and collaborating with non-government groups in their persecution of civilians. This assertion was made in testimony before the House Subcommittee on the Western Hemisphere of the Foreign Affairs Committee on April

³⁹ In 1819, the Republic of Greater Colombia was formed. The new republic included all the territory of today's Colombia, Venezuela, Ecuador and Panama.

⁴⁰ Estimates are from Consejo de Politica Economica y Social, the Republic of Colombia's National Planning Department and the U.S. Department of State.

⁴¹ Even large U.S. companies state that they are vulnerable to the violence and extortion. On March 17, 2007, the Associated Press reported that the Banadex company, a subsidiary of the U.S. company Chiquita, stated that it "had been forced to make payments to right- and left-wing paramilitary groups in Colombia to protect the lives of its employees." For this infraction, Chiquita paid a fine of \$25 million to the U.S. Justice Department.

⁴² The Center for International Policy in Washington, DC reported that in 2006 the U.S. provided \$733.8 million in assistance to Colombia.

24, 2007. “The fighting between leftist guerrillas of the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN), the right wing paramilitary, sometimes in collusion with the Colombian Army, has caught most of the rural civilian population in the crossfire.”⁴³

In Colombia, even neutrality and stated commitment to peace are considered political opinions. Political opinions are also attributed to individuals who do nothing. Political opinions (e.g. support for a particular armed group and its tactics) are imputed to individuals merely because they live in a particular area controlled by an armed group or because they refuse to join a guerrilla group or paramilitary. No matter what group is seeking or maintaining power—whether it is the government, paramilitaries or guerrillas—civilians are not allowed to merely remain neutral, but are forced to choose sides. Examples include the government compelling civilians to be informants and the guerillas targeting communities that have tried not to take sides by calling themselves peace communities.

While the violence has affected all social strata in Colombia, there are some social groups that have been particularly targeted. The social groups in Colombia that have been targeted for persecution include adolescents who are the victims of forcible recruitment, Afro-Colombians⁴⁴ who live in the more remote areas where guerillas believe they can operate with less government interference, the residents of Choco department, some indigenous populations and women.

Conditions in the Country of Asylum: Panama

Panama gained independence from Colombia in 1903 with U.S. backing. Panama currently has a population of three million and shares many ethnic similarities with Colombia. For example, it is estimated that 70% of its population is Mestizo.

The U.S. State Department reports that the law in Panama provides for the granting of asylum or refugee status in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol and that the government has established a system for providing protection to refugees. A 1998 decree grants protection to all persons entering the country due to “state persecution based on race, gender, religion, nationality, social group, or political opinion.” The decree grants two months temporary protection to “displaced persons” in the case of a large influx. The U.S. Department of State reports that in practice the government did not enforce the two month time limit in 2006. The State Department also reports that the 1998 decree provides for a meeting by the government’s refugee commission every three months to determine the status of persons seeking refugee status and that during 2006 the commission granted asylum to 135 persons.

UNHCR characterizes the Panamanian government’s compliance with the Refugee Convention and its protocol differently. According to UNHCR, certain key aspects of the Executive Decree N°23 of 1998, such as the refugee definition and temporary protection, are not fully consistent with the 1951 Convention, its Protocol of 1967, and international human rights standards.

In December 2006 42 Colombian asylum seekers of the Wounaan indigenous group became the first ever indigenous people to be recognized as refugees in Panama. This decision was described as a landmark decision by UNHCR. However, in the same press statement recognizing this positive step, UNHCR expressed continued concern for some 900 Colombians in the border region who have temporary protection, but who cannot work and have limited freedom of movement.

UNHCR has also expressed concern regarding urban asylum seekers, especially those in Panama City. While UNHCR continues to work with the Panamanian government regarding regularizing the status of Salvadoran and Nicaraguan refugees who had been in Panama for decades, it includes in its response to Colombian asylum seekers the search for a solution in third countries.

How the U.S. Can Help

When human rights violations are being committed against the greatest number of civilians of any other country to sustain drug trafficking, human trafficking and other illicit activities at unprecedented scales in one of the largest and richest countries in Latin America, it is in the interest of the United States to respond. Overly broad interpretations of our anti-terrorism laws that revictimize refugees who have spent years as displaced persons in fear of their lives is not the response that will lead to long-term stability for Colombia or its neighbors, including the U.S.

The U.S. offer of resettlement for groups of Colombian refugees in Panama would be an important contribution to efforts to address the Colombian crisis. The U.S. should encourage UNHCR to make group referrals that take into account the particular vulnerabilities of Afro-Colombian leaders, adolescents who are forcibly recruited into armed groups, women who are the victims of sexual violence and the residents of the department of Choco.

Opportunities and Challenges

One of the most important challenges to securing the durable solution of resettlement for Colombians is the overly broad application of our security laws to conclude that Colombians who have been the victims of extortion or forcible recruitment are providing material support to terrorists. While RCUSA commends the U.S. government for recent actions by the Administra-

tion to attempt to rectify this situation, the burdensome interagency work required to implement these new policies mean that too many Colombians are languishing in insecurity in countries of asylum, including Panama. If the overly broad application of U.S. security laws is not meaningfully fixed, the U.S. will not be able to take advantage of some genuine opportunities to help Colombian refugees rebuild their lives in the U.S.

Panama has just recently begun to address some of the needs of asylum seekers through the granting of permanent residence to some refugees who had been there for decades and by recently granting refugee status to over 40 indigenous Colombian asylum seekers. If the U.S. shares responsibility with Panama in responding to Colombian asylum seekers and refugees, it will facilitate Panama’s continued appropriate response to refugees. Sustaining Panama’s appropriate response to refugees becomes increasingly important as the numbers of reports of recent human rights violations in the Colombian departments closest to the Panama border increase, numbers of Colombian asylum seekers in Panama City mount and anti-Colombian sentiments among the Panamanian population intensify.

**4.2.2b Haitians in the Dominican Republic
The People**

Jesuit Refugee Service (JRS) has registered a total of 1,300 Haitian asylum applicants in the Dominican Republic which does not include hundreds, if not thousands, of other Haitians who should apply for asylum, but do not. In the Dominican Republic, a country of over nine million, there are an estimated 200,000 to one million undocumented individuals of Haitian descent, many of whom would identify themselves as Dominico-Haitians.

Haitian asylum seekers in the Caribbean and the United States have for decades been subjected to interdiction, detention and summary return with minimal opportunities to have their refugee claims heard. Since the establishment of the Republic of Haiti, neighboring countries, especially the United States and the Dominican Republic, have had a complicated relationship with it.

In 1804, while slavery thrived throughout the Americas, Haiti became the first black republic in the world ruled by former African slaves who were brought mostly from West Africa by France to sustain its agricultural sector. The arrival of the Europeans to Haiti eliminated the population of indigenous people and thus the vast majority of Haitians are of West African descent. Haiti, with an estimated population of 8.3 million, currently shares the island of Hispaniola with the Dominican Republic; but for a period of some twenty years in the 1800s, Haiti controlled the entire island.

For decades, neither Europe nor the United States recognized Haiti, and it was thus excluded from international initiatives, including trade, remaining a largely isolated country. In order for Haiti to be recognized by France, it paid war reparations to reimburse France for expenses it incurred during the Haitian revolution. After the U.S. Civil War, U.S.-Haiti relations were established, including U.S. occupation from 1915 to 1934.

For decades, the Haitian population has responded to political and economic difficulties by migrating. Because of the reputation of Haitians as hard workers, they are tolerated for their labor in neighboring countries, but are often scapegoated during periods of national difficulties in the host countries.

There is thus a significant Haitian diaspora. According to the 2000 U.S. Census, there were an estimated 419,000 foreign-born from Haiti in the United States, which does not include the hundreds of thousands of native-born individuals who identify themselves as Haitian-American. The Inter-American Development Bank estimates that in 2006, Haitians in the diaspora sent to their families in Haiti \$1.65 billion, a figure which is more than seven times the amount of U.S. foreign assistance to Haiti for that same year.⁴⁵

The Refugee Claims

Haitians who meet the refugee definition have a well-founded fear of persecution on account of membership in a particular social group or political opinion. Haiti has been a country mired in political and economic turmoil, with different economic and social classes being associated with particular political opinions; and the U.S. has been implicated in some of this turmoil.

Although the U.S. military left Haiti in 1934, the U.S. government continued to be involved in its internal affairs, including supporting certain leaders like Dr. Francois Duvalier (“Papa Doc”), whose violations of

⁴³ See Testimony of Luis Gilberto Murillo-Urrutia, Former Governor, Choco State, Colombia, Senior Fellow, Phelps Stokes Fund, before the Subcommittee on the Western Hemisphere of the House Committee on Foreign Affairs on U.S.-Colombian relations, April 24, 2007 at 1.

⁴⁴ See April 24, 2007 congressional testimony of Luis Gilberto Murillo-Urrutia at 5-8.

⁴⁵ In March 13, 2007 testimony before the Western Hemisphere Subcommittee of the House Foreign Affairs Committee, USAID stated that for the period between 2004 and 2006 (or three years), the United States provided over \$600 million in assistance to Haiti. This works out to a little over \$233.3 million for each of those years.

human rights starting in the 1960s caused many Haitians to flee seeking asylum. Most recently, certain members of the U.S. Congress have alleged that in 2004, the U.S. government ousted Haiti's President Aristide, who was first democratically elected in 1990.

The JRS registered asylum seekers in the Dominican Republic include those who fled the instability when pro-Aristide individuals and their families were persecuted and anti-Aristide individuals and families who were targeted by pro-Aristide sympathizers. There are also asylum seekers who fled persecution by non-government armed groups, demanding high ransom amounts for kidnapped relatives threatened with death and sexual violence, in the period leading up to President Aristide's departure in 2004 and during its aftermath.

During the period leading up to Aristide's 2004 departure, U.S. government statistics show that a total of 8,485 Haitian asylum cases were filed before U.S. asylum officers or immigration judges. Of the cases adjudicated by DHS Asylum Officers, there was a 32% approval rate in fiscal year 2003. Of the cases adjudicated before Department of Justice immigration judges, there was an 18% approval rate for fiscal year 2003.⁴⁶

Persecution in Haiti has taken the form of torture, killings, imprisonment without charges, extortion, repression of basic rights, including the right to express opinions about government policy and country conditions, sexual violence and most recently, the forcible recruitment, especially of children, into armed groups. Persecutors over the years have included the government and non-government entities.

Currently there is a United Nations Stabilization Mission in Haiti (MINUSTAH)⁴⁷ whose positive impact is debatable. There are certain areas of Haiti, particularly in Port-au-Prince, that are con-

trolled by non-government armed groups who use extortion and death threats to control the people, resulting in a growing population of internally displaced persons. Neither the UN, the Haitian government, nor NGOs can operate in these areas to assess conditions, let alone try to improve them. In addition, the perpetrators of such violence and repression are operating in a country described by human rights activists as having no rule of law and a corrupt judicial system. According to human rights activists in Haiti, impunity that leads to crimes being unpunished and government corruption need to be meaningfully addressed in order to confront the rising influence of these armed groups.

There is a pervasive fear of kidnapping among the population by these armed groups, particularly throughout Port-au-Prince. According to human rights workers in Haiti, they disproportionately target boys for forcible recruitment and kidnap disproportionately high numbers of women who reportedly head over 50 percent of the households in Haiti.

Conditions in the Country of Asylum: the Dominican Republic⁴⁸

According to the Dominican government, 99% of the asylum applications filed is from Haitians. Haitian asylum seekers in the Dominican Republic say that they are treated as economic migrants instead of as people in need of protection from persecution. For example, when Haitian asylum-seekers give birth to children in the Dominican Republic, the Dominican government expects them to go to the Haitian embassy, just as any other Haitian migrant, to register the birth.

Just like many other Haitian migrants, asylum seekers, even those with documents showing that they have a pending asylum claim, fear deportation. Each year, tens of thousands of Haitians, including asylum seekers and those who

arguably have a right to Dominican nationality, are deported from the Dominican Republic to Haiti. These deportations result in the separation of families, including minor children from parents.

The claims of Haitian asylum seekers in the Dominican Republic are pending for many years without a decision, causing many difficulties for the population, most importantly vulnerability to deportation, but others as well. Asylum applicants do not get authorization to work yet they must pay to apply for asylum and to renew the application. Asylum applications, which must be regularly renewed, cost between 8,000 and 24,000 Dominican pesos or between USD \$239 and \$718. Because the Dominican government body which decides on asylum cases rarely meets and has only decided on a handful of Haitian cases, there are Haitian asylum seekers who have needed to pay to renew documents and applications every several months for many years. Many Haitians, finding that they do not have the money to maintain valid asylum documents, will not apply for asylum or stop renewing asylum documents.

Haitian asylum seekers also face hardships like lack of housing, exorbitantly high rents, inability to register children in school, exploitative work situations and physical insecurity. Because of what many Caribbean political and social scientists have described as a history of anti-Haitian, racist sentiment throughout Dominican society, Haitians are often scapegoated during times of crisis. Such scapegoating has led to confirmed reports of verbal abuse and destruction of identity documents by government civil servants, physical violence by police and private citizens and sexual violence and murders by private citizens.

How the U.S. Can Help

The U.S. resettlement of those Haitian asylum seekers registered by JRS as of the end of 2006

would provide refugee protection that is non-existent in the Dominican Republic. The U.S. should encourage UNHCR to make group referrals that take into account the particular vulnerabilities of women-headed households and children/adolescents vulnerable to forced recruitment into the armed groups in Haiti.

The International Organization for Migration (IOM) is concerned that large numbers of undocumented individuals in exploitative situations are vulnerable to trafficking and other forms of organized crime which hamper constructive migration agreements that contribute to regional and global stability. Addressing the more controversial issue of asylum claims through resettlement for a finite group would facilitate bilateral talks between Haiti and the Dominican Republic regarding the range of issues associated with migration which they and neighboring countries must address.

Opportunities and Challenges

The Dominican Republic has an interest in maintaining relations with the United States and Haiti, its two largest trading partners, but it bristles at accusations of racism against its own people and Haitians and what it perceives as U.S. arrogance. Recently, including in 2006, there has been attention from international NGOs, the Inter-American Court of Human Rights, a U.S. Congressional delegation and the U.S. Ambassador to the Dominican Republic regarding the violations of human rights against Dominicans of Haitian descent and Haitian migrants by the Dominican government. In sharing responsibility for the protection of Haitian refugees in the region, the U.S. government might relieve some pressure from the Dominican government, allowing it to consider ways of addressing the recent public criticisms about its human rights record.

4.2.3 Asia
4.2.3a Burmese Chin in India
The People

In 1948, the Union of Burma⁴⁹ became an independent republic, no longer a British colony. Today, Burma's population is estimated to be over 50 million, the majority of whom are Bamar or Burman (69%), followed by the Shan (8.5%), Karen (6.2%), Rakhine (4.5%), Mon (2.4%), Chin (2.2%), Kachin (1.4%), Karrenni (0.4%) and small percentages of other groups. Buddhism is the predominant religion in Burma, estimated to be practiced by well over 80% of the people.

The majority of the Burmese refugees in India are Chin. These refugees are currently in the Mizoram state in India where there is other non-Burmese Chin. The Burmese Chin are mostly from the western areas of Burma (the Chin state) and most practice Christianity which is practiced by 4% of the population in Burma.

The Refugee Claims

Since 1962, Burma has been ruled by a succession of highly authoritarian military regimes dominated by the majority Burman ethnic group. The current controlling military regime, the State Peace and Development Council (SPDC), led by Senior General Than Shwe, is the country's de facto government.

Respect for the basic rights of freedom of speech, the press and

association were severely limited. Successive resolutions at the United Nations General Assembly (UNGA) and United Nations Commission on Human Rights (UNCHR) have drawn attention to arbitrary detentions, extra-judicial killings, rape, torture, the large number of political prisoners, abuse of women's and children's rights and the complete absence of democracy.

Some Burmese claim a fear of persecution by the government due to their involvement with minority religious groups. The predominant religion in Burma is Buddhism. The other main religions are Christianity, Islam and Animism. Burma is ethnically diverse, and there is some correlation between ethnicity and religion. Theravada Buddhism is the dominant religion among the majority Burman and other ethnic groups. Christianity is the dominant religion among the Chin.

In October 2004, the military intelligence apparatus that covertly and overtly monitored religious activities in the country was disbanded; however, the government continued to infiltrate and monitor the meetings and activities of virtually all organizations, including religious organizations. The government systematically restricted efforts by Buddhist clergy to promote human rights and political freedom, discouraged and prohibited minority religions from constructing new places of worship, and actively promoted Buddhism over other reli-

⁴⁶ See fiscal year 2003 immigration judge statistics for Haitian asylum seekers at www.usdoj.gov/eoir/statspub/fy03syb.pdf and fiscal year 2003 asylum officer statistics at www.dhs.gov/ximgtn/statistics/publications/YrBk03RA.shtml.
⁴⁷ MINUSTAH is currently authorized to be in Haiti through October 15, 2007, according to its website.
⁴⁸ See Refugees International and Lutheran Immigration and Refugee Service, "Dominican Republic, Haiti and the U.S.: A Shared Responsibility to Protect Refugees," January 16, 2007.
⁴⁹ Today's regime identifies the country as the Union of Myanmar; it is the policy of the United States to refer to the country as Burma.

gions, particularly among members of the minority ethnic groups.

Most adherents of religions that are registered with the authorities generally enjoy the right to worship as they choose; however, the government has imposed restrictions on certain religious activities and has frequently abused the right to religious freedom. During 2005, Christian groups continued to experience difficulties in obtaining permission to repair existing churches or build new ones.

Burmese refugees have claimed a fear of persecution by the government on account of their involvement with opposition pro-democracy political organizations and parties in Burma. A few ethnic insurgent groups continued to battle the government for autonomy or independence, including the Chin National Front.

The United Kingdom's Immigration and Nationality Directorate has concluded in an October 2006 opinion that the Burmese authorities do not tolerate political opposition, it is clear that they may take serious action against those expressing opposition political views and that this treatment may amount to persecution. The October 2006 opinion advises its adjudicators that where an individual is able to demonstrate that he or she is at serious risk of facing such persecution on account of their activities, a grant of asylum will be appropriate. In fact United Kingdom adjudicators of refugee claims have found that Burmese who have been involved at a high level in opposition movements in countries of asylum are likely to face difficulties if returned to Burma because Burmese authorities monitor some political activities outside Burma and thus these activists would likely qualify for asylum.

Members of Burma's ethnic groups do face societal and government-sponsored discrimination in Burma and the Burmese security forces continue to commit serious human

rights abuses in ethnic minority areas. Where individuals are able to demonstrate that they are at serious risk of facing such persecution on account of their activities a grant of asylum will be appropriate.

Some Burmese refugees will claim that the very fact of making an asylum application has increased their risk of persecution. The Immigration and Nationality Directorate of the United Kingdom has advised refugee claim adjudicators that this basis for fearing persecution is credible. Burmese Chin in India who meet the refugee definition have a well-founded fear of persecution on account of religion, membership in a particular social group and political opinion.

Conditions in the Country of Asylum: India

The Republic of India, with a population of over 1 billion, is the world's largest democracy; but it has struggled to respond appropriately and humanely to refugees. It is not a signatory to the 1951 Convention and 1967 Protocol relating to the status of Refugees. According to UNHCR, as of November 2006, there were 11,585 refugees under UNHCR's mandate, but during the year there were over 300,000 unregistered refugees, including those from Burma, Afghanistan, Bhutan, and Nepal in India.

The government generally denied NGOs and UNHCR direct access to refugee camps, particularly in Mizoram, where most of the Burmese Chin are seeking protection. UNHCR has no formal status, but the government has permitted it to have access to refugees living in urban centers. The government does not formally recognize UNHCR grants of refugee status, although it provides "residential permits" to many Burmese and Afghans.

UNHCR provided refugee status and assistance to approximately 1,800 Chin from Burma who were living in New Delhi. However, UNHCR did not have access to the

larger population of ethnic Chin living in the northeastern states. Burmese Chin were among the non-recognized refugees in the northeastern states of India. An estimated 40,000 to 50,000 Chin lived and worked illegally in Mizoram in 2006. NGOs estimated that during the year 2005, 10,000 Chins with alleged ties to Burmese insurgent groups were expelled to Burma, where the military government reportedly jailed them.

How the U.S. Can Help

U.S. resettlement of eligible Burmese Chin refugees in India would contribute to the efforts underway to find durable solutions for refugees who have been in exile for over fifteen years. Given the limitations of UNHCR's resources in India, the ideal approach to the processing of this group would be to allow them to apply directly to the U.S. refugee admissions program as a priority two (P-2) group of special humanitarian concern to the United States.

Opportunities and Challenges

While India purports to support democracy in Burma, including condemning the Burmese regime for refusing to hand over power to Daw Aung San Suu Kyi and her National League for Democracy (NLD) following the party's victory in the 1990 elections, it supports the current regime through economic cooperation. India's concern about the growing influence of China in Burma is influencing many of its decisions, including those that contradict a support for democracy in that country.

**4.2.3b Burmese Rohingya in Malaysia and Bangladesh
The People**

According to UNHCR, at the end of 2006, there were 12,715 registered Burmese Rohingya Muslim refugees from the Northern Rakhine State of Burma in Malaysia. There are more than 20,000 confined to two refugee camps in Bangladesh.

The Rohingya are a minority Muslim ethnic group who are mostly from the Rakhine state of Burma. The origin of the Rohingya is the subject of much dispute. Many Rohingya claim that they are the true natives of Arakan, having converted to Islam centuries ago. Cultural traits tend to support the Rohingyas being part of the native population of the region. However, Rakhine peoples and the Burmese military government claim that Rohingyas are migrants from southeastern regions in neighboring Bangladesh.

The Rohingyas have not been included among the indigenous groups qualifying for citizenship under the Burmese constitution as they have been classified as "Bengali Muslim" by the Burma government and denied recognition as an official ethnic group. The Rohingya have a distinct culture and language. The Rohingya language is mutually intelligible with Chittagonian, the language of southeastern Bangladesh. Religion is particularly important to the Rohingya people, who are predominantly Muslim. There are mosques and religious schools in every quarter and village.

The Refugee Claims

Rohingyas are victimized in Burma because of their religion and ethnicity. They face widespread religious persecution and discrimination at all levels, such as education, health and other basic needs, including the denial of their right to citizenship. Major incidents of repression of the Rohingya community occurred in 1962, 1978, and 1991. They are not allowed to marry, cannot travel without permission and do not have rights to land or property. They are also used as slave labor, beaten in the streets and even jailed for little or no reason.

Rohingya activists claim that the Burmese government's objective is to turn Muslim Arakan into a

Burmanised region by reducing the Muslims to an insignificant or manageable minority, and that as a result, more than a quarter of the total area of arable land has gone back to jungle. The government has started a massive colonization project to settle Buddhists from both inside and outside of Arakan on lands confiscated from the Rohingya.

Muslims reported that they are essentially banned from constructing any new mosques or expanding existing ones anywhere in the country. There were flare-ups of Muslim-Buddhist violence during 2004. Persistent social tensions remained between the Buddhist majority and the Christian and Muslim minorities, largely due to old British colonial and contemporary government preferences. There is widespread prejudice against Burmese of South Asian origin, most of whom are Muslims.

With regard to Rohingyas, only persons who were able to prove long familial links to the country were accorded full citizenship. Members of the Rohingya Muslim minority in Rakhine State continued to experience severe legal, economic, and social discrimination. The government denied citizenship to most Rohingyas on the grounds that their ancestors did not reside in the country for one year prior to the start of British colonial rule in 1824, as required by the country's highly restrictive citizenship law. Rohingya Muslims did not have access to state run schools beyond primary education because the government reserved secondary state schools for citizens.

Some Burmese fear persecution by the government due to their having left Burma illegally. Some claimants will also claim that they cannot return to Burma as they do not have the correct documentation and will therefore be entering Burma illegally and will face imprisonment.

The treatment of individuals who lack documentation has a disproportionately negative impact on Rohingyas as they have difficulty getting government documents.

A citizen needs the following three documents to travel outside the country: a passport from the Ministry of Home Affairs; a revenue clearance from the Ministry of Finance and Revenue; and a departure form from the Ministry of Immigration and Population. Citizens may retain their passports after completing trips abroad through their validity dates, but for those who are in countries of asylum like Malaysia, the passports' validity dates would likely have passed because the validity date on passports for incidental travel is one year. Those who return to Burma with an expired passport and those who have "caused embarrassment" to the government, e.g. applied for asylum abroad, could be immediately jailed upon return to Burma.

Those who exit or return to Burma illegally without a valid passport face substantial prison sentences. Returnees who are known political activists can face additional charges and harsher sentences, which can be as long as 30-40 years.

Under the terms of the Burma Immigration (Emergency Provisions) Act of 1947, "no citizen of the Union of Burma shall enter the Union without a valid Union of Burma passport, or a certificate in lieu thereof, issued by a competent authority." If a citizen violates this provision, he is automatically liable to "be punished with imprisonment for a term which may extend from a minimum of six months to a maximum of five years or with [a] fine of a maximum of K.1500 or with both."

The Burmese authorities keep detailed records of those who leave Burma legally on properly acquired exit stamps and are therefore likely to know if a claimant has left

without the required authorization. According to United Kingdom case law, an illegal exit can be defined as “leaving Burma without authorization from the Burmese authorities which includes travel to a country to which the person concerned was not permitted to go by the terms of an authorized exit.” This definition includes claimants who have left Burma legally to travel to a country such as Thailand but who then travel to a western country without authorization from the Burmese authorities.

Burmese who do not have a valid passport or are unable to acquire a replacement passport are likely to face imprisonment on return to Burma. If it comes to the attention of the Burmese authorities that the person who has left or attempts to enter Burma illegally is also a failed asylum seeker, then there is a reasonable likelihood that the prison sentence will be increased. The United Kingdom has determined that to return such a person to Burma would violate the non-return provisions of the Refugee Convention.

Forced labor of Muslims continued to be widespread in Rakhine State which disproportionately impacts Rohingyas. The International Labor Organization (ILO) has noted with concern the number of people taken into forced labor, particularly by the military, and announced in November 2006 that it will be seeking charges against Burma over the continuous forced labor of its citizens by the military at the International Court of Justice.

Burmese Rohingya in Malaysia and Bangladesh who meet the refugee definition have a well-founded fear of persecution on account of religion, nationality,⁵⁰ membership in a particular social group and political opinion.

Conditions in the Country of Asylum: Malaysia and Bangladesh

Malaysia is a predominantly Muslim country of 24 million. According to

USCRI, Malaysia hosted 155, 700 refugees in 2006, including at least 12, 000 Burmese Rohingya. The law does not provide for the granting of asylum or refugee status in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol, and the government has not established a system for providing protection to refugees. According to the Department of State, the government did not protect refugees from return to countries where they feared persecution unless they were recognized as persons of concern by UNHCR. The government did not grant refugee status or asylum, but it cooperated with UNHCR and generally did not impede other humanitarian organizations from assisting refugees and asylum seekers. The government generally did not distinguish between asylum seekers and illegal immigrants, detaining them in the same camps.

At the end of 2006, UNHCR listed 37,170 persons as refugees, of whom 40 percent were Burmese citizens. Police and immigration officials continued to observe an August 2005 directive not to arrest or detain persons solely for immigration violations if they had been granted UNHCR refugee or asylum seeker status. However, Malaysian law provides for six months in prison and up to six strokes of the cane for immigration violations.

The government of Malaysia implemented a short-lived program to issue work permits to Rohingya refugees in August 2006. The program was suspended within weeks. The International Rescue Committee reports that since then, Rohingya refugees have been unable to pursue local integration or resettlement.

Like Malaysia, Bangladesh is predominantly Muslim; however, it is much larger, with a population of 144.2 million. Also like Malaysia, Bangladesh is not a signatory to the 1951 Refugee Convention or its 1967 Protocol.

The Rohingya living in refugee camps in Bangladesh continue to live under some of the most squalid conditions of any refugee population in the world today, with local integration prospects thwarted by the Bangladeshi authorities. Illiteracy and malnutrition in the camps run rampant, particularly among children. Moreover, the more than 21,000 refugees who remain in the camp refuse to take part in any type of voluntary repatriation efforts.

How the U.S. Can Help

While the possibility remains that the Rohingya will be allowed to live and work in Malaysia, vulnerable cases of Rohingya should be referred to the U.S. UNHCR should be encouraged to make a group referral of Burmese Rohingya Muslim refugees in Malaysia for resettlement consideration—especially if Malaysia does not reinstitute a work permit program for the Rohingya.

As for Bangladesh, UNHCR completed a 2007 pilot project that assessed the protection needs of refugees. While certain aspects of the camp conditions have marginally improved in recent years, camp conditions remain well below any acceptable standards. Neither local integration nor repatriation are imminent. Given the total lack of social, medical and educational support in the camp, RCUSA urges that—at a minimum—the most vulnerable cases be considered on an urgent basis and that a P-2 designation be considered for the remaining refugees in the two camps.

Opportunities and Challenges

Malaysia continues to face a shortage of human resources and labor migrants (1.5 million, including an estimated half a million irregular migrants) have therefore become a significant component of its demographic and economic makeup. According to UNHCR, given

its relatively advantageous socioeconomic position, the country will remain a pole of attraction for migrant workers from countries in the region, as well as for refugees seeking a safe haven and means of survival. The vast majority of persons of concern to UNHCR fall into the category of “illegal immigrants” under Malaysian law, which provides no legal method to differentiate those in need of international protection from other migrants.

At this stage, the Malaysian government takes no part in the reception, registration, documentation and status determination of asylum-seekers and refugees. Determination of eligibility for international protection is carried out entirely by UNHCR under its mandate, but there are still large numbers of people potentially of concern to UNHCR who have not yet been able to register with it.

4.2.3c Burmese Karen and Karenni in Thailand⁵¹
The People

Of the over 130,000 registered refugees along the Burma-Thai Border, as many as two-thirds are Karen. A large number of the remaining refugees are Karenni.

It has been estimated that there are seven million Karen in Burma. The Karen people live mostly in the hilly eastern border region of Burma, primarily in Karen State, with some in a number of other states, including Kayah State (Karenni State) and southern Shan State.

In early February 1947, the Karen National Union (KNU) was formed at a Karen Congress attended by 700 delegates from the Karen National Associations, both Baptist and Buddhist (KNA - founded 1881), the Karen Central Organization (KCO) and the Karen Youth Organization (KYO). The Karen have fought for independence from Burma since 31 January 1949, and 31 January is consequently

recognized as Revolutionary Day among the Karen.

By 2006, the KNU's strength had shrunk to less than 4,000, opposing what is now a 400,000-man Burmese army. The conflict continues as of 2006, with KNU headquarters in Mu Aye-Pu, on the Burmese-Thai border.

The Refugee Claims

In 2004 the BBC cited aid agency estimates that up to 200,000 Karen have been driven from their homes during decades of war. Many, including Karen people, accuse Burma of ethnic cleansing.

Some Burmese seek protection from persecution due to their membership in one of the minority ethnic groups. Members of ethnic minorities, including the Karen, continued to be subjected to forced labor and other violations at the hands of the military, especially in counter-insurgency areas in the Mon, Shan, Kayah and Kayin States during 2005. Hundreds of thousands of civilians in these areas were still displaced from their homes, mostly because of counter-insurgency activities. They were generally cut off from international aid organizations and UN agencies, restricting their access to health care and food.

Several thousand civilians in northern Kayin State and eastern Bago Division were reportedly displaced as a result of the Burmese government's/ SPDC's efforts to break up imputed links with the Karen National Union (KNU). Government troops continued land confiscations, extortion and restrictions on

freedom of movement in the Shan State and abducted civilians for forced labor in the Mon State.

A few ethnic insurgent groups continued to battle the government for autonomy or independence, including the Karenni National Peoples Party (KNPP) and the KNU through its armed wing, the Karen National Liberation Army (KNLA). The largest of these, the KNU, began peace talks with the government in 2003 leading to a tenuous cease-fire. However, during 2005, there were several isolated fire fights between units of the Burmese Army and KNLA forces, and a more serious outbreak of fighting a few miles from Taungoo Town, Bago Division. In April 2005 the Shan State National Army rejoined the ranks of the ethnic resistance groups by forming an alliance with the Shan State Army – South (SSA-S), thus becoming the first cease-fire group to break its agreement with the government.

Wide-ranging governmental and societal discrimination against minorities persisted during 2005. Animosities between the country's many ethnic minorities and the Burman majority, which has dominated the government and the armed forces since independence, continued to fuel active conflict that resulted in serious abuses during 2005.

Christianity is also practiced among the Karen and Karenni ethnic groups of the southern and eastern regions, although many Karen and Karenni are Theravada Buddhists, and their Christianity is a basis for some of their persecution. An

⁵⁰ According to UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status*, nationality does not merely mean citizenship, but can include a group within the same border as the persecuting group whose distinct language, culture and history constitutes a different nationality in the mind of the persecutor.

⁵¹ This section mostly refers to the Karen with some reference to the approximately 27,000 Karenni who live in the nine refugee camps along the Burma-Thai border. The persecution claims of the Karenni are similar to those of the Karen.

estimated thirty to forty percent of Karen are Christians. Burmese Karen and Karenni in Thailand who meet the refugee definition have a well-founded fear of persecution on account of membership in a particular social group, political opinion and religion.

Conditions in the Country of Asylum: Thailand

The Kingdom of Thailand, a predominantly Buddhist country of over 64 million, is not a signatory to the 1951 UN Convention relating to the Status of Refugees or its 1967 Protocol. Thai law does not provide for granting asylum or refugee status; however, the government generally cooperated with UNHCR and other humanitarian organizations in assisting refugees. Late in the year cooperation with UNHCR deteriorated as the authorities detained increasing numbers of refugees, including Burmese Rohingya.

During the year, asylum seekers of many nationalities, the large majority of whom were Burmese, received temporary protection. The government continued to allow UNHCR to monitor the conditions of the approximately 150,000 Burmese refugees living in nine camps along the Burmese border but prohibited UNHCR from maintaining a permanent presence in the border camps. NGOs provided basic needs assistance in the camps.

In 2005 Royal Thai government provincial admission boards (PABs) were established, with UNHCR participation, to replace UNHCR in determining refugee status for Burmese nationals. The Thai government allowed NGOs to provide food, medical services, housing, and other services to Burmese refugees who may have valid refugee claims but who reside outside the camps, but the government officials periodically arrested Burmese outside designated camps as illegal aliens. Those arrested generally were taken to the border and released without being turned over to Burmese authorities.

In March 2005 the authorities ordered urban Burmese refugees to relocate to refugee camps near the border or face arrest and deportation and loss of their chance for third country resettlement for being in the country illegally. NGOs protested that difficult conditions in the camps would be exacerbated by the influx of new refugees and that Burmese journalists and activists from urban areas would be unable to continue their work. While UNHCR reported that it was able to register more than 11,000 additional Burmese asylum seekers outside of a camp setting, under Thai government policy, asylum seekers must first transfer to holding centers in the camps before it will consider their cases.

How the U.S. Can Help

The U.S. should continue to press for fully operational Thai Provincial Admissions Boards (PABs). To complement the work of the PABs, the U.S. should provide funding to facilitate UNHCR's registration of Burmese Karen and Karenni refugees who are outside of refugee camps and encourage group referrals of Karen and Karenni refugees for resettlement consideration.

RCUSA recognizes the positive impact of the Administration's decision to issue waivers allowing Burmese refugees in Thailand to be processed for U.S. resettlement. However, over one thousand, mostly Karen refugees, remain on hold because of the overly broad application of provisions in the USA Patriot Act of 2001 and the REAL ID Act of 2005 and pending the issuance of a waiver to allow former combatants to be considered for resettlement. Legislative changes as recommended in Section 3.1 of this report would allow more eligible and deserving Burmese refugees to find a durable solution in our country.

For its part, RCUSA intends to examine ways to create links between the resettled populations of Burmese refugees and those

that remain in the camps. Current information campaigns can be augmented by the resettlement community in the U.S. so that refugees along the Burma-Thai border have the information they need regarding their hope for rebuilding their lives.

Opportunities and Challenges

The situation in Thailand presents some opportunities not found in other asylum countries. UNHCR reports that the Royal Thai government continues to recognize the use of resettlement as a key protection, strategic and burden-sharing tool, and confirmed that resettlement from the camps is now an accepted policy. This new strategic direction has had immediate implications for UNHCR in Thailand, and resettlement has become an increasingly dominant feature of the Thailand operation. The U.S. government can build on the host government's position on resettlement to plan for the resettlement of urban refugees and refugees living outside refugee camps.

**4.2.3d Lao Hmong in Petchabun, Thailand
The People**

The Hmong fought alongside the U.S. in what is now known as the Secret War of Laos during the Vietnam War. Because of this allegiance, hundreds of thousands of Hmong have become refugees since the end of the war and have been resettled in various countries. The U.S. is home to over 200,000 Hmong Americans according to the 2000 Census.

In Laos, many Hmong continue living in fear of persecution from the communist government against which they once fought. At the end of the war, those who did not make it to the refugee camps in Thailand stayed in the harsh jungles of Laos. To this day, an unknown number of Hmong families continue to live in hiding in the jungles of Laos with no access to medical care, unsta-

ble food supplies, and no access to outside assistance.

In recent years, thousands of Hmong from Laos, including many who have lived in hiding in the jungles for the past three decades in fear of persecution, have made their way into a border makeshift camp, the Whitewater settlement, near Huay Nam Khao village in Petchabun Province, Thailand. This population is a mixture of economic migrants, people left over from the Wat Thamkrabok resettlement in 2004 and 2005, as well as those with serious claims of persecution. While Thai authorities have not allowed UNHCR access to this population to assess the situation and the many claims of persecution, UNHCR estimates that the population in Whitewater numbers around 8,000.

The Refugee Claims

UNHCR has not been allowed official access to this region to assess the refugee status and claims of this population. It has been difficult to obtain information on refugee claims within this population. However, according to conversations with Lao Hmong in the camp, community members in the U.S. and the extensive *Report on the Situation in the Xaysomboun Special Zone and the 110 Hmong-Lao Refugees Who Escaped to Petchabun*,⁵² claims include a fear of persecution in Laos on account of membership in a particular social group (e.g. ethnic group) and political opinion (e.g. allegiance to the U.S.).

Conditions in the Country of Asylum: Thailand

The makeshift camp in Petchabun Province, Thailand consists of shelters made of plastic tarps with limited mosquito netting and a minimum supply of rice.⁵³ Those in the camp are not permitted to leave the camp grounds and can face detention if they are found off site even if it is to find food or work.

Few NGOs have been allowed access to the area to assist with needs, however, Doctors Without Borders has been able to gain access to provide limited medical consultations. Doctors Without Borders has lobbied unsuccessfully for UNHCR involvement with this population.⁵⁴

Several events have taken place which have shown the dire situation of this population. In December of 2005, 27 Hmong children from Whitewater were separated from their parents on their way home from church. It was feared that they were deported back to Laos.⁵⁵ In March 2007, Amnesty International reported that the Lao government "found" 21 of these girls and young women who went missing while six others remained missing. Reports indicated that the girls had been held in a prison in Bolikhamxay province in Laos while six young men were held elsewhere. While the details of the children's whereabouts during these 15 months and what happened to them remain unclear, conditions were reportedly difficult and some are believed to have been ill treated and tortured.⁵⁶

International organizations and NGOs, including UNHCR, Human Rights Watch and Amnesty International, have also expressed grave concerns over the deportation of detained Hmong men, women and children on the Thai/Lao

border. In late 2006, 53 Hmong in Petchabun Province, including one newborn baby, were deported back to Laos without having the opportunity for their refugee status to be determined. In January 2007, an attempt to deport 153 Hmong individuals who had already been granted refugee status, including one newborn baby, from the Nong Khai detention center, failed amidst protest from some of the detained and concerns expressed by international human rights organizations. Subsequently, many of the 153 refugees who were detained were resettled in countries such as Australia and the Netherlands. However, in mid-May 2007, a group of 31 Lao Hmong were forcibly repatriated to Laos after only being in Thailand for two weeks. They were not given the opportunity to register with UNHCR and their whereabouts in Laos are now unknown.

UNHCR and other international organizations have repeatedly expressed their concerns about the forced deportation of anyone in the makeshift camp in Petchabun without assessments of their refugee status. UNHCR has consistently advocated with Thailand to put in place a system which would ensure that any individuals among this population with protection concerns be screened in line with international standards and has offered their assistance to man-

⁵² See Rebecca Sommer, Society for Threatened Peoples at www.gfbv.de/report.php?id=19&stayInsideTree=1.

⁵³ See "6,000 Hmong evicted from town face uncertain future," *Seattle Times* at http://seattletimes.nwsources.com/html/nationworld/2002532532_hmong02.html

⁵⁴ See Doctors Without Borders at www.doctorswithoutborders.org/publications/ar/i2006/thailand.cfm under "Assisting Laotian Refugees."

⁵⁵ See UNHCR at www.unhcr.org/news/NEWS/45bf6c5e4.html.

⁵⁶ See Amnesty International at <http://web.amnesty.org/pages/lao-220307-feature-eng>.

age this situation.⁵⁷ Thai authorities have yet to utilize this resource. In addition, there are serious concerns that any forced repatriation will result in the persecution of those who are genuine refugees.

How the U.S. Can Help

The U.S. should undertake diplomatic efforts to ensure that international NGOs and UNHCR can address immediate humanitarian needs and assess the refugee claims of the Lao Hmong. In addition, the U.S. should undertake diplomatic efforts to ensure that all forced deportations of Lao Hmong back to Laos are halted until the refugee claims of all those involved are assessed. The U.S. can be a leader in engaging Laos, Thailand and other countries to pursue resettlement for eligible refugees from this population. The administration should advocate for a legislative change so that the Lao Hmong support for our government during the Vietnam War is not interpreted as material support to a terrorist organization as is explained in Section 3.1 of this report.

Opportunities and Challenges

Thai authorities have been reluctant to allow UNHCR to determine the refugee status and the Lao government continues to deny that there is any persecution of this population. The lack of access to this population has resulted in no comprehensive monitoring of the situation and has hampered the international community's capacity to meaningfully respond to this situation.

Another challenge has been the overly broad application of U.S. security laws. Currently, Hmong refugees abroad who would otherwise be eligible to resettle in the U.S. with their families are unable to do so because they have been the victims of an overly broad definition of what constitutes a terrorist organization and what it means to provide material support to such an organization. While the administration has issued over eight material support

waivers for different groups as of April 2007, it has not issued a waiver for the Hmong. The administration has assured that waivers for the Hmong are forthcoming, but they have not yet been issued. As already discussed in this section, in addition to a material support waiver for the Hmong, a legislative change is needed to resettle more eligible Hmong refugees.

4.2.4 Europe

4.2.4a Hemshins⁵⁸ and Batumi Kurds⁵⁹ in Krasnodar Krai, Russia

The People

The Hemshins and Batumi Kurds are ethnic groups that are closely linked to one another and to the Meskhetian Turks. In 1944, Stalin's campaign of forcible deportation of ethnic groups to Central Asia resulted in the removal of the Hemshins and Batumi Kurds from Georgia to Kazakhstan and Kyrgyzstan where they remained in forced settlements until 1956.⁶⁰ While other peoples deported from the North Caucasus thereafter returned to their homelands, the Hemshins and Batumi Kurds were not permitted to return to Georgia, but rather were allowed to settle in other areas of the Soviet Union. Although many remained in Kazakhstan and Kyrgyzstan, smaller numbers moved to Krasnodar Krai in Russia where they worked in agriculture, to be joined later by others fleeing pogroms in the Fergana Valley in Uzbekistan and Kyrgyzstan.

As of 2006, exact population counts for Hemshins and Batumi Kurds living in Krasnodar Krai were not available given the fact that many members of these populations either avoided participation in the 2002 Russian census out of fear of extortion or deportation, or were outside of Krasnodar Krai because of seasonal employment in other areas. However, according to information gained through interviews with community leaders and elders, the population of each group is estimated to be roughly

1,500, for a total combined population of 3,000 individuals, most of whom arrived in Krasnodar Krai after fleeing the Fergana Valley.⁶¹

The Refugee Claims

Increasing nationalism and ethnic tensions culminated in a pogrom in the Fergana Valley in the summer of 1989. While some have viewed the violence that transpired in 1989 as having been confined to Uzbekistan, the massacres and threats against those perceived as being Meskhetian Turks occurred on both the Uzbek and Kyrgyz sides of the Fergana Valley. Hemshins and Batumi Kurds living predominantly in Osh and Jalalabad in Kyrgyzstan and parts of Kazakhstan, many of whom were defined as "Turks" in their Soviet passports, were directly targeted during the Fergana massacres. Along with the Meskhetian Turks, these groups were viewed as Turkish by the local population that was largely comprised of ethnic Uzbeks. Their fear of becoming embroiled in the violence and subsequent actions carried out by ethnic Uzbeks ultimately prompted many to flee, as they were threatened with the destruction of their homes and loss of their property at the hands of nationalists.⁶² It is estimated that roughly half of the population of Hemshins and Batumi Kurds fled the Fergana Valley between 1989 and 1991, primarily to Krasnodar Krai where they joined the small pre-existing Hemshin and Batumi Kurd communities that had settled there in previous decades to work as agricultural laborers.

The Hemshins and Batumi Kurds remain highly vulnerable without access to durable solutions. They cannot repatriate voluntarily; they are unable to integrate locally and they have not achieved firm resettlement. Further, the Russian Federation has demonstrated its inability to protect Hemshins and Batumi Kurds from discriminatory practices and persecution at the local level in Krasnodar Krai.

As acknowledged by the U.S. State Department in its *Proposed Refugee Admissions for FY 2007*, voluntary repatriation is not feasible for populations such as the Hemshins and Batumi Kurds given the fact that the areas in which they formerly resided are now in new countries with different laws on citizenship and residency. They cannot return to Kazakhstan or Kyrgyzstan (countries where they never held citizenship), nor are they able to return to Georgia, the country from which they were deported more than a half century ago.

Under the present circumstances, the Hemshins and Batumi Kurds have no guarantee of physical or legal protection. In Krasnodar Krai, there is no commitment to the human rights of these groups. The vast majority of Hemshin and Batumi Kurd families are impacted by one or more members who are *de facto* stateless and the Russian Federation government has not been successful in ensuring that the local authorities in Krasnodar Krai adhere to Russian laws granting rights to permanent registration and citizenship.

Hemshins and Batumi Kurds who meet the refugee definition fled Kazakhstan and Kyrgyzstan due to persecution or a well-founded fear of persecution for reasons of race or membership in a particular social group. Additionally, as de

facto stateless persons, Hemshins and Batumi Kurds could be designated by the President as refugees on the basis of persecution or well-founded fear of persecution on account of race or membership in a particular social group in the country of habitual residence, as outlined in the below section.

Conditions in the Country of Asylum: Russia

Today, approximately 35% of the Hemshin and Batumi Kurd population is without Krasnodar registration or Russian citizenship due to discriminatory registration practices at the local level and complicity on the part of federal authorities. An Amnesty International report details the efforts of Krasnodar local officials aimed to increase pressure on Meskhetians and other "unwanted" minorities to leave.⁶³ Eighty-eight percent are stateless, having either a Soviet passport (which is no longer valid) or no passport whatsoever.⁶⁴ The ramifications of this situation are grave, with nearly every family impacted by at least one member who is stateless or unable to obtain Krasnodar registration and Russian citizenship. Those denied citizenship and permanent registration are effectively denied a range of basic human rights, including freedom of movement and equality before the law. The International League for Human Rights reported in 2002 that "[s]tatelessness...and

lack of registration in place of residence for all the vulnerable groups prevents them from enjoying such core rights as the right to health, the right to education [and] the rights to labor."⁶⁵ Their statelessness also expresses itself in denial of access to pensions, child benefits and higher education. They cannot officially register house or vehicle purchases, marriages or deaths. They are frequently stopped and questioned by police on the pretext of checking their identity documents and obstructed in their work or daily business. Their lack of status leaves them at constant risk of harassment, extortion, detention and deportation. In some instances, physical harm and even death has resulted from the harassment by Cossack militias while the local authorities either support the discrimination or turn a blind eye to it.

Since the 1990s, the local authorities and media of Krasnodar Krai have not been shy about their distrust of ethnic minorities such as the Hemshins and Batumi Kurds, insisting that they are "illegal migrants" despite the fact that they have resided in the area for decades since fleeing persecution in neighboring countries. Local authorities have made racist and discriminatory comments which are

⁵⁷ See UNHCR article at www.unhcr.org/news/NEWS/45bf6c5e4.html.

⁵⁸ Hemshins may also be referred to as Khemshins, Khemshils, Hemshils, or Khemshilis.

⁵⁹ Batumi Kurds may also be referred to as Kurmanj or Kurmanch.

⁶⁰ Steve Swerdlow, *Durable Solutions for Ethnic Minorities in Krasnodar Krai: Challenges of Integration for Hemshins, Batumi Kurds, Yezids, and Abkhaz Georgians*, 2006, report prepared for International Organization for Migration based on fieldwork conducted in Krasnodar Krai in 2006.

⁶¹ Swerdlow.

⁶² Swerdlow.

⁶³ See Amnesty International, "Dokumenty! Discrimination on the grounds of race in the Russian Federation," 2003 at 50-52.

⁶⁴ See Swerdlow at 30.

⁶⁵ See International League for Human Rights, statement before the 58th Session of the Commission on Human Rights, *Discrimination of Ethnic Minority Migrants in Russian Federation*, April 24, 2002 at www.ilhr.org/ilhr/regional/russia/un_migrants.htm.

often reflected in the media.⁶⁶ Local authorities continue to apply the requirements of the now-defunct Soviet era *propiska* or registration system to ethnic minorities, including Hemshins and Batumi Kurds, in an effort to deprive them of legal status. By denying access to permanent registration, Hemshins and Batumi Kurds are either unable to obtain Russian citizenship or their Russian citizenship is rendered effectively invalid. Although banned in 1991 by the USSR Constitutional Supervision Committee, the *propiska* system remains in place in a handful of areas of the Russian Federation, including Krasnodar where it is “invoked in an arbitrary and often discriminatory way to the detriment of ‘undesirable’ people, such as some racial or ethnic minorities.”⁶⁷

As former Soviet citizens who entered the Russian Federation prior to 1992, the overwhelming majority of Hemshins and Batumi Kurds were entitled by law to permanent Krasnodar registration and Russian citizenship under the 1991 law “On Citizenship of the Russian Federation.” However, discrimination against these groups—supported at administrative levels as high as the gubernatorial level—has been highly successful in preventing access to these rights as part of an effort to purge Krasnodar Krai of ethnic minorities. The Hemshins and Batumi Kurds are in a dire legal situation following the passage in 2002 of the law “On the Rights of Foreign Citizens in the Russian Federation,” which essentially ignored their habitual residence in the Russian Federation and made their status no different than those who had just entered.⁶⁸

Moreover, over the course of 2005 and 2007, local Krasnodar courts have been increasingly issuing deportation orders to Hemshin and Batumi Kurd families who have resided in the province lawfully for the past seventeen years. To enforce these deportation orders, Krasnodar authorities have impris-

oned Hemshins, Batumi Kurds and other “undesirable” groups in locally administered detention camps and have backed Cossack groups to carry out xenophobic attacks.

How the U.S. Can Help

Therefore, out of humanitarian concern for these populations and their de facto stateless status, as well as a lack of prospects for voluntary repatriation or local integration, the U.S. should offer resettlement to these populations as a priority two (P-2) group. Further, the U.S. should work with UNHCR’s Statelessness Unit to make greater efforts to monitor access to registration and citizenship specific to Hemshins and Batumi Kurds in Krasnodar Krai, and should hold the Russian Federation accountable for the lack of progress on this issue.

Opportunities and Challenges

The State Department has expressed concerns regarding resettlement of ethnic groups from the former Soviet Union and the fact that these communities will be divided if group resettlement is made available. However, the need for a durable solution remains and other options are not viable. P-2 groups are often based in part upon ethnic background, as it is a common cause of persecution and the basis of many refugee claims. Moreover, the case of the successful Meskhetian Turk resettlement program demonstrates that the overwhelming majority of Hemshin and Batumi Kurd families would be eligible for resettlement because, as mentioned above, at least one member of almost every nuclear family in these communities has been prevented from obtaining citizenship or Krasnodar registration. A well-planned information campaign would help to ensure that each family would understand the implications of resettlement for their family and their community, and would thus be able to make their own decisions accordingly.

4.2.4b Yezids⁶⁹ in Krasnodar Krai, Russia

The People

The Yezids are an ethnic group of Kurdish descent who fled to Armenia and Georgia from Turkey along with large groups of Armenians following the Armenian genocide in 1915. While many consider themselves to be related to Kurds, they see themselves as a distinct group and they practice their own religion of Yezidism. In 1989, the Soviets responded favorably to appeals from Yezids over several years to be recognized as an ethnic group independent of the Kurds.⁷⁰ Approximately 5,500 Yezids reside in Krasnodar Krai at present, concentrated predominantly in Krymsk district.

The Refugee Claims

Most Yezids in Krasnodar Krai fled to the region after a massive earthquake struck Armenia in 1988. While the timing of their flight coincided with the disaster, it is important to recognize that the Yezids were subject to persecution when war broke out between Armenia and Azerbaijan over Nagorny-Karabakh in the same time period. Their internal displacement within Armenia was followed by their flight beyond Armenia’s borders because of a credible fear of persecution. As representatives of the Yezid community in Krasnodar recently reported, rising Armenian nationalism in connection with perestroika and the lead-up to the Nagorny-Karabakh conflict made Yezids and other non-Armenians targets of violent attacks and ethnic cleansing.⁷¹ Further, their perceived closeness to Kurds and other Muslims meant that many Armenians viewed them as sympathetic to Azerbaijan. The Yezids were drawn into clashes between Armenians and the Azeris and other Muslims as a result.

They are not able to return to Armenia, local integration is not supported locally and they are not firmly resettled. The Yezids cannot repatriate voluntarily because they

never had citizenship in Armenia; those who had citizenship and have documentation have former Soviet passports, which are no longer valid. Further, Yezids who fled Armenia as children under the age of 16 have absolutely no documentation because they were too young to receive Soviet passports.

Yezids who meet the refugee definition fled Armenia due to persecution or a well-founded fear of persecution for reasons of race or membership in a particular social group. Additionally, as de facto stateless persons, Yezids could be designated by the President as refugees on the basis of persecution or a well-founded fear of persecution on account of race or membership in a particular social group in the country of habitual residence, as outlined below in the below section.

Conditions in the Country of Asylum: Russia

There are approximately 5,500 Yezids in Krasnodar Krai. According to official sources in Krasnodar Krai, almost 45% are unable to access Krasnodar registration or Russian citizenship despite the fact that they have resided there for nearly two decades. The Yezids claim that statelessness is substantially more prevalent in their

communities, at as high as two-thirds of the entire Yezid population in Krasnodar Krai.⁷² The situation is equally difficult for those who do have Russian citizenship, which is unrecognized because they are unable to secure Krasnodar registration.⁷³ Without registration, they are prevented from accessing the full range of benefits and rights assured to them under Russian law.

As is the case with the Hemshins and the Batumi Kurds, the majority of the Yezids should have been allowed Krasnodar registration and Russian citizenship on the basis of the 1991 citizenship law. However, because access to those rights was hindered by local authorities, the Yezids are now in an extremely vulnerable position due to changes in the citizenship law that passed in 2002, which effectively made the legal status of Yezids and other former Soviet citizens who have long resided legally in the Russian Federation the same as those for people who just arrived.⁷⁴

The local authorities in Krasnodar have no interest in integrating the Yezids and they do not enjoy the social and civic rights to which they should be entitled. A substantial portion of the population is de facto stateless, as the Russian Federation’s federal government has failed to ensure that Krasnodar

authorities adhere to Russian law by allowing Yezids to be granted permanent registration.

Yezids are subject to routine harassment, extortion and denial of human rights. In absence of a *propiska* documenting Krasnodar registration, they are “vulnerable to detention and police harassment during identity checks, to the seizure of [their] passport[s], and to the payment of arbitrarily imposed fines and bribes.”⁷⁵ They are regularly threatened with deportation to Armenia—a country in which they resided under the Former Soviet Union but where they have never held citizenship—and even with forcible removal to Abkhazia and Georgia.⁷⁶ Further, in Krymsk district where the Yezids are largely concentrated, a highly active Cossack militia has increasingly focused on Yezids as targets of harassment now that resettlement to the U.S. has substantially decreased the local Meskhetian Turk population. In the local press, Yezids are commonly portrayed as undesirable elements that should be deported from Krasnodar Krai.

How the U.S. Can Help

Out of humanitarian concern for this group and in light of the fact that no other prospects for a durable solution exist, the U.S. should

⁶⁶ See generally Amnesty International, *Racist attack in Krasnodar territory*, 2003.

⁶⁷ See generally Human Rights Watch, *The Residence Permit System (Propiska)*, 1998 at <http://www.hrw.org/reports98/russia/srusstest-04.htm>.

⁶⁸ See Amnesty International, *Russian Federation: Open Letter from a Coalition of Non-Governmental Organisations to Vladimir Vladimirovich Putin, President of the Russian Federation*, May 2003 at <http://web.amnesty.org/library/print/ENGEUR460512003>.

⁶⁹ Yezids may also be referred to as Yezidis or Ezidis.

⁷⁰ See Swerdlow at 36.

⁷¹ See Swerdlow at 36.

⁷² See Swerdlow at 40.

⁷³ See Memorial Human Rights Center, *Compliance of the Russian Federation with the Convention on the Elimination of All Forms of Racial Discrimination*, March 1998 at http://www.minelres.lv/count/russia/CERD_mem.htm.

⁷⁴ See European Commission against Racism and Intolerance, *Third Report on the Russian Federation*, May 16, 2006 at http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-country-by-country_approach/russian_federation/Russian%20Federation%20third%20report%20-%20cri06-21.pdf.

⁷⁵ See generally *The Residence Permit System (Propiska)*.

⁷⁶ See Swerdlow at 37.

offer the Yezids resettlement as a P-2 group. Further, the U.S. should work with UNHCR's Statelessness Unit to make greater efforts to monitor access to registration and citizenship specific to Yezids in Krasnodar Krai, and should hold the Russian Federation accountable for the lack of progress on this issue.

Opportunities and Challenges

As with the Hemshins and Batumi Kurds, the State Department has expressed concerns regarding the potential splintering of the Yezid community by a resettlement effort. However, the need for a durable solution remains and this concern should not become the basis on which the situation is allowed to continue. A well-planned information campaign would ensure that the Yezids had the information necessary to understand the implications of resettlement for their families and for the community, and would thus be able to make their own decisions accordingly.

4.2.4c Abkhaz Georgians in Krasnodar Krai

The People

Krasnodar Krai hosts a population of ethnic Georgians who once resided in Abkhazia, who are often referred to as “Abkhaz Georgians.” Because of their precarious situation and lack of legal status in Krasnodar, it is difficult to provide an accurate population figure for the Abkhaz Georgian refugees. They are widely estimated to number anywhere between 10,000 and 15,000 individuals, primarily located in and around Sochi.⁷⁷

The Refugee Claims

In 1992 and 1993, armed conflict broke out between elements in the territories of Abkhazia and Georgia. These ethnic Georgians residing in Abkhazia were highly vulnerable because of persecution at the hands of Abkhazians as ethnic strife increased to a point that later came to be recognized as ethnic cleansing multiple times by the

Organisation for Security and Co-operation in Europe (OSCE).⁷⁸ As they were threatened with becoming the target of the Abkhaz forces’ reprisals, many fled across the border to seek safety in Georgia or the Russian Federation.

Nearly 15 years later, the Abkhaz Georgian refugees in Krasnodar Krai remain as relations between Abkhazia and Georgia continue to be highly strained. Conflict has become increasingly frequent in the past year in particular, and there is no foreseeable resolution to the dispute.

Due to the ongoing conflict between Georgia and Abkhazia, this group has a well-founded fear of persecution in Abkhazia. They are therefore unable to repatriate voluntarily, as their ethnicity means that they are viewed as Georgian despite their long-term residency in Abkhazia and lack of connections to Georgia (familial or otherwise). Similarly, because their ties are to Abkhazia rather than Georgia, repatriation to Georgia is not an option, as they have never lived there and it would not actually be repatriation.⁷⁹ Given their lack of legal status, the Abkhaz Georgians are not able to integrate locally and they are not firmly resettled.

Abkhaz Georgians who meet the refugee definition have a well-founded fear of persecution for reasons of race, membership in a particular social group or political opinion. Additionally, as de facto stateless persons, Abkhaz Georgians could be designated by the President as refugees on the basis of persecution or well-founded fear of persecution on account of race or membership in a particular social group in the country of habitual residence, as outlined in the below section.

Conditions in the Country of Asylum: Russia

As is true of other ethnic minorities in Krasnodar Krai, the Abkhaz Georgians are deprived of their rights and denied access to any

means of normalizing their legal status. Along with Armenians, Azeris, Kurds, Hemshins, and refugees from Georgia, the Abkhaz Georgians are widely recognized as a group subject to discrimination at the hands of Krasnodar authorities.⁸⁰ While there has not been the same level of open support for discrimination against Abkhaz Georgians as in the case of some other ethnic minorities, they have been deprived of refugee status and denied permanent registration. Through the use of registration to deny access to legal, social and civic benefits, the Abkhaz Georgians do not have rights related to freedom of movement, employment, education, health care, documentation, and equity before the law.

How the U.S. Can Help

Resettlement should be offered as a durable solution for the situation of the Abkhaz Georgians through designation as a P-2 group.

Opportunities and Challenges

The timing of flight for this population complicates matters. Because the major conflict that prompted their flight occurred in 1992 and 1993, many entered Krasnodar Krai after the 1992 citizenship law entered into force and were therefore ineligible for automatic receipt of Russian citizenship.

Another challenge is related to the political sensitivity of the conflict between Abkhazia and Georgia, and the support that they have from Russia and the U.S., respectively. While it is understood that circumstances are difficult, the situation of over 10,000 people without adequate physical and legal protection cannot remain unaddressed.

4.2.5 Middle East and South Asia

4.2.5a Afghans in Pakistan

The People

Since 1973, when Afghanistan was established as a republic, the

Afghan people have been ruled by a number of different regimes. The Soviet Union attacked Afghanistan in 1979 and withdrew in 1989. The Pashtun Taliban emerged as the dominant power controlling most of the country by 1998. In October 2001, following the September 11, 2001 attacks, the United States launched a military campaign against the Taliban as they were reportedly harboring the Al Qaeda leader, Osama bin Laden. Following the deposing of the Taliban, Hamid Karzai became the Islamic Republic of Afghanistan’s first president following U.S.-assisted elections in October 2004.

In this country of over 31 million people, 42% are Pashtun, 27% are Tajik, 9% are Hazara and 9% are Uzbek. Approximately 80% are Sunni Muslims and 19% are Shi’a Muslims.

The Refugee Claims

Following the overthrow of the Taliban in late 2001, the focus of UNHCR and asylum countries turned toward repatriation. According to a March 2007 CIA report, of the 4 million Afghan refugees in October 2001, 2.3 million had voluntarily repatriated by that date. More recently, however, it has been increasingly reported that the Taliban, Al Qaeda and other groups have re-emerged to control many parts of Afghanistan through violence, terrorism and violations of human rights. In fact, according to the United Kingdom’s Immigration and Nationality Directorate, non-state warlords and local commanders exert influence or de facto control in most areas of Afghanistan. Because of the lack of state control in many areas and the existence of widespread corruption, there are violations of due process and systematic unfairness against women, children, and other individuals who fall afoul of those asserting power.

Pashtuns from the southeast and southwest of Afghanistan may face harassment or discrimination on account of their perceived links with the former Taliban regime, even in areas where they enjoy a certain degree of protection because of their high numbers. Pashtuns in the north of Afghanistan and in the parts of Herat where they are a minority, particularly women without male protection, face even greater persecution and cannot be protected by the national government whose influence outside the capital, Kabul, is limited.

Despite some limited and localized improvement of their situation since the overthrow of the Taliban government, women and girls in Afghanistan continue to suffer from security, economic, social and human rights challenges. Violence against women is pervasive. Women and girls are the victims of domestic violence, abduction, rape, forced early marriages, often in settlement of debt or as a result of feuds, and at risk of being murdered in so-called honor-killings if they try to escape these circumstances. Male family members, local ethnic group leaders, and local religious leaders forbid the majority of women to work outside their home or to go to school. Thus, women who are perceived to have breached certain social norms, including taking part in public life, may have a well-founded fear of persecution. In June 2005 UNHCR identified women without male support, women’s rights activists, women married to non-Muslims or

married without the family’s consent and “westernized” women as being particularly at risk.

Both Pashtuns and women constitute groups currently subject to persecution in Afghanistan. Some Pashtuns have a well-founded fear of persecution on account of membership in a particular social group and political opinion because of their imputed support for the Taliban. Women whose behavior, opinions or circumstances violate the norms governing their status in society have a well-founded fear of persecution on account of political opinion and membership in a particular social group. Individuals who have fled Afghanistan because of such persecution should be considered for resettlement.

Conditions in the Country of Asylum: Pakistan

Pakistan is not party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and has no legislation to recognize refugees. According to USCRI, the 1946 Foreigners Act (amended 2000) continues to be the only standard applying to refugees and asylum seekers even though the Act recognizes no distinction between them and other foreigners. According to a UNHCR/government survey completed in 2005, approximately 3 million Afghan refugees remained in Pakistan and the government cooperated with UNHCR in the voluntary repatriation of 365,575 Afghan refugees. During 2006, UNHCR assisted approximately 133,000 Afghans

⁷⁷ See generally Igor Kuznetsov, Center of Pontiskyi-Caucasus Research, Kuban State University, Krasnodar, Russia, *Information about Georgian Refugees who Fled from Abkhazia to Krasnodar Region*, April 2005.

⁷⁸ See Swerdlow at 46.

⁷⁹ See Swerdlow at 45.

⁸⁰ See International League for Human Rights statement before the 58th Session of the Commission on Human Rights.

in repatriating, well below the 400,000 UNHCR had planned. UNHCR has attributed the low repatriation numbers to the deteriorating security and challenging economic and social conditions in Afghanistan, as well as the long exile during which half of the Afghan refugees were born outside Afghanistan.

According to USCRI, by the end of January 2007, Pakistan registered and issued identity cards to 2.16 million out of the approximately three million Afghans in Pakistan and thus legalized the stay of the 2.16 million Afghans through December 2009. Only those Afghan refugees registered as of April 2007 are eligible for the UNHCR repatriation grant of \$100. According to USCRI, some 84 percent of Afghans are unwilling to return to Afghanistan, with nearly 42 percent citing security as the primary reason and 24 percent citing the lack of jobs in Afghanistan.

Despite the relative tolerance that has been extended to Afghan refugees by the government of Pakistan, a number of factors continue to threaten their protection. There have been credible reports that members of the intelligence community have harassed Afghan refugees within Pakistan during their search for Al Qaeda. Such harassment has led to some forcible deportations and the deaths of some refugees whom the Pakistan authorities cannot protect. According to USCRI, in 2006, Pakistan deported several hundred Afghan refugees, citing both security and non-security concerns and offences without allowing UNHCR to determine the refugee claims of those being deported for security reasons. USCRI reports that in August 2006 Islamic militants kidnapped and killed a refugee and the Taliban beheaded another refugee in May 2007, both groups claiming that the refugees were spying for the United States.

Some female refugees who accepted jobs with NGOs reported

harassment from Taliban sympathizers among the refugees. Refugees face societal discrimination and abuse from local communities, which resent economic competition and blame refugees for high crime rates. Single women, female-headed households, and children working on the streets are particularly vulnerable to abuse.

How the U.S. Can Help⁸¹

The U.S. should continue to consider for resettlement those Afghan refugees who remain vulnerable in Pakistan and cannot return to Afghanistan in safety and dignity. Priority should be given to individuals in vulnerable social groups, including single women, members of female-headed households, separated children, minorities and those from areas of Afghanistan not controlled by the central government who would be in danger of persecution upon return. Special consideration should be given to those refugees who fear gender-based persecution, including so-called “honor killings.” Certain Pashtuns should be considered for resettlement. Special consideration should be given to those with physical disabilities who would not be able to survive the rigors of return to or obtain medical care in Afghanistan.

Opportunities and Challenges

The current political situation in Afghanistan is quite fragile, with the authority of the Karzai government largely restricted to the capital, Kabul. There are credible reports of the re-emergence of the Taliban outside Kabul.⁸² Instability in Pakistan is also a concern. The cooperation of the Musharaf government is deemed by the United States to be of great importance in the effort to suppress the Taliban; yet General Musharaf faces increasing opposition. The protection needs of the remaining Afghan refugees must not be forgotten in the effort to shore up the Afghan and Pakistan governments. Given the uncertain environments in Afghanistan and Pakistan, the phasing out of refugee assistance

at this time would be premature. It is important, during the present period, to find a workable balance between the promotion of voluntary repatriation for those for whom return is a safe and viable option and support for other durable solutions for those who cannot and should not return. Finding such a balance should remain a priority for the United States and the international community.⁸³

**4.2.5b Iraqis in Jordan
The People**

Iraq's estimated population in 2006 was 26,783,000. The majority, between 75-80 percent, are Arabs and between 15 and 20 percent are Kurds. Other ethnic groups include Turkmens, Chaldeans, Assyrians and Sabean Mandaean. According to the CIA World Factbook, 97 per cent of the population is Muslim, of which 60–65 per cent are Shi'a and 32–37 per cent are Sunni. The remaining three per cent of the population practice Christianity or other religions.

The Iraqi people are part of a very ancient culture and indeed Iraq is considered to be located in one of the “cradles” of civilization where we currently find what is believed to be the world's second largest reserves of oil after Saudi Arabia. Iraqis have suffered hardships as a result of UN sanctions, survived violations of human rights, including most recently during Saddam Hussein's 25-year reign and now under the government of al-Maliki, and experienced war and occupation by various world powers, including the British beginning during World War I and the U.S.-led coalition in 2003.

To understand what Iraqis have suffered over the last decades and most recently, it is important to know some details of Iraq's past achievements. UNHCR noted in an October 2005 report that “despite its vast oil wealth and abundant water resources, Iraq's ranking in the UN Human Development Index, [which measures national achievements in health, education and per

capita GDP], dropped from 76 in 1991 to 127 in 2001.” UNICEF reported on March 28, 2003 that, “the education system in Iraq, prior to 1991, was one of the best in the region, with [a 100% enrollment rate] for primary schooling and high levels of literacy, both of men and women. The higher education, especially the scientific and technological institutions, was of an international standard.”

The Iraqi people continue to experience worsening conditions. In 2003, “the ousting of Saddam Hussein's government was followed by a period of civil unrest. Looting, revenge killings and destruction of property were regular occurrences.”⁸⁴ Sectarian violence and attacks against the coalition forces also increased. According to a May 12, 2006 article in *Le Monde Diplomatique*, “Iraq is simultaneously descending into both a civil war and a war of resistance against foreign occupation.” It has been reported that minority Iraqi populations such as the Chaldean Christians and Mandaean have also been singled out for abuse in these circumstances.

According to the United Nations Country Team for Iraq, up to 8 million Iraqis (well over twenty-nine percent of the population) are vulnerable. This number includes 2

million refugees, 1.9 million internally displaced persons (IDPs) and 4 million acutely vulnerable individuals. According to the UN, it can be estimated that for every man killed, 5 or more family members become vulnerable as a result of losing the breadwinner. Female-headed households face a particular challenge, as the women cannot earn income within certain cultural environments. The election of the first permanent government, led by Prime Minister al-Maliki, which was sworn in on May 20, 2006, has had little effect on stabilizing the situation.

The Refugee Claims

“In the most significant displacement in the Middle East since the dramatic events of 1948, one in eight Iraqis has been driven from their homes.”⁸⁵ In fact, the UN High Commissioner for Refugees has stated that Iraqis, who have fled to Jordan, Syria, Egypt, Lebanon, Iran, Turkey, the Gulf countries and around the world, are the largest urban refugee caseload with which UNHCR has ever dealt.⁸⁶ According to UNHCR, the bombing of the Shia Al-Askariya shrine in Samarra in February 2006 was a turning point since it triggered factional violence and [further] acts of terror, leading to more complex and durable forms of displacement.⁸⁷

The consensus of the U.S. Department of State, individual governments around the world, national and international NGOs and the United Nations is that every demographic segment of the Iraqi population has been impacted by serious violations of human rights. According to UNHCR's October 2005 report on Iraq, “all sides to the conflict have been implicated in serious violations of the laws of armed conflict, including war crimes (the use of civilian objects such as schools or hospitals for military purposes, the abduction and execution of civilians, etc.).” The United Nations Assistance Mission for Iraq (UNAMI) report, dated 1 July–31 August 2006, noted that “militias, at times linked to political parties which are also part of the government, continue to operate outside the law; death squads and sectarian and religious extremists are equally prone to commit human rights violations.” The United Nations Security Council (UNSC) reported in August 2006 that “State institutions have been unable to protect individuals from gross human rights violations or grant redress or compensation to the rapidly growing number of victims.”

Speaking of those who have fled the country, the High Commissioner for Refugees stated in his April

⁸¹ Note that while RCUSA focuses on durable solutions and rights for refugees, we are also encouraged by congressional and administration support for amending the Immigration and Nationality Act to allow for an increase in special immigrant visas for Afghan and Iraqi interpreters, some of whom may also have valid refugee claims.

⁸² On April 29, 2007, the Associated Press reported that “Taliban guerrillas have vastly expanded their activities in the past year. Insurgents have returned to many regions outside their traditional strongholds that were rebel-free since the 2001 U.S.-led invasion.”

⁸³ See UNHCR, *State of the World's Refugees 2006* at 144.

⁸⁴ See United Kingdom Home Office, Border and Immigration Agency, *Country of Origin Information Report: Iraq*, April 30, 2007 at 17.

⁸⁵ See UNHCR press release, April 17, 2007 which continues with “many Iraqis were displaced prior to the fall of the previous regime in 2003. Between 2003 and 2005 more than 300,000 Iraqis had returned home to begin rebuilding their lives. But the trend has now dramatically reversed, particularly since the Samara bombing in February 2006. About 750,000 people are estimated to have fled their homes since that incident, with up to 50,000 more displaced each month.”

⁸⁶ According to the NGO statement at the April 2007 Iraq conference in Geneva, “an additional almost half million have fled further abroad.” According to UNHCR's March 30, 2007 paper, “Humanitarian needs of persons displaced within Iraq and across the country's borders: an international response,” Iraqis today account for the largest group of asylum-seekers in 32 industrialized countries surveyed by UNHCR in Europe, North America and Asia.

⁸⁷ See UNHCR, “Humanitarian needs of persons displaced within Iraq and across the country's borders: an international response,” March 30, 2007 at 4.

17, 2007 press release on the first day of a UNHCR-convened international conference on Iraq that “Iraqis, in general, if escaping conflict and insecurity, meet the definition of a refugee.” While violations of human rights are widespread, they cannot be described as indiscriminate. Many Iraqi refugees have been the targets of or fear persecution for reasons of religion, nationality, membership in a particular social group or political opinion (including imputed political opinion) and are unable to return to Iraq because of these fears. Many displaced persons still in Iraq have these same fears, but have either been turned away by asylum countries or lack the means to leave Iraq.

UNHCR has identified 11 categories of persons who will receive priority consideration when it makes referrals for resettlement.⁸⁸ The categories are

- persons who have been the victims of severe trauma (including sexual and gender-based violence), detention, abduction or torture by State or non-State entities;
- members of minority groups and/or individuals who are/have been targeted in Iraq for their religious/ethnic background;
- women-at-risk in the country of asylum;
- separated children and children as principal applicants [for refugee protection];
- dependents of refugees living in resettlement countries;
- older persons-at-risk;
- medical cases and disabled refugees with no effective treatment in the asylum country;
- high profile cases and/or family;
- Iraqis who fled because of their association in Iraq with the

Multinational Force (MNF), the Coalition Provisional Authority (CPA), the UN, international and foreign institutions/companies and members of the press;

- stateless persons from Iraq; and
- Iraqis at immediate risk of return to persecution.

Conditions in Iraq support the need to respond to the needs of the above categories of persons with resettlement. UNAMI continues to report that the severe deterioration in the security situation in Iraq hampers the implementation of vital humanitarian assistance projects across the country and the safe and dignified return of refugees and IDPs.

The vulnerability of Iraqi women and children deserves special attention. UNAMI reports that women and children make up three quarters of the newly displaced. Rape, threats of rape, domestic violence, disappearances and detentions after displacement remain a major concern. UNHCR continues to report that “there are persistent indications of the recruitment of child soldiers by irregular forces.”⁸⁹

“Honor killings” are another threat to Iraqi women. “Honor killings” disproportionately affect women who do not conform to gender roles assigned to them, including those who refuse to enter a forced marriage and even victims of rape. As recently as March 2007, UNAMI reported that in the governorates of Erbil, Duhok and Sulaimaniya, women’s rights to life and personal security remained of serious concern to it, given the high incidence of “honor killings” and other abuses against women. A study conducted by the Iraq Ministry of Women’s Affairs, reported in May 2005, found that of a group of more than 400 women who had been raped since the fall of Saddam Hussein, more than half were later killed for honor-related reasons.

Women who have fled Iraq on their own or with their children face additional risks. The United Kingdom’s Immigration and Nationality Directorate concludes that “as a result of the recent rise in Islamic extremism, single women may be unable to move around freely if unaccompanied and may not be able to settle in areas where they have no family ties as they are unlikely to be able to access resources without support.” UNHCR echoes this conclusion. Women who do not benefit from any type of family network or tribal links to protect them are at risk and are likely to be prime targets for traffickers, according to UNHCR.

In addition to women, reports from various sources highlight the persecution of other social groups in Iraq, including those to whom particular political opinions are imputed. UNHCR reported in 2005 that “there are growing indications that state persecution (including extra-judicial executions) is taking place in Iraq, in particular by Shiite-dominated police commandos working under the authority of the Ministry of Interior.” These commandos “have been accused of deliberately targeting Sunnis considered to be supporting the insurgency [and while] [t]he Iraqi authorities have admitted such incidents, [they] are currently not able to stop them.” The February 27, 2006 International Crisis Group (ICG) report supports UNHCR’s 2005 reports on the Sunni-Shiite schism.

UNHCR also reported in October 2005 that armed groups targeted alleged supporters or associates of the Iraqi Government. Targets included politicians, government workers and their families, and Iraqis working with the multinational forces (MNF) and foreign construction companies. UNHCR further reported that tribal or religious leaders, members of religious or ethnic minorities, journalists, doctors and lawyers were targeted by armed groups.

Populations in certain areas of Iraq continue to be disproportionately impacted by the violations of human rights and should not be expected to return to these areas. The UN Security Council report, dated March 3, 2006, specified that “Baghdad, Mosul and the western province of Al Anbar have been experiencing the worst of the destruction.” It is the position of UNHCR that “no Iraqi from southern or central Iraq should be forcibly returned until such time as there is a substantial improvement in the security and human rights situation in the country.”⁹⁰

The above-described violations have forced Iraqis to flee, remaining in limbo and insecurity within Iraq, in camps in the neutral zone or “no man’s land” between the Iraqi, Jordanian, Syrian and Saudi Arabian borders or in countries of asylum. Given the conditions in countries of asylum, in addition to advising governments not to forcibly return Iraqis to Iraq, UNHCR also encourages States to refrain from returning Iraqis to countries neighboring Iraq.⁹¹

Conditions in the Country of Asylum: Jordan

UNHCR has described general conditions in countries of asylum in its March 30, 2007 paper on Iraq. According to UNHCR, the warm welcome previously extended to Iraqi refugees has begun to wane and security considerations have led to increased border controls and the risk of further restrictions on admission. UNHCR estimates that there are more than one million Iraqi refugees in Syria and up to 750,000 Iraqi refugees in Jordan.⁹² Some of the Iraqis who left in 2003-04 were relatively wealthy; but by 2007, most newcomers were poor and many of those who had come earlier had exhausted their savings.

The Kingdom of Jordan, with an estimated population of six million, is not a party to the 1951

Convention relating to the Status of refugees or its 1967 Protocol. However, Jordan’s Law on Residence and Foreigners’ Affairs gives the minister of the interior the discretion to waive normal immigration requirements “on account of special considerations connected with international or humanitarian courtesy or of the right to political asylum.” Human Rights Watch (HRW) reports that as the early groups of Iraqis started fleeing in April 2003, Jordan demonstrated considerable leniency in enforcing immigration laws, including looking the other way when Iraqis overstayed visas which were issued at the Jordanian border. However, Jordanian “hospitality and tolerance toward Iraqis changed ... after November 2005 when three Iraqi nationals killed sixty people by setting off bombs in three large hotels in Amman.”⁹³

HRW reports that as recently as late 2006 a Jordanian government official told it that Jordan was not facing a refugee problem, but rather one of “illegal migration, no different from what the United States faces with Mexicans.” Indeed, Jordan has stepped up immigration enforcement since November 2005, according to HRW. Jordan has begun to turn away large numbers of Iraqis at the border, made it more difficult for Iraqis to renew visas and has arrested Iraqis for residing and working illegally in Jordan. Iraqis accrue fines for each day that they remain in Jordan after their visas

expire. HRW reports that if the police apprehend Iraqis who cannot pay the fines for overstaying their visas, the police may deport them and deny them re-entry to Jordan for five years.

In 2006 Jordan deported as many as one hundred Iraqis per month and detained between five and 15 Iraqis registered with UNHCR each month, according to USCRI. According to USCRI, Jordan has increasingly targeted Shi’a Iraqis for arrest and deportation. UNHCR could not screen these deportees despite its 1998 Memorandum of Understanding (MOU) with the Jordanian government against forced return. Jordan generally allowed Iraqis to choose deportation to Syria or Yemen if they feared returning to Iraq, which most do. Although deportees had the right to appeal the order of deportation within 60 days, few did so.

Jordanian border guards increasingly turned back Iraqis in 2006, especially younger men and those who appeared poor. They also turned back those they accused of carrying false passports or being part of smuggling operations.

Many Iraqis have overstayed their visas and have become illegal residents, at risk of detention and deportation. Refugee households have limited or no access to all basic services including medical care and education. The prevalence of separated families, unaccompanied minors and women-headed house-

⁸⁸ See UNHCR, “Resettlement of Refugees from Iraq,” January 9, 2007 at 3 and 4.

⁸⁹ See UNHCR, “Humanitarian needs of persons displaced within Iraq and across the country’s borders: an international response,” at 7.

⁹⁰ See generally UNHCR, “Return advisory and position on international protection needs of Iraqis outside Iraq,” December 18, 2006.

⁹¹ See “Humanitarian needs of persons displaced within Iraq and across the country’s borders: an international response” at 11.

⁹² In Human Rights Watch’s (HRW) November 2006 report, “The silent treatment: fleeing Iraq, surviving in Jordan,” HRW estimates that about one million Iraqis who fled since the 2003 war are split evenly between Jordan and Syria.

⁹³ See Human Rights Watch, “The silent treatment: fleeing Iraq, surviving in Jordan” at 4.

holds has further exacerbated the difficulties facing Iraqis. There are reports that young girls are increasingly obliged to contribute to family incomes, and some are resorting to prostitution as a means of survival. Consequently, the incidence of sexual and gender-based violence (SGBV) is on the rise, as is vulnerability of refugees to trafficking and exposure to HIV. Child labor and other means of exploitation are increasingly being reported.

How the U.S. Can Help⁹⁴

The U.S. should help the Iraq government sustain its commitment to addressing the needs of internally and externally displaced Iraqis, always bearing in mind, however, that there will be refugees who cannot go to the Iraqi authorities for assistance because of their fear of persecution.⁹⁵ We are encouraged by the U.S. support for the UN Strategic Framework for Humanitarian Action in Iraq. The U.S. should substantially increase funding and assistance to the most vulnerable, especially separated minors, to ensure their access to essential health, housing and education services and to protect them from trafficking.

In view of the State Department's assessment of its capacity to resettle 25,000 Iraqi refugees in fiscal year 2007, the U.S. should immediately accelerate its processing of Iraqi refugees through the end of this fiscal year and should make an additional commitment to resettle a minimum of 25,000 Iraqis in fiscal year 2008.⁹⁶ In order to meet this goal, the U.S. government should adopt policies that respond to UNHCR's encouragement that countries streamline their resettlement processes and apply more flexible criteria. For example, the Department of State and Department of Homeland Security adjudicators should agree to accept group referrals by UNHCR of Iraqis who meet the refugee definition and are in need of resettlement, without requiring exhaustive individual case preparations from UNHCR.

The U.S. should establish programs for the direct registration and admission of refugees who are former employees of the United States, coalition or multinational forces, international organizations, NGOs and U.S. companies in Iraq who suffer or fear persecution due to this association without a UNHCR referral. The U.S. should also establish a program of direct registration and admission for Iraqi refugees who are family members (e.g. siblings, parents, children, grandparents and grandchildren) of Iraqis residing legally in the United States. The U.S. should authorize the non-governmental Overseas Processing Entities assisting applicants for U.S. resettlement in the Middle East to identify, register and process directly refugees falling into these categories. The U.S. should plan to train NGOs working with Iraqi refugees to refer vulnerable individuals requiring resettlement to the U.S. Embassies.

The U.S. government should support UNHCR's recommendations regarding the registration of Iraqis in countries of asylum and the issuance of documents to prevent forced return to Iraq. The U.S. government should support the Iraqi government in fulfilling its pledge at the April 2007 international conference in Geneva to provide displaced Iraqis with appropriate documentation to ensure access to essential services and facilitate travel through the issuance of passports.

Opportunities and Challenges

The U.S. should build on the congressional and international interest in responding to displaced Iraqis. The consensus has been that while there has been extensive media coverage on the war in Iraq, the plight of the displaced has been largely ignored in the U.S. and other media. While attempts at international consensus on broader Iraq and Middle East policies is difficult, agreements on ways of responding to the plight of the displaced may provide a significant opportunity to address broader issues.

4.2.5c Palestinian Refugees in Iraq

The People

Palestinian refugees came to Iraq in successive waves. The first group, originating from the northern part of today's Israel, reached Iraq in 1948. UNHCR specifies that they were followed by another group who fled the Occupied Territories, mainly in 1967, as a result of the Six Day War and later by a third group who moved from the Gulf countries in the aftermath of the 1991 Gulf War.

Following the 2003 war in Iraq, 23,000 Palestinian refugees were registered by UNHCR before the evacuation of the UN staff from Iraq and the interruption of the registration campaign in August 2003. As of December 2006, UNHCR estimates that there were less than 15,000 Palestinians remaining in Iraq.⁹⁷ According to the United Nations Assistance Mission for Iraq (UNAMI), on March 31, 2007 there were 341 Palestinians at al-Tanf camp⁹⁸ and a further 656 at the al-Walid border crossing inside Iraq. UNHCR notes that the Palestinian refugees "often have a good level of education; however, the difficult economic situation and loss of the privileges they previously enjoyed [under the previous regime] has seriously affected their ability to provide for themselves."

The Refugee Claims

Palestinian refugees in Iraq, being outside the United Nations Relief and Works Agency's (UNRWA's) area of operations, fall within UNHCR's mandate. UNHCR has received many reports suggesting that Palestinians have become subject to discriminatory and violent acts, forcing some of them to leave the country in search of safety abroad. In fact, in some Palestinian neighborhoods leaflets have been distributed asking Palestinians to leave within days or face death, and a similar message was repeated by the Minister of Displacement and Migration who said that Palestinians were not welcome in Iraq and should leave.

However, at the April 2007 international conference on Iraq convened by UNHCR, the Iraqi foreign minister stated that the Iraqi government would enhance the protection of Palestinian refugees.⁹⁹ "Enhanced resettlement of non-Iraqi refugees who are no longer safe inside Iraq, or who are stranded at its borders, is considered a vital component of the international protection response. For example, in view of their precarious situation, Palestinians are in particular need of humanitarian solutions at this time."¹⁰⁰

Human Rights Watch (HRW) reported in September 2006 that "militant groups, mostly Shi'a, have targeted this predominantly Sunni minority community, attacking their communal buildings and committing murders." It is HRW's assessment that "amidst the widespread politically motivated and criminal violence in Iraq, Palestinians have been targeted more than other minorities." HRW further reported that "the post-Saddam Iraqi governments have done little to protect the Iraqi Palestinians – a community whose members were given the same rights as citizens, minus the actual citizenship and the right to own property – and some elements within government have actively contributed to this community's insecurity."

Non-governmental organizations and UNHCR report that Palestinians are subjected to various human rights violations, including torture and extrajudicial killings, by government and non-government entities because they are perceived as supporters of the previous regime or the insurgency. According to UNHCR's December 2006 report on Palestinians in Iraq, "it is clear that the Palestinian community in Iraq has become the target of various abuses based on a combination of political and religious grounds."

UNHCR does not consider the conditions in Iraq to be conducive, especially for Palestinians, for a safe and dignified return. This is due to the prevailing insecurity, as well as to the lack of a solid legal status and the general resentment from a portion of the Iraqi population towards Palestinians. UNHCR has gone further to determine that there are no alternative locations within Iraq which would allow Palestinians to access the basic services essential for a livelihood.

Conditions in the Country of Asylum: Iraq

According to the U.S. Department of State, "the law does not provide for the granting of asylum or refugee status in accordance with the 1951 UN Convention relating

to the Status of Refugees and its 1967 protocol, and the government has not established a system for providing protection to refugees." UNHCR reports that the Palestinian refugees in Iraq were never recognized formally as refugees by the Iraqi government. However, they were protected by the Iraqi authorities based on pertinent resolutions of the League of Arab States and, in particular, the 1965 Protocol for the Treatment of Palestinians in Arab States, the Casablanca Protocol. They enjoyed a relatively high standard of treatment and were granted residence permits, benefited from the right to work, access to social services and were provided with government-owned housing or fixed, subsidized rent in privately-owned dwellings. Iraq could thus be considered as the habitual place of residence of these Palestinians.

Since the fall of the former regime in 2003, members of the Palestinian community in Baghdad have raised concerns that their status and their security in Iraq are at risk. They have expressed concerns regarding the burdensome requirements regarding their residency permits and the confiscation of their documents. The United Kingdom's Immigration and Nationality Directorate has reported that "Syrian, Palestinian, and Iranian Arab refugees reportedly had to renew

⁹⁴ Note that while RCUSA focuses on durable solutions and rights for refugees, we are also encouraged by congressional and administration support for amending the Immigration and Nationality Act to allow for an increase in special immigrant visas for Iraqi and Afghan interpreters, some of whom may also have valid refugee claims.

⁹⁵ The Iraqi foreign minister announced at the UNHCR international conference in Geneva on displaced Iraqis that "in a first phase, a total of 25 million US dollars has been allocated to address some of the needs of displaced Iraqis, including for increasing Iraqi presence in host countries to facilitate access to basic services and to issue documents."

⁹⁶ See April 17, 2007 response from Ellen Sauerbrey, Assistant Secretary of State, to media inquiry regarding U.S. resettlement at www.state.gov/g/rls/rm/83166.htm where she specified that the widely reported U.S. commitment to resettle 7,000 Iraqi refugees in fiscal year 2007 reflects UNHCR's capacity for referrals, but not the U.S. capacity.

⁹⁷ See UNHCR, "Protecting Palestinians in Iraq and Seeking Humanitarian Solutions for Those Who Fled the Country," December 2006; At the April 17-18, 2007 International Conference on Iraq in Geneva, UNHCR and the U.S. government stated that there were 15,000 Palestinians in Iraq—mainly in Baghdad.

⁹⁸ According to UNHCR, as of April 25, 2007, there were 389 Palestinians, mostly women and children, in the al-Tanf camp in the no man's land between Iraq and Syria.

⁹⁹ See Chairman's summary, International Conference on Addressing the Humanitarian Needs of Refugees and Internally Displaced Persons inside Iraq and in Neighboring Countries, Geneva, 17-18 April 2007 at www.unhcr.org/admin/ADMIN/462633724.html.

¹⁰⁰ See UNHCR, "Humanitarian needs of persons displaced within Iraq and across the country's borders: an international response" at 8.

residency permits every three to six months but authorities required proof of employment. Many refugees, however, had no employment due to discrimination and insecurity.” This assessment is supported by HRW’s observation that since the fall of Saddam Hussein, Palestinian refugees have been treated as non-resident foreigners instead of as recognized refugees.

UNHCR reported in December 2006 that as a result of the deteriorating security situation in Iraq, some groups of Palestinians have sought protection in neighboring countries. According to various sources, including representatives of the Palestinian community in Baghdad, almost all Palestinians in Iraq would like to leave the country. Many have turned to people smugglers to achieve this option. However, Palestinians are experiencing difficulties to relocate, since countries are unwilling to accept their travel documents or issue visas to them.

According to UNHCR, currently, there are three groups of Palestinian refugees who are in a precarious situation in neighboring countries and in need of a humanitarian solution as follows:

- Palestinians in Ruwashed camp in Jordan, 70 km west of the Iraqi border, where it was recently reported that 148 Palestinian families remain in very harsh weather conditions with no prospects for the future.
- 300 Palestinians in El Hol refugee camp in northeast Syria.¹⁰¹
- 320 Palestinians stranded in the Tanf border area between Iraq and Syria.¹⁰²

The reports of HRW, the United Nations, the U.S. State Department and other governments show that since the fall of Saddam Hussein, Palestinians in Iraq have suffered abuse, discrimination and physical assaults which have impacted all

areas of their lives. One contributing writer to UNHCR’s *Refugees* magazine has described the situation starkly. “It is to everyone’s dishonour that these human beings are still rotting in Al Tanf, in Al Walid, in Ruwashed and – worst of all – in Baghdad where one or more is being murdered virtually every day.”¹⁰³

How the U.S. Can Help

While UNHCR recommends the legalization of the refugee status of the Palestinians in Iraq, RCUSA recommends full integration for all Palestinians in Iraq who are currently de facto stateless. Such integration includes that Palestinian refugees be granted all rights under international and domestic laws, including the entitlement to travel and residency documents. Like UNHCR, RCUSA urges the Iraqi Government and the multinational forces to ensure the safety of Palestinian refugees.

Palestinian refugees who have fled Iraq represent a particularly vulnerable group. Their prolonged stay in refugee camps or in border areas and their continuous dependency on humanitarian aid is not a viable option. The states neighboring Iraq are called upon to keep their borders open to Palestinians fleeing Iraq, to treat them in accordance with international standards and to ensure that no Palestinian is subjected to forced return to Iraq. Other countries are urged to play their part in ending the suffering of Palestinians fleeing Iraq and to consider sharing the responsibility in a gesture of solidarity by offering some Palestinians, be it on a temporary basis, residence, basic social services and work permits until their return to Iraq, or a more durable solution becomes feasible. UNHCR also appeals to Arab States to re-admit ex-Iraqi Palestinians to whom they have previously issued travel documents, as outlined in the 1965 Casablanca Protocol and relevant League of Arab States’ Resolutions. UNHCR, within the limits of its resources, is willing to deploy all efforts to provide the necessary material assistance

required for the relocation of the concerned refugees, facilitate their temporary stay in the countries willing to receive them, and work on making their return to Iraq possible as soon as circumstances allow.

For those Palestinian refugees in or fleeing from Iraq, who are not receiving adequate protection in the region, the United States should consider urgent resettlement of these cases and encourage other countries to do the same. Canada, Brazil, and Chile have already taken or have pledged to resettle refugees from this group. Norway is currently considering some cases from this group. Nevertheless, the protection needs of Palestinians from Iraq continue to far outweigh the resettlement places thus far offered to them. The U.S. and other governments should also facilitate family reunification for those Palestinians from Iraq with close family members residing in their respective countries.

Opportunities and Challenges

UNAMI reports that threats of kidnapping, assassination, and generalized violence continued to hamper the work of both international and national humanitarian non-governmental organizations, making it extremely difficult for them to reach some of the most vulnerable populations [in Iraq]. As a consequence, international organizations maintained a reduced presence on the ground, with their operational headquarters located in neighboring countries. The challenges within Iraq are particularly relevant for Palestinians who cannot leave and are not allowed to enter countries of asylum.

Given what UNHCR has described as a lack of the required collective commitment from the international community, all of the efforts of UNHCR, UNAMI and UNRWA to improve the protection of Palestinians in Iraq and to secure solutions for those who fled Iraq, have, so far, yielded no significant results. The following conclusion from UNHCR’s December 2006 report

on Palestinians in Iraq is a plea for help that deserves a response:

Palestinians inside Iraq as well as those who have fled into the neighboring States are facing a dire protection situation, lacking basic protection as refugees. The situation of Palestinian refugees inside Iraq has become untenable, while those who have fled into Jordan and Syria are living in conditions which are degrading and precarious. Inside Iraq, Palestinians suffer the same insecurity affecting the entire Iraqi population, and are also specifically targeted for serious discriminatory treatment and acts of violence. Being a large foreign minority and a high profile group, and having benefited from a large number of privileges under the former regime, Palestinian refugees are particularly vulnerable to human rights violations, which could well reach the threshold of persecution. There is no adequate protection from tribal or other social affiliations, or from the state authorities. All relevant stakeholders and the international community as a whole must act to address the protection needs of Palestinians inside Iraq as well as those who have

fled into the neighboring States as outlined in this paper.

It is RCUSA’s view that given the situation of Palestinian refugees, it is important to consider the immediate protection and humanitarian needs of the Palestinians in Iraq independent of the wider political question of Palestinians in the Middle East. To do otherwise, may result in a substantial outflow of Palestinians from Iraq, which would complicate the situation for the broader population of Palestinians.

4.2.5d Sabaeen Mandaeans in Jordan and Syria

The People

The practitioners of the Mandaean faith follow the teachings of John the Baptist. Mandaeans are natives of Iraq and Iran. Throughout history they have occupied areas such as Baghdad, Umara, south Iran and east Iraq. Due to the persecution they endured, many families fled to the “inaccessible marshes of southern Iraq and the river districts of Khuzistan, where the Mandaeans are [found today].”¹⁰⁴ There are no converts; rather, one must be born to two Mandaean parents. According to the Mandaean Human Rights Group (MHRG), due to the absence of converts and persecution, Mandaeans are a very small

population. MHRG estimates that there are roughly 60,000 Mandaeans scattered around the world.¹⁰⁵ Among those who have fled the region and sought refuge in another country, it is estimated that there are approximately 15,000 throughout Europe, 4,000 in Australia, 1,500 in the United States, and 1,000 in Canada.¹⁰⁶

The Refugee Claims

Persecution is not new to the Mandaeans. Reports of persecution cover several centuries.¹⁰⁷ More recently, in the 1950’s and 1960’s, the Mandaean Human Rights Group reports that Arab nationalism posed a new set of problems for the Mandaeans and other minority groups. According to MHRG, Arabization efforts stripped Mandaeans of their cultural and religious heritage, including the loss of their native language, Aramaic, which is only used in liturgical services. MHRG reports that many Mandaeans were forced to join the armed forces despite their strong pacifist beliefs, and young boys were forced to cut their hair making many young men ineligible for the priesthood.

MHRG reports that during the Baathist era in Iraq, the Mandaeans faced discrimination in all areas

¹⁰¹ Around 300 Palestinians who fled Iraq are presently accommodated in the El Hol refugee camp, near the city of Hasake in northeastern Syria. Many of them reported that their family members had been murdered and others claimed to be former detainees or victims of torture. They were stranded for several months in the border area with Jordan and, in late April 2006, the Syrian government allowed them entry into Syria where they were accommodated in El Hol camp in cooperation with UNRWA and UNHCR. This initial move has been welcomed by UNHCR. While this group enjoys safety and receives basic assistance in El Hol camp, their freedom of movement is limited, they depend on humanitarian aid and it is not yet clear what legal status they will be granted in Syria. Some of them have close relatives lawfully residing in Syria and will hopefully be authorized to join them.

¹⁰² The situation of this group, which includes children and pregnant women, is the most compelling. They arrived to the Syrian border in small groups following the admission of the group above in El Hol camp and seem to be determined to stay until they are authorized to enter Syria. Similar to other Palestinians who fled Iraq, members of this group claimed to have been subject to repeated acts of harassment, threat, violence, abduction and eviction from their homes. The Tanf site is unsuitable for the provision of adequate humanitarian assistance and lacks basic infrastructure, which makes the living conditions of the group miserable, despite efforts made by UNHCR and UNRWA to provide them with basic services. While Syria has denied admission to this group, Syria has allowed UNHCR to have access to the group. A more prolonged stay in the area is extremely difficult to sustain and a solution to the plight of the concerned persons has become urgent.

¹⁰³ See Rupert Colville, “Shame: how the world has turned its back on the Palestinian refugees in Iraq,” *Refugees*, number 146, issue 2, 2007 at 24.

¹⁰⁴ See Mandaean Human Rights Group, *Sabaeen Mandaeans in Iraq face Annihilation*, January 2007 at 4.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

of life. They were often denied legal and social rights. They were discriminated against due to their religious and political beliefs. Hundreds of people were killed or kidnapped for seemingly arbitrary reasons. Approximately 15,000 Mandaean fled the country during this time.

In the post -Saddam era, “[t]he sectarian Muslim identity among Iraqis has preceded the national identity and the violence is increasing in scope and lethality.”¹⁰⁸ MHRG reports that death squads are killing based on name and religion as stated on national ID cards and minorities such as Mandaeans are singled out by both Sunnis and Shi’as. According to MHRG their pacifist beliefs leave them defenseless, and they presumably are less likely to find protection within Iraq as MHRG reports that there are no areas within Iraq where many Mandaeans live. The Mandaean Human Rights Group reports that the Mandaeans are frequently persecuted for their religious beliefs, including through forced circumcision, forced conversions and property confiscation and are targeted for their professional positions in society. Many are jewelers, doctors, dentists and other professionals. In November 2006 alone, there were nine reported murders, fifteen kidnappings, and thirty known threats demanding ransom.¹⁰⁹

In the past, Mandaeans were able to preserve their way of life by relocating, dialogue, or by paying a jizia tax for protection and escape.¹¹⁰ MHRG reports that these methods are no longer viable solutions. Due to the violence and the persecution, more than 90% of the population has fled Iraq, including 1700 families to Syria and 650 families to Jordan.¹¹¹

Conditions in the Countries of Asylum: Jordan and Syria

In Syria and Jordan, families have little legal and social support. Most refugees cannot get a job, and many go in search of illegal work. This leaves them vulnerable to a variety of abuses including working without pay, long work hours, child labor, and employer abuse. Due to their lack of legal standing, they are vulnerable to deportation. Women-headed households are increasingly common in Syria and Jordan. Some unfortunate mothers and single women have been forced to turn to prostitution as their only means of income and survival. Children receive no education and health care is unaffordable for most families. Tragically, “most families have no money to bury their dead. Some families started to beg in mosques and churches and some even search the dumpsters for food. Psychological problems, including depression and post traumatic stress [disorder], are widespread among adults and children.”¹¹²

How the U.S. Can Help

The U.S. should accept a group referral from UNHCR and NGOs of Sabian Mandaeans in Jordan and Syria.

4.2.5e Religious Minorities in Iran¹¹³

The People

Among the world's refugees are 11,000 Baha'is, Zoroastrians, Jews, Mandaean Christians, and Sunni and Sufi Muslims who are waiting in Iran for their opportunity to travel to Vienna to be processed for the U.S. refugee program. Some 60,000 Zoroastrians, 300,000

Christians, 30,000 Jews, 300,000 Baha'is, and 5,000-10,000 Mandaean Sabaeans reside in Iran, where 98% of the population is Muslim. In 2006 there were indications that members of all religious minorities were emigrating at a higher rate.

The Refugee Claims

According to the State Department's International Religious Freedom Report of 2006, there was “a further deterioration of the extremely poor status of respect for religious freedom” during the year for Iran's religious minorities, which include Sunni and Sufi Muslims, Baha'is, Zoroastrians, Jews, and Christians. Imprisonment, harassment, intimidation, and discrimination based on religious beliefs continue unabated. Since 1999 the U.S. Secretary of State has designated Iran as a “Country of Particular Concern” (CPC) under the International Religious Freedom Act for its particularly egregious violations of religious freedom. The U.S. Commission on International Religious Freedom underscored these concerns in its May 1, 2007 Annual Report.

One religious group that suffers particularly extreme forms of discrimination in Iran is the Baha'i. According to Iranian law, Baha'i blood is considered Mobah, meaning it can be spilled with impunity. According the State Department, the Iranian government considers Baha'is to be apostates. They suffer frequent government harassment and persecution. The State Department reports that Baha'i children cannot enroll in public schools if they identify themselves as Baha'is, Baha'is are expelled from universities if their religion becomes known, and they may

not teach or practice their faith or maintain links with co-religionists abroad. Furthermore, the property rights of Baha'is are generally disregarded. The government has confiscated large numbers of private and business properties and religious material and has forced numerous Baha'i families from their homes.

The security situation for Jews has also worsened. Since August 2005 President Ahmadinejad has pursued a virulent anti-Israel campaign, which has created an even more hostile environment for Jews in Iran. Increasingly negative rhetoric, coupled with the tension surrounding the nuclear issue in the country, has led to increased concerns about the future security of the Jewish community in Iran.

How the U.S. Can Help

While more than 11,000 Iranian religious minorities in and from Iran are currently awaiting resettlement, only 5,000 refugee admissions from Iran have been funded for 2007. While this represents a significant increase over years past, it still means that most refugee ap-

plicants will have to wait two years or more – in their country of persecution - to be processed. Increased refugee numbers and funding specifically allocated for religious minorities from Iran is necessary in order to better address current refugee needs.

Opportunities and Challenges

Competing priorities always complicate refugee allocations and funding for the resettlement of specific populations. However, this is an easily accessed population that can be quickly processed and which remains in the country of their persecution. As relations between the U.S. and Iran deteriorate, there is a strong probability that the safety of these refugees will be placed at even greater risk. The U.S. refugee admissions program has established in the past that it has the capacity to respond to this challenge and should therefore increase refugee admissions numbers from Iran in order to do so.

¹⁰⁸ Id. at 6.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Id. at 8.

¹¹² Ibid.

¹¹³ For this group, there is no section on conditions in the country of asylum because Austria, the country from where they are processed, is considered a country of transit.

We hope that together with all stakeholders we can respond to the hopes of refugees with compassion that is rooted in an appreciation of our distinctive roles in promoting stability and a desire to strengthen and perpetuate the values we share.

5 Conclusion and Planning for Fiscal Year 2009

Given this report's sober account of the breadth and nature of instability which causes displacement, it is necessary to forge partnerships that include all stakeholders to craft comprehensive solutions and to plan ahead. Governments, international organizations, NGOs and activists, including refugees, must think ahead to fiscal year 2009 for a number of reasons. Fiscal year 2009 will be first full fiscal year during which we hope our government will be responding to large groups of refugees displaced by the U.S.-led invasion of Iraq. During the first quarter of fiscal year 2009, our country and policy makers will be preoccupied with one of the most important national elections in recent times, and the last three quarters of the fiscal year will occur under a new U.S. president.


In addition to working with this Administration to help our country honor its fiscal year 2008 commit-

ments to refugees, RCUSA pledges to work with our government to plan for considering the following groups for resettlement in fiscal year 2009:

- Colombians in Venezuela
- Ethnic minorities in the Russian Federation
- Somalis in Kenya
- Somalis in Yemen
- Sudanese in Chad
- African refugees in the Russian Federation
- Iraqis in the Middle East, Turkey and Europe
- Afghans in South Asia and Europe
- Iranian refugees in Turkey

We hope that together with all stakeholders we can respond to the hopes of refugees with compassion that is rooted in an appreciation of our distinctive roles in promoting stability and a desire to strengthen and perpetuate the values we share.





... for it is the inherent nature of all
human beings to yearn for freedom,
equality and dignity, and they have
an equal right to achieve that.”

—The Dalai Lama

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