

## QUESTION TAKEN ON NOTICE

### SUPPLEMENTARY BUDGET ESTIMATES HEARING: 20 OCTOBER 2009

#### IMMIGRATION AND CITIZENSHIP PORTFOLIO

#### **(81) Program 2.1: Refugee and Humanitarian Assistance**

Senator Fierravanti-Wells asked:

1. What are Australia's obligations under the Refugee Convention in relation to non-refoulement?
2. Does the Refugee Convention impose an obligation on Australia to take registered asylum seekers on a permanent basis or on a temporary basis only?
3. Outline the powers under the Refugee Convention for the return of refugees to their homeland and the circumstances under which such return can be effected.
4. Does the UNHCR provide advice in relation to the circumstances for return of refugees to their homeland? Please provide details as to how this happens, the procedures involved, the method of return and the responsibility for the return etc.

*Answer:*

1. Australia is a signatory to the Refugees Convention. The principle of *non-refoulement* is expressed in Article 33 of the Refugees Convention. It states in paragraph (1) "No Contracting State shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". Paragraph (2) states "The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country".
2. The Refugees Convention obliges Australia to not *refoule* a refugee to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. The Refugees Convention makes no distinction in this obligation between refugees who are temporary or permanent residents.

The UNHCR has responsibility under Article 35 of the Refugees Convention for supervising the application of the provisions of the Refugees Convention. It has expressed the following views in relation to temporary protection as previously implemented in Australia:

#### **UNHCR Submission to Senate Select Committee on Ministerial Discretion and Migration Matters (June 2000)**

*"The conditions of the Temporary Protection Visa are unacceptable to UNHCR in their denial of the (Refugee) Convention right to travel documents as well as the denial of family reunion."*

## UNHCR Submission to Senate Legal and Constitutional References Committee (July 2005)

*"UNHCR has a number of concerns in relation to Australia's Temporary Protection visa (TPV) and Temporary Humanitarian visa (THV) regime. Foremost among these are that TPV and THV holders are not entitled to family reunion, have no right to re-enter Australia if they leave, and are not eligible to receive Convention Travel Documents. In some cases the lack of access to these entitlements may be indefinite."*

3. Articles 33(1) and 1A of the Refugees Convention outline the *non-refoulement* obligation. Articles 1C(5) and (6) provides that the Refugees Convention shall cease to apply to a refugee if:

- Article 1C(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
- Article 1C(2) Having lost his nationality, he has voluntarily re-acquired it, or
- Article 1C(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
- Article 1C(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
- Article 1C(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;
- Article 1C (6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

4. The UNHCR provides advice in relation to the circumstances for the return of people who cease to be refugees to their homeland. The UNHCR has provided guidance to states on the application of the change of circumstances cessation provisions in its [Guidelines on International Protection: Cessation of Refugee Status under Article 1C\(5\) and \(6\)](#) of the Refugees Convention. The UNHCR Guidelines suggest that considerations may include, for example, the existence of basic administrative structures and adequate infrastructure to enable residents to exercise their rights, including their right to a basic livelihood, in the country of origin. The method of return is managed by states.