



# diakronia

News from the Jesuit Refugee Service Asia Pacific

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## Durable Solutions



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## Foreword

By Fr. Bernard Hyacinth Arputhasamy, SJ, Regional Director

*Diakonia* is the Greek work for ‘service’. Through the revival of this newsletter we share the stories of our service to, and the stories of, refugees and displaced peoples in the region of Asia Pacific. We hope to create a sense of solidarity with you as you continue to journey with us.

We bade farewell to Fr. Andre Sugijoprano as Regional Director. I succeeded Fr Andre on the 1<sup>st</sup> of September 2005, going on a learning voyage to the country offices in the region to visit the staff and the projects, meeting donors who support our services and other meetings within and outside the region.

We will introduce the regional office staff who support and assist the country offices and their projects in the region.

In remembering 25 years ( 14 Nov., 1980-2005) of our service to refugees and displaced peoples, the worldwide JRS embarked on a journey too, with the 10 Regions having Strategic Planning sessions to prepare for the coming years. It was an appropriate time to reflect on our work, our strengths and weaknesses, our environment of opportunities and threats and to ask how we could do better in these areas—information/communication, advocacy, finance, the overall quality of our programme management, human resource management, staff development and education for refugees and displaced persons, etc. Some concrete actions were already initiated.

In October 16-19, 2006, participants from the Region will gather in Hua Hin, Thailand to finalise the Strategic Plans until 2010. This Meeting will be followed by a training workshop on media, communications and website for those concerned, facilitated by the JRS International Office staff.

### Advocacy for Durable Solutions

During one of my visits to a refugee camp in Thailand, I was welcomed by woman to her humble home. We sat down to talk in the presence of the camp leader. Maw Saw (not her real name), a woman of small stature, recounted some of her stories, “I fled, like many other people, with my son because of the bad situation there. My husband is still there and I am waiting for him to come here. I have been here for some years now.” I left the place struck by her disposition, serene face and a great sense of humour. What might ‘durable solution’ look like for Maw Saw?

Advocacy has always been an integral part of JRS work rooted in direct encounter with refugees and displaced persons. Our projects—education, health, emergency aid, social/community development and income generating activities—are concrete expressions of our service to them. Our advocacy is nurtured and given credibility by this direct service. One area of advocacy that has received particular attention this past year is “durable solutions” to the situation of refugees and displaced peoples in the world. Three “durable solutions” are proposed, i.e. repatriation, integration and resettlement. These solutions will play out in myriad number of ways in the region. For the internally displaced in the Moluccas or the conflict situations in Indonesia it would be to scrutinize the development issues that cause marginalization of some people.

In Thailand, while resettlement to a third country and integration in Thailand are better possibilities, the voluntary repatriation of the Burmese should not be forgotten. Many would prefer to return home if possible. JRS seeks to support this dream of many and keep it alive. Our partners in Malaysia engage in a crucial endeavour for the integration of some (advocacy to grant work permits) and assistance to resettle others in third countries. We will have a glimpse of the effects of the “Pacific Solution” in the Australian offshore refugee processing, raising questions of burden sharing and burden shifting.

### What is best for them?

To seek root causes of displacement of peoples and appropriate durable solutions for the displaced are challenging tasks that require critical research coupled with practical response. It ought to consider the short-term and long-term remedies that will *truly consider what is best for the lives of refugees and displaced persons*. We can only *learn what is best for them from them*—by listening to them.

Our ongoing and diverse projects in the region engages us directly with them, helping us to understand with them—accompaniment—their dreams for themselves, for their loved ones and their countries.

We discover *with them* that their dreams are no different from ours—education, work for self-sufficiency yet not in self-isolation, opportunities for holistic growth and a better life, respect for who one *is* and not for what one *has/has not*, compassion and understanding (not patronizing), to be at home and in one’s country, peace and love. ●

## JRS-Asia Pacific: Seeking Mutual Cooperation on Regional Thrust for Durable Solutions

By Mr. Sanjay Gathia, Regional Information Advocacy Officer

The JRS accompanies many of the displaced people, serving them as companions and advocating their cause in an uncaring world. *The mission is one.* Its style of advocacy flows from its direct accompaniment of refugees and displaced people to address problems at the local/national level and regional and international levels.

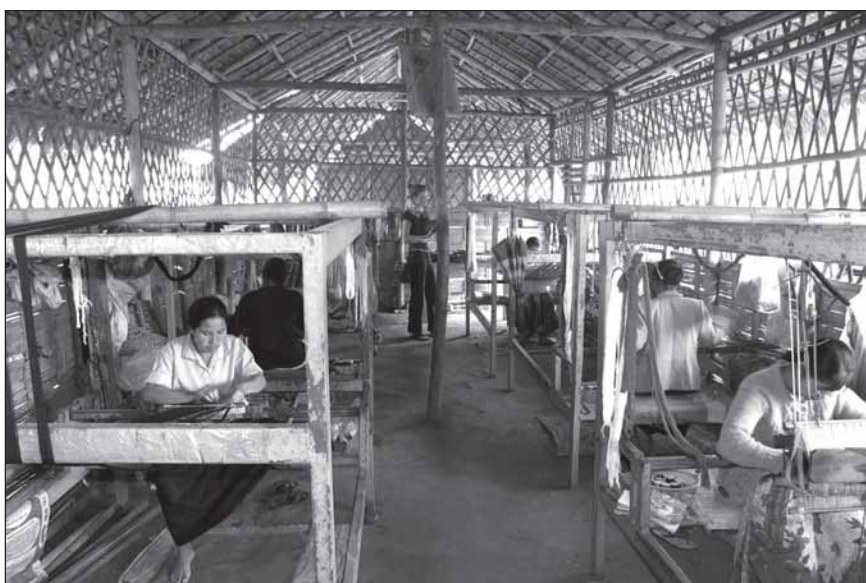
JRS actions are aimed at: (i) promoting the rights of refugees and forcibly displaced persons; (ii) improving the way in which people treat refugees and forcibly displaced persons; (iii) promoting governmental and institutional action to address root causes of forced displacement; and (iv) promoting sustainable solutions. The following areas are of particular concern: three of them are international campaigns, i.e. Administrative Detention, Child Soldiers and Ban Landmines Campaign, while three others are priority issues for cross regional advocacy, i.e. Durable Solutions (local integration, re-settlement and voluntary repatriation), Right to Food and Sexual and Gender Based Violence (SGBV).

JRS-AP regional office undertakes the following activities in order to strengthen its advocacy activities in the region: Information, Communication and Publications, Policy Analysis and Research, Networking and Outreach, Regional Advocacy and Lobbying and Resource Materials Development.

In the next two years we are looking at creating synergy on the various efforts and capacity building activities within the region. We hope to work towards identifying regional governmental bodies policies' and its impact on forced migration, immigration, detention of asylum seekers and refugees, durable solutions, right to food, sexual and gender based violence and on banning landmines. For this purpose, research is necessary in the existing constitutional measures, laws, decrees and the best practices of detention which uphold and is inclusive of the human rights standards and humanitarian practices.

The regional office will strive to share information on the above issues within its network and also with other organizations and institutions, governmental and non-governmental, in order to have a better understanding of the issues and in finding sustainable and durable solutions. To begin with in this present issue, we hope to engage people in a reflection on durable solution. According to the UNHCR the three durable solutions—voluntary repatriation, local integration in the country of first asylum or resettlement in a third country—are the options available for the permanent resolution of the 'refugee cycle.' All three are regarded as durable because they promise an end to refugees' suffering and their need for international protection and dependence on humanitarian assistance.

Besides the concern of refugees and asylum seekers, the issue of administrative detention deserves greater attention. It is our hope that within the region, government and non-government efforts can be made to achieve durable solutions for these detainees too. Searching together for holistic durable solutions will allow refugees, asylum seekers, migrants and detainees to have access to protection, while being able to meet their basic and psycho-social needs, provide medical services, education opportunities and other necessary assistance. Mutual cooperation and concerted effort are needed to realize these solutions. ●



*Shan women weaving traditional shawl's for income generation in one of the JRS supported activities in Thailand. © Photo by Sanjay Gathia.*

# Three Solutions for All Refugees

By Ms. Vera den Otter, Information Advocacy Officer, JRS Thailand

Towards the end of 2004, repatriation was the buzz word at the Thai-Burma border as the situation in Burma apparently had changed for the better. Their hope for returning home was short lived! The Burmese army's tyranny against the ethnic minority groups, particularly in the Karen State, has escalated since then. Currently there may be about 15,000 internally displaced people hiding in the jungle.

Other changes occurred since 2004, internationally and in Thailand, opening opportunities for resettlement to third countries and education in the Thailand.<sup>1</sup> There has been changes in policy to provide refugees with ID cards and initiate pilot projects allowing refugees the right to work starting 2007. These changes bring a new hope for the Burmese refugees in Thailand.

## Resettlement

In the past, the Thai government did not promote the idea of resettlement for Burmese refugees from the camps as it feared a great pull-factor from Burma. After repatriation was wiped off the agenda late 2004, it became clear that the situation has become and will continue to be protracted. Coordinated efforts by CCSDPT<sup>2</sup> and UNHCR convinced the Thai government in 2005, for the first time, to allow refugees from all camps to be resettled to third countries. The United States is said to resettle the refugees in the Tham Hin camp. Nine other countries have offered resettlement to refugees from the other eight camps along the Thai Burma border. The reality is that only a small number of people will be resettled. The estimated number of refugees to leave Thailand for a third country is around 6,000 per year. With a total population of 150,000 it is clear that only a few will have this chance.

The decision to resettle is not an easy one—to leave for an unknown country from the familiar green hills and mountains on the border, to adapt to another language, culture and environment. It may also include leaving behind friends and family. On the other hand, it is also an opportunity to live life in freedom, to study, to work, to be self-sufficient, to learn a new language and acquire skills, make new friends and to give one's family a hope for a better future.

## “Don't forget other durable solutions!”

We need to continue the search for other possible durable solutions: local integration and repatriation. The CCSDPT members, UNHCR and refugee camps leaders have been persistent in their efforts to create more rights for refugees in the camps. The Royal Thai Government's (RTG) progress to provide education for refugee children and on other issues have been commendable. The recent visit of the Mr Antonio Guterres, High Commissioner for Refugees, to Thailand and his meetings with the former care-taker Prime Minister Mr. Thaksin Shinawatra and members of the care-taker government have been instrumental in creating new commitments by Thailand, i.e. options for more self-sufficiency and integration in the Thai economy. Refugees contribute to the economy by working in the areas surrounding the camps but risk arrest and deportation. The ID cards, expected in 2007, will grant them temporary legal status in the country. Commitments were made to start a pilot project to allow refugees to work outside the camps (in Mae La, Umpium and Ban Mai Nai Soi). They would be required to live in the camps while going out to work on a daily basis. However, there are concerns whether refugees will receive fair wages and protection against exploitation. It would be important to evaluate and discuss the possible impacts, positive or negative, before the start of the project and monitor it as it progresses.

Amidst the ongoing resettlement process and additional rights in Thailand, we must not forget that refugees still hope to return to their country. “Most refugees still want to go home,” says a JRS staff. NGOs and other agencies should support this dream albeit not a possibility at present and in the near future.

## Burmese Urban Refugees

The Burmese urban refugees in Thailand are far from these solutions. At the start of 2004, UNHCR, pressured by the Thai government, stopped Refugee Status Determination (RSD)—but not registration—of new arrivals from Burma in urban areas. All persons with refugee status during this period, referred to as People of Concern (POC), were requested to report to the camps. Officially, the Thai authorities would no longer accept refugees from Burma to stay in urban areas. The reality is different.

First of all, not all POC made it to camp for a variety of reasons. Secondly, new arrivals continue to come but cannot register with UNHCR since late 2005.<sup>3</sup> At the moment of writing 2,700 slip-holders from Mae Sot and Sanklaburi are about to enter camps following government instructions. Thousands of others, including slip-holders, still live in Bangkok. Assistance to this group is extremely minimal and no protection is offered. For them, no durable solutions are in sight.

### Shan

The Shan, an ethnic group from Shan State in the north east of Burma, is among the forgotten people when discussing refugees from Burma in Thailand. They face similar forms of persecution as others from Burma and are not considered 'refugees' by the Thai Government. A small number are allowed to live in a temporary camp on humanitarian grounds while many more live outside the camp and work as legal, but more often as illegal, migrant workers. They too have minimal assistance and no protection.

### Conclusion

While many positive steps forward for durable solutions are commendable this past year for refugees in camps, the urban refugees and the Shan people are often forgotten in the discussion. It is important to continue advocating for their cause. Durable solutions should not exclude them. ●

#### *(Footnotes)*

*1 The Thai Government allowed vocational training non formal education and started learning centers that include the teaching of the Thai language.*

*2 Committee for Coordination of Services to Displaced Persons in Thailand (CCSDPT), this Committee coordinates effort and assistance in representing the membership's interests to the Royal Thai Government, international organizations and embassies. It holds monthly coordination meetings in Bangkok.*

*3 UNHCR continued to register Burmese cases without doing RSD, the letter gave the refugees some form of protection. Those with the post 2004 registration are referred to as slip-holders.*



*A pensive father waiting for some respite to his situation while taking care of his 4-month old baby in JRS supported Social House in Thailand. © Photo by Sanjay Gathia.*

# Targeting Development Assistance for IDPs in Indonesia

By Ms. Els Coolen, Information Advocacy Manager JRS Indonesia

In Indonesia, violent conflict is the greatest obstacle of human development as it imposes some obvious and immediate development costs—collapsing food distribution systems, disintegration of health and education services and slowed economic growth, psychological stress and trauma. It is apparent that violent conflict is primarily a product of the failure of the state to prevent, contain and resolve conflicts between groups.

Poverty, inherent economic inequalities, systematic political exclusion, lack of adequate and responsive institutions, shifts in demographic balance, economic decline and ecological land deterioration have all been put forward as separate triggers of conflict. Yet to date, systematic analysis of these local conflicts and the potential underlying factors associated with conflicts has been limited. The extent of local violence in Indonesia suggests that intra-country empirical analysis will offer a starting point to a deeper understanding of the root of causes of conflict in Indonesia.

## Decentralization and Development

Each region has its unique character. Regional autonomy and the establishment of the Ministry for Development of Disadvantaged Regions have raised the potential to expedite the development process in marginalized areas. However, the transition from little to more autonomy requires a strong political infrastructure, which is still in progress in many of the marginalized regions. Development of education and health systems will contribute towards this path. A needs-based approach to development involves a high level of participation and hence a strong civil society. Because of Indonesia's long history of centralist and top-down governance, the capacity of civil society is underdeveloped. As decentralization now hands over conflict prevention and management to local government, there is an urgent need for capacity building of those local government bodies in marginalized areas as some local governments are unable to fulfil their obligations to prevent or mitigate abuse and discrimination.

Decentralization, if done right, is expected to bring about positive changes by (i) improving administrative efficiency and accountability, (ii) enhancing local participation in governance, thus (iii) contributing to poverty reduction, and (iv) addressing grievances by devolving political and economic

authority to the people, which (v) could stabilize the country and strengthen national unity. Conversely, the negative impacts include (i) creation or exacerbation of conflicts through devolution of political and economic resources, (ii) aggravation of inter-regional disparity, (iii) exacerbation of division along ethnic or religious lines through devolution of authority to re-draw territorial boundaries, and (iv) the elite's possession of greater economic and political resources.<sup>1</sup>

## Research for Durable Solutions

During JRS Indonesia's accompaniment of IDPs in the Moluccas and Aceh, it has become clear that inequality and unequal access to resources is one of the causal factors of conflict and advocacy for targeted development assistance is needed. In order to formulate recommendations towards durable solutions, JRS Indonesia is now analyzing how cross-sector marginalization or discrimination influences the outbreak of violent conflict. Understanding the causal factors of conflict and how to implement conflict prevention mechanisms is a prerequisite for the formulation of development policies.

Thus, in seeking for durable solutions that could prevent and mitigate conflict, JRS Indonesia aims to seek an understanding of the relationship between development, marginalisation and violent conflict. The guiding question is, "To what extent does development process lead to marginalization and how does marginalisation influence the outbreak of violent conflict?"

The overall goal is to develop an advocacy strategy to assist the Ministry for Development of Disadvantaged Regions, local governments, civil society and communities to reduce discriminating factors in development policy, hence improving conflict prevention and management.

Based on the experiences of JRS in conflict situations, the analysis or research program will develop recommendations for future programmes of JRS in the area of advocacy. We should strive for sustainable solutions and equity for the IDPs and the host or receiving communities. ●

### (Footnotes)

<sup>1</sup> Jozefina Cutura & Makiko Watanabe. *Decentralization and Violent Conflicts: The Case of North Moluccas, Indonesia, 2004.*

## Malaysia: Diversity in Durable Solutions

By Mr. Leslie Tan, Information Advocacy Officer, Kumpulan ACTS Bhd, Malaysia  
(Partners of JRS-AP)

The present estimate of refugees registered with UNHCR in Malaysia is 48,000: 20,000 Acehnese (Indonesia), 12,000 Rohingyas and 8,000 Chins (Myanmar) and another 5,000 ethnic minorities from Myanmar and 3,000 from other nationalities.<sup>1</sup> There are approximately 22,000 more yet to be registered with the UNHCR. Like thousands of refugees, they too fled their home and country from the many human rights abuses and conflict situation to seek refuge and survive in Malaysia. Much has been done but much more needs to be done for them. The durable solutions of voluntary repatriation, integration and resettlement to third countries, differ for each of these groups due to the socio-political climate in Malaysia and the recent developments in the region and other parts of the world.

**Chins from Myanmar:** The Chin from Myanmar started arriving in Malaysia in 1999 and early 2000s, and to date there are approximately 20,000 Chins (including the 8,000 registered with UNHCR) and an increasing number of new arrivals. It appears that the only durable solution for them is resettlement to third countries. The UNHCR has resettled 476 Chin refugees 2 last year and, until August 2006 about 392 refugees have been resettled.<sup>2</sup> Given the limited number of places offered by third countries for resettlement, much more needs to be done to urge countries to increase the quota of acceptance for the refugees. Kumpulan A.C.T.S. together with MSF and other NGOs are providing medical services, i.e. conducting mobile clinics, at the sites and detention centres where the refugees reside and are detained respectively. A small convalescence home provides a resting place for pre- and post-hospitalization persons. Kumpulan A.C.T.S. also provides food to some in the communities, conducts psycho-social activities for the children and income-generating activities for women.

**Rohingyas from Myanmar:** The Rohingyas, who are mainly Muslims, from the Northern Rakhine (Arakan) State of Myanmar and across the border in Bangladesh are not recognized as a national minority in Myanmar. Claimed by the Myanmar government to be recent arrivals from the British colonial period, the 1982 Citizenship Law effectively denies citizenship to the Rohingyas. Since late 1980s they started arriving in Malaysia. The UNHCR had discussions with the Malaysian government on the status of the Rohingya people with the view of integrating them locally. This would be a possible durable solution for the Rohingyas since they are also Muslims. The government finally

accepted the recommendations made and approved local integration of the Rohingyas in 2004. In early 2005, the IMM 13, a temporary stay permit document which enables foreigners to work in Malaysia, was offered to the Rohingyas. However, it is suspended momentarily for unknown reasons. The government is still in the process of introducing and implementing a policy on how to integrate them into the local populace. Meanwhile, they are still vulnerable to arrest.

**Acehnese from Indonesia:** The Acehnese from the province of Aceh, Indonesia, fled to Malaysia during the conflicts between the government of Indonesia and the GAM (Free Aceh Movement). However, since the peace treaty between the Indonesian government and GAM in August 2005, some of the Acehnese have returned home and still others chose to wait before deciding to return home. The Malaysian government has offered the IMM 13 to the Acehnese enabling them to work during this transition period. Many are still vulnerable to arrests by the local authorities through sudden raids. There were also acts of forced deportation by the government while only a handful of them were resettled by the UNHCR.

### Conclusion

Voluntary repatriation, local integration and resettlement to third countries – these are the options available to refugees giving them hope for a solution. For some it would not be wrong to say that it could far-fetched and a vague idea, given the poor economic and political situation in their home countries (repatriation), the fragile and nervous atmosphere of the first world due to fear of terrorists attacks (resettlement) and the indifferent and sometimes hostile attitude of host countries towards refugees (integration). Concerted effort is needed to realize one of these solutions, according to the needs and situation, for the refugees in Malaysia. It is important to raise the awareness of the people and the government authorities to understand the lives of refugees who did not choose but were forced to be refugees. Then the hearts of people can be changed to make them feel welcomed, hands can be moved to serve them and laws enacted to provide adequate protection and freedom for them. ●

### (Footnotes)

<sup>1</sup> UNHCR: *Myanmar Refugees in South East Asia April 2006*  
<http://www.unhcr.org/cgi-bin/texis/vtx/publ/pendoc.pdf?tbl=PUBL&id=449676844>

<sup>2</sup> Data obtained from the Chin Refugee Committee in Kuala Lumpur, Malaysia

# Durable Solutions for Refugees in Cambodia

By Ms. Anne Peters, *Former Legal Officer, JRS Cambodia*

In 1992, the Cambodian government signed the 1951 UN Refugee Convention and the 1967 Protocol relating to the status of refugees. However, there is neither domestic legislation nor administrative procedures pertaining to refugees and asylum seekers in the country. The refugee caseload in Cambodia is divided into two groups, i.e. urban<sup>1</sup> and Montagnard<sup>2</sup> refugees. The Cambodian government maintains different policies for the two groups. This influences to a large extent the durable solution opportunities available for the two different groups. The Memorandum of Understanding<sup>3</sup> signed between



*Montagnard children resettling to a strange country. ©Photo by JRS-Cambodia.*

the Vietnamese and Cambodian government and the UNHCR concerning the Montagnard caseload had far reaching consequences for this group.

## Local Integration

The Cambodian government only offers temporary asylum to Montagnards. They are offered two options, i.e. to return to Vietnam or resettlement. Local integration is not an option. The urban refugees are allowed to remain and are free to move in Cambodia but are not offered identity cards, work permits or travel documents by the government. This makes it rather difficult for them to find work since employers require some form of identification. The UNHCR refugee cards are often not accepted. It seems easier for refugees from other Asian countries to integrate locally since a large population of Vietnamese and Chinese are present in the country. There is discrimination towards Africans, who find it hard to learn the language and to find work.

The UNHCR in Phnom Penh has emphasized local integration for urban refugees as the only solution. It has created a system of dependency by giving refugees monthly financial assistance. It seeks to make financial assistance available only to vulnerable persons. UNHCR is offering the urban refugees the possibility of getting a one-time financial gift for setting up their own

business. Their attempts to contact employers to recognize refugee cards as identification papers have been largely unsuccessful. The lack of documents makes the refugees vulnerable to police harassment.

## Voluntary Repatriation

The UNHCR encourages the Montagnards to return voluntarily since the signing of the MOU and their monitoring visits into the Central Highlands. The Montagnards live in closed camps in Phnom Penh and have hardly any access to information from outside. Since 2006, only UNHCR, a small unknown local



*Goodbye party for some Montagnards departing for the USA. © Photo JRS-Cambodia*

organisation and the Cambodian government are allowed to enter the camps. Thus, it is difficult for the Montagnards to make an informed decision about returning. This has been criticised by HRW because the visits were not conducted in a way that would allow returnees to speak freely and confidentially.<sup>4</sup> They contest that the information of UNHCR differs significantly from HRW reports.

Since the signing of the MOU on 25 January 2005, small numbers of Montagnards have decided to return voluntarily either for reasons of being with their family or refusing resettlement. There have been a few “double-backers,” Central Highlanders who return to Vietnam only to experience severe persecution causing them to flee again to Cambodia to seek the protection of UNHCR. There have been reports of asylum seekers being deported or forcibly repatriated by Cambodian authorities in the border areas.

### Resettlement

Resettlement seems to be the only other option for many Montagnards. They are basically forced to accept resettlement because the Cambodian government refuses to allow them to stay in the country while the MOU threatens them with forced repatriation if they do choose resettlement abroad. Most of them have been resettled in the USA, while others in Canada and Finland. Some have been rejected for resettlement by the USA under the Patriot Act<sup>5</sup> because of their involvement in FULRO.<sup>66</sup>

FULRO was an armed separatist organisation, consisting of ethnic minorities of the Central Highlands that fought against the communists. This group was backed by the USA in the early 1960s and aided US troops during the Vietnam war. The organisation eventually died out in 1992. Most of their members were given the opportunity in the past to resettle in the USA.

### Conclusion

Cambodia does not have national laws protecting the rights of the refugees and asylum seekers. Local integration seems difficult if not impossible for most refugees. The Montagnards’ voluntary repatriation is flawed due to lack of necessary and correct information for the refugees to make an informed decision. Forced repatriation or deportation of asylum seekers before their refugee status determination has been reported. The Cambodian government has obligations to fulfil according to the 1951 Refugee Convention and 1967 Protocol. The UNHCR too needs to take firm positions

in their dealings with the Cambodian and Vietnamese governments in protecting and promoting refugees’ rights. ●

#### (Footnotes)

<sup>1</sup> The “urban” refugee caseload comes from a variety of countries, including Vietnam, China, Sri Lanka, Afghanistan, Iraq, and several African countries.

<sup>2</sup> “Montagnard” is a French term meaning “mountain dwellers.” It is used to refer to indigenous minorities living in the Central Highlands of Vietnam.

<sup>3</sup> The MOU was signed on 25 January 2005 seeking for a settlement on issues regarding the Montagnards. The Montagnard refugees who neither wanted to resettle nor voluntarily return to Vietnam would have one month to decide. If undecided within a month, the Cambodian government and UNHCR would cooperate with the Vietnamese government to bring them back to Vietnam. The MOU has been heavily criticised by international and Cambodian rights groups for authorising forced repatriation of refugees refusing resettlement abroad, and for its insufficient provisions for monitoring and protection of returnees.

<sup>4</sup> Human Rights Watch, *No Sanctuary. Ongoing threats to Indigenous Montagnards in Vietnam’s central highlands*, June 2006, Vol. 18, No. 3 (C).

<sup>5</sup> The USA Patriot Act denies entry to anyone who has provided material support to a group deemed as terrorists or armed rebels by the USA.



Two cousins, Montagnard refugees, all dressed up for their travels to the USA. © Photo by JRS Cambodia.

## Cast Adrift: Recognising the right to seek asylum amidst Australia's "Pacific Solutions"

By Ms. Georgina Pike, Programs-Advocacy Assistant, JRS Australia

Since the end of the Vietnam War, Australia has had a history of giving asylum to those who reached its shores. Amongst them were those arriving unauthorised by boat and asking for Australia's protection under the Refugees Convention. And in accepting these refugees who became known as 'boat people,' Australia implicitly accepted their unfettered right to seek and enjoy asylum. In recent years, Australia has adopted harsh new policies in order to restrict entry by unauthorised means, as a valid exercise of sovereign power and a vital plank in Australia's national security strategy. The question must be asked, at what cost? Australia is almost unique in the Asia-Pacific region in that geographical isolation combined with long-running political stability and economic prosperity have enabled governments to maintain strict controls over people movements. Australia's approach is based on the belief that refugee movements can, and should, be amenable to the same controls as any other form of migratory movement. Just as migrants must apply, wait for their application to be processed and accepted and then be issued with a valid visa, Australia similarly assesses the applications and selects refugees to be resettled under its refugee and humanitarian visa program. In this way, Australia makes a valuable contribution to a durable solution to the world's refugee problem.

### The "Pacific Solution"

A very different approach is taken when it comes to asylum seekers. A combination of airport and naval interdiction, territorial excisions and offshore detention and processing have in effect drawn an imaginary offshore border around Australia to exclude asylum seekers. Australia calls this the "Pacific Solution". An arbitrary line – amounting to a narrow stretch of ocean – separates those who can access Australia's refugee protection laws and those processed through a second rate system in offshore processing centres. If an asylum seeker is intercepted on route to Australia, in a place that falls outside Australia's legal migration zone, he or she will be transported to an offshore place for processing and will have no recourse to Australia's judicial system. Once recognised as refugees some are resettled in Australia, which is under no legal obligation to accept them. This places such asylum seekers at risk of indefinite detention and, as they continue to languish in harsh isolated landscapes such as the island of Nauru, the prospect of return in spite of the dangers they will face becomes progressively more enticing.

The "Pacific Solution" brings about three unfortunate consequences. Firstly, lengthy and indefinite processing times can damage the physical and mental health of any asylum seekers who may eventually be recognised as a refugee and whom Australia, as a signatory to the *Refugees Convention*, must take responsibility for. Secondly, and with some arrogance, the Pacific Solution seeks to position Australia as a country that does not have the same responsibility to accept its share of asylum seekers and to accept the moderate strain on resources that this entails.

While Australia is prepared to resettle refugees taken from countries of first asylum, it seeks to shift the burden elsewhere when it comes to asylum seekers arriving on its shores. This sets a dangerous precedent that, if followed by other nations, threatens to destabilise international refugee protection. Fear and political expediency can be a more powerful influence than a principled approach based on the ideals of burden sharing and durable solutions. Thirdly, the "Pacific Solution" seeks to shift responsibility to other sovereign nations (such as Nauru or Papua New Guinea) or to an external body (such as the International Organization for Migration). The resulting lack of accountability, transparency and rigour in the decision making processes may be threatening the very principle that underpins international refugee protection, that is, the principle of *non-refoulement*. This principle of customary international law seeks to prevent states from returning non-citizens to a place where they will face serious harm or death. Australia's offshore processing regime carries with it a serious risk of breaching this fundamental principle and in some cases it may, in effect, have done so.

## A Step Forward

In recent months, the Australian Government sought to introduce a law that would expand offshore processing to include all asylum seekers arriving by boat, even those who land on Australian soil. Any refugee recognised by such a process would not be guaranteed resettlement in Australia, and thus, the possibility of refugee warehousing was a credible threat. Through intense lobbying by non-government organisations such as JRS (Australia), this proposed law was withdrawn. It is a small step forward yet an important one.

Australia continues to administer a generous refugee program, resettling 13,000 refugees and humanitarian entrants each year. However, by dealing so harshly with the small numbers of asylum seekers who manage to make the perilous journey to Australia in search of safety, Australia arguably does more to undermine regional cooperation and burden sharing and thereby undermines what would otherwise be a valuable contribution made to durable solutions for refugees. ●

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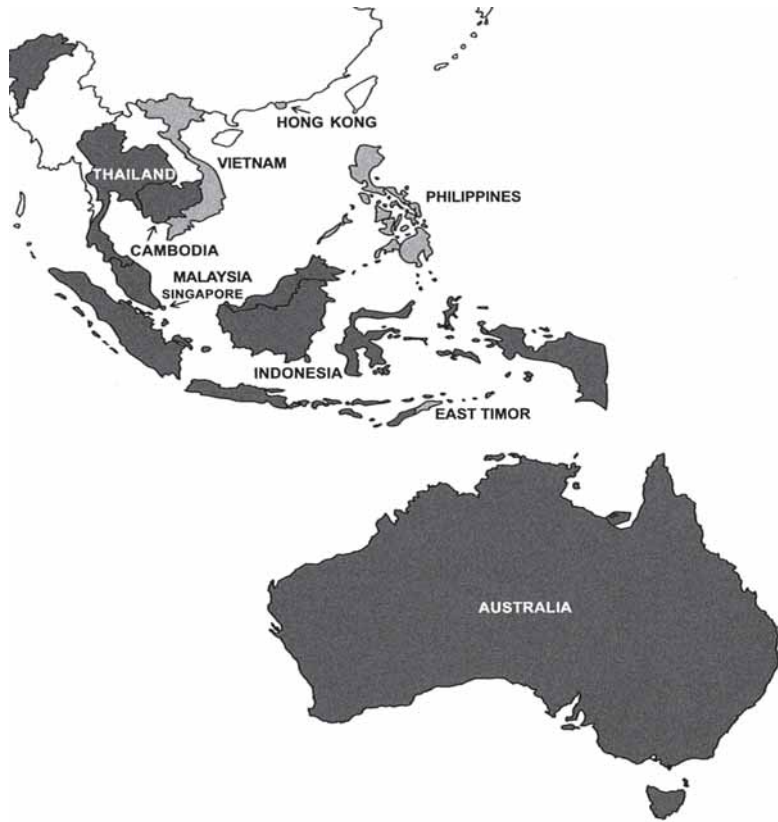
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## JRS-Asia Pacific



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