



## Summary of Principal Findings and Recommendations

### The U.S. Refugee Admissions Program: Reforms for a New Era of Refugee Resettlement -- Summary of Principal Findings and Recommendations

Bureau of Population, Refugees, and Migration

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#### Introduction

The US Refugee Program is at a crossroads, and many people would say it is in crisis. The most obvious symptoms are a steep fall-off in refugee admissions for fiscal years (FY) 2002 and 2003, to below 29,000 annually, even though the Presidential Determination for each of those two years authorized 70,000 admissions. (For a comparison, actual refugee admissions for the previous five years averaged almost 76,000.) Because FY 2002 began 20 days after the September 11 terrorist attacks, observers often attribute the program's travails to the enhanced security measures introduced in response. Those measures played a role, but they are by no means the only source.

In fact, FY 2002 brought the United States to the end of several familiar elements of past refugee programs, placing us into a significantly new context for U.S. refugee resettlement -- a difficult transition whose dimensions were obscured by the September 11 responses. Largely gone are the massive, steady, and more predictably manageable programs that had dominated U.S. admissions since the passage of the Refugee Act of 1980 -- the Indochinese and Soviet programs, followed for a few years by programs for those fleeing the former Yugoslavia. We are in a distinctively new era for refugee resettlement, and we need to recognize the true dimensions of the change.

For the future, refugee admissions will be characterized by the combination of many smaller-scale resettlement programs, mostly originating in difficult locations that will shift from year to year, each presenting significant and distinct policy challenges. The challenges consist not only of processing and logistics, though these are substantial, especially in an era of heightened security concerns. They consist also -- and more importantly -- of the complicated steps required to achieve agreement among the relevant U.S. government (and often international) players on the groups and individuals that should be the beneficiaries of resettlement. A sensible system that does not make it too hard to say yes to new priority categories for resettlement is absolutely essential to our post-Cold-War refugee admissions program. Without that development, even expansive gains in operations, including in the security screening system, will not achieve significantly improved admissions.

The refugee resettlement system must evolve in response to this distinctly new climate, in both outlook and operations. Several useful changes are in the works, but others are missing or underdeveloped. This report, commissioned by the Bureau of Population, Refugees, and Migration (PRM) in the U.S. Department of State, represents an effort to describe the program, identify the problems and challenges, and provide concrete suggestions for improvements, both short-term and long-term.

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#### Chapter I The Context

Critique of the past two years' admissions performance often takes this form: "There are 12 million refugees in the world. Why

can't they find 70,000 to admit?" To many it seems an obvious question, and its unspoken premise suggests a lack of will, lack of effort, or outright resistance to a vigorous resettlement program on the part of those running the system. The question is well worth asking, but the underlying premise is not fair to the dedicated individuals who work in the various offices responsible for pieces of the admissions system or to the real dilemmas that must be faced honestly in making decisions to resettle. There are often good reasons not to resettle particular populations, or at least to defer any resettlement until other possible responses to the situation have been fully explored and allowed to develop. Moreover, even when a decision to resettle a particular group is made, actual movements may be delayed for lengthy periods because of unforeseen political complications or simple bad luck. Many of these factors -- combined with the historical reality that we now lack a large and steady anchor resettlement program from a particular region that can be counted on to bring tens of thousands as part of an established pipeline -- help to account for low admissions totals in FY 2003.

Section A of this chapter explores these genuine barriers and obstacles to resettlement, as well as factors that might properly counsel against a resettlement initiative in specific circumstances. Critics of the US refugee program often underestimate or obscure these challenges, while government officials take umbrage at critiques that do not do justice to the constraints under which they labor. In fact, refugee migrations and refugee resettlement represent highly complex phenomena. Resettlement decisions must take careful account of the inherent dynamics of refugee situations, which vary greatly from place to place. A candid and rigorous look at those challenges is not antithetical to the vital humanitarian aims of refugee resettlement; in fact, it is necessary in order for the program to serve those aims more effectively.

But to acknowledge these points -- to be more judicious in giving them their due weight -- does not require surrendering to them. Reasons not to resettle may be legitimate, but they are rarely decisive. A major flaw in the current system is the lack of an institutional framework that effectively brings to bear the good reasons in favor of resettlement, at least for specific and carefully chosen groups, so that balanced and sensible choices can be reached to produce a US Refugee Program on the scale determined by the President at the beginning of the fiscal year. Section B therefore begins an examination of the reasons for this flaw, dissecting an ambivalence about the aims of the system and about the outlook that should govern. It recommends an end to this ambivalence and firm acceptance of objectives that go beyond resettling those in immediately life-threatening circumstances -- adopting an outlook that treats the annual refugee number set by the President as a goal and not a mere ceiling. If such a shift is accepted, then it becomes easier to determine how to reshape other operational elements of the system -- an issue that is taken up in detail in later chapters.

Recommendation: The US Refugee Program should be explicitly based on a broad perspective about the use of resettlement. The President, the Secretary of State, the Secretary of Homeland Security, the Assistant Secretary for PRM, and the Director of USCIS should make it abundantly clear that the USRP is not limited to rescue from life-threatening situations, but will work actively to include displaced individuals and groups who face a wider range of dangers, including the wastage of human potential that can result from protracted stay in a refugee camp. These needs are real and compelling, and there are large populations meeting these wider criteria. Therefore the program can still be prudent and selective in choosing among them, with full attention to countervailing factors such as possible magnet effects, other political impacts, and near-term prospects for voluntary repatriation. This approach should be accompanied by a determination to sustain fully viable budgets for refugee assistance, minimizing as much as possible any direct financial competition between assistance and resettlement.

On the other hand, if the Administration and the Department are unprepared to make a firm declaration of this sort, they should then be candid about the likely outcomes in the current era, which lacks large-scale programs like those formerly in place for Indochina and the Soviet Union. That is, without new initiatives premised on this broader perspective, admission totals will almost surely remain low and admissions will fluctuate widely, whatever other operational improvements are introduced for processing those given access to the program. Without candor on these points, officials responsible for the system are placed in an extremely difficult position. They will be judged by most outside observers against a high admissions total placed in the annual Presidential Determination, but not given the more specific policy directives indispensable to meet that benchmark.

Recommendation: The number of admissions set in the annual Presidential Determination should be treated as a goal, 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 PRM and USCIS but also the regional bureaus of the Department of State and the enforcement bureaus of the Department of Homeland Security. Because of the potential volatility of refugee flows, and the program's vulnerability to unforeseen problems, the benchmark should apply with reasonable tolerances, which can probably diminish once a system built on this new approach has matured.

Access decisions should still pay attention to countervailing factors, both logistical and political, that might appropriately weigh against a resettlement initiative. Such decisions must still be done case-by-case, with full attention to the context. But treating the PD as a firm goal by which performance will be measured will help counter a long-standing tendency to overvalue the disadvantages of a proposed initiative.

## Chapter II

### Reforming the System for Deciding on Resettlement Initiatives

Recommendation: PRM, as the lead office on the process of group designation, must develop a sense of urgency about adding one or two new groups to the pipeline development process each month. PRM must impart energy and vision to this mission, in a way that will promote added efforts on the part of the other players in the process, both governmental and nongovernmental. It must seek innovative ways to accomplish the various functions involved. The Admissions Office staff should also expand in view of the very different requirements in this new era of refugee resettlement. Without abandoning its own critical perspective on admissions proposals, the Admissions Office must come to think of itself as the component in the decision-making system that gives the benefit of the doubt to resettlement, so as to serve as a counterweight to negative arguments that will readily appear from other governmental or international quarters.

Recommendation: The Department of State should establish a Refugee Admissions Committee, to meet no less often than bimonthly. In a multi-level decision process, the Committee should consider lists of *potential groups* and select *candidate groups* for more thorough investigation. After the investigation, which could involve field visits by targeted response teams that include representatives of NGOs, DHS, and perhaps UNHCR and IOM, the Committee will ultimately *designate* groups for priority resettlement, at a rate needed to meet the PD target and to keep a reasonably steady flow of admissions.

The Committee should also play a central role in the adoption of the annual congressional consultation document. It should schedule its deliberations so as to assure that the document is prepared in a timely and complete fashion that will enable consultation with Congress before its August recess and signing of the Presidential Determination by early September.

### Chapter III

#### The Priority System and Arrangements for Urgent Cases

Recommendation: The priority system should be revised modestly, so that P-1 becomes the priority for individual referrals from UNHCR, US embassies, or, in some circumstances, other referring entities; P-2 covers all decisions for designated groups; and P-3 remains the category for close family members of US residents. P-4 and P-5, now covering more distant family relationships, should be removed as priorities, although those same family connections might sometimes be characteristics used in specific P-2 designations. UNHCR group referrals should be worked into the group designation process under P-2, although such referrals should enjoy a strong presumption of approval. PRM should consider refining the list of factors for P-1 referrals accordingly, as well as adding a factor for persons facing persecution that is based on their real or imputed ties to the US government or US entities. PRM should post on its website a list of P-2 groups currently being given access to the US system.

Recommendation: PRM should press UNHCR to continue expanding its individual referral capacity, streamlining the referral process, and enhancing its mechanisms for quality control and consistency. PRM should systematically evaluate the past experiences with NGO individual referral schemes, so that the process can be made available elsewhere. Such referrals will ordinarily be done quietly by NGO assistance personnel present in the camp or settlement for other reasons, and can be expected to produce only modest numbers, because they will focus on urgent, compelling cases. State Department training should better equip embassy personnel for their own role in referrals of compelling cases, although numbers cannot be expected to expand significantly.

Recommendation: The Department of State should give close attention to NGO suggestions, including the annual RCUSA Recommendations report, when developing the potential group list. No legislative sanction is needed or desirable with regard to that sort of input. Once a group has been chosen as a candidate group, further investigation of group needs and characteristics should take place. It will often prove advantageous to proceed through a field mission by a targeted response team, which should include NGO representation and one or more participants from the Department of Homeland Security.

Recommendation: The Department of Homeland Security, in cooperation with PRM and the NGOs, should continue to refine its anti-fraud methods, assuring that they can evolve in response to changes in fraudulent practices. But the risk of fraud should be confronted directly, and we should avoid as much as possible letting fraud problems force major cutbacks in access to the US program. DHS and PRM should also consider wider use of DNA testing, particularly as costs come down, if needed to preserve access for family members.

The Refugee Access Verification Unit (RAVU) has been a worthwhile development. Now that these more systematic arrangements are in place for detecting and deterring fraud in the P-3 process, the Department of State should continue to expand the list of nationalities for whom P-3 is available. But this process should go forward case-by-case, rather than moving to a universal P-3 designation. So that all nuclear families somehow separated in the process of resettlement can be speedily reunited with the anchor relative already in the United States, however, the Department must make major improvements in the Visas-93 process.

Recommendation: PRM and DHS should work together to restore the capacity to act in a matter of days or weeks to approve and resettle as § 207 refugees persons who are in grave and immediate danger and whose cases are referred by UNHCR or a US embassy. This procedure for urgent action cases should replace the use of parole to the greatest extent possible. Such cases will be exceptional and the volume of such cases can be expected to be quite low, thus making such special arrangements feasible.

Recommendation: The President has the legal authority to designate all countries for in-country processing, provided that other precise limitations confine its effect, thus honoring the "special circumstances" requirement of the statute. Such a designation would hold advantages for a handful of urgent cases each year, involving the rescue of individuals from immediately dangerous circumstances in their country of nationality. But a full exploration of possible drawbacks should be undertaken before deciding on such a step.

#### **Chapter IV**

##### **The Role of the Department of Homeland Security**

Recommendation: DHS must 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 holds implications for both enforcement and services. The system must assure that services-related perspectives are given a full airing and are not drowned out by concerns emanating from DHS enforcement offices. Such a system will likely require a far more active policy role in this realm for the Deputy Secretary, who has direct authority over both the enforcement and services units of DHS, a role that would be advanced by a centralized immigration-policy unit within his office. The Department should also move promptly to resolve currently pending matters for which clearance has been requested by other departments. As it completes the details of the immigration reorganization, it needs to make clear that field offices are bound by policy decisions reached at headquarters.

Recommendation: DHS should continue and refine existing quality control measures to assure consistency in refugee adjudications. It properly applies a generous interpretation of the refugee definition in overseas processing, and it should give ongoing consideration to other measures, such as guidance containing adjudicatory presumptions -- in order to advance these objectives and also free up more interview time to address questions of identity and inadmissibility, including security concerns.

Recommendation: DHS should continue its cooperative work with PRM and embassy security officers to bring about the creation of secure sites for interviewing refugees designated for access to the program. It should also place a priority on developing new techniques that can expand the range of possible deployments, because a large number of circuit rides to potentially hazardous locations will be needed in the current era of refugee admissions. Better security training of deployed officers and more use of experienced officers permanently assigned to refugee responsibilities, for example, will help lower the deployment threshold. DHS should also continue and enhance its active exploration of video hookup possibilities that could enable effective interviewing, when necessary, from a remote location.

Recommendation: DHS should move ahead as soon as possible with deployment of an expert refugee corps. This is exactly the kind of creative institution needed to handle the demands of admission processing when future admissions are likely to derive from a multitude of disparate groups located in far-flung and often dangerous sites, to be handled by circuit rides rather than permanently stationed staff. Having a corps of full-time and experienced refugee officers should alleviate a great many of the problems that other players have raised in the past with DHS performance. The concept has wide support throughout the government and among NGOs. DHS should resolve the remaining design questions promptly, and it should fight for the necessary funding in the FY 2005 budget so as to begin deployment on an urgent basis. Full deployment is likely to take at least two years, and by then other improvements to the refugee admissions system should have raised the pace of interviews substantially, making this improved capability even more necessary.

#### **Chapter V**

##### **Operational Issues**

###### **A. Overall observations**

Recommendation: PRM and DHS need to move away from ad hoc responses to problems, adopting instead a managerial approach that resolutely seeks to adopt or change standard operating procedures when problems recur. Current PRM-DHS working groups and PRM-NGO working groups should help in taking that approach. While that process matures, the regular involvement of DHS officers and NGO representatives on investigatory teams considering "candidate groups," as recommended in Chapter II, should go far toward anticipating possible difficulties, taking steps to avoid them, and collecting a body of experience that will foster changes with wider application.

###### **B. Overseas Processing Entities**

Recommendation: Both NGOs and IOM can serve well as OPEs, and some ongoing competition between them is probably healthy for the admissions system. In an effort to share best practices and promote productive relations between IOM and the NGOs that operate OPEs, PRM should convoke meetings on common issues. IOM could then find ways to link up better with the NGOs that will receive and place the refugees in communities in the United States, but such methods might productively be adopted as well by many NGO-run OPEs.

### **C. Training and preparation of interviewing officers**

Recommendation: DHS should arrange for better specific training on country conditions before deployment of an interviewing team, including the provision of high-quality documentary material that the team can continue to use. In preparing such training and materials, DHS should draw on a variety of sources, including its own Resource Information Center, the DOS Bureau of Democracy, Human Rights and Labor, and the Commission on International Religious Freedom. The targeted response team that investigated the particular candidate group now slated for interview should also participate. The intelligence agencies also have a role to play, particularly in helping to develop questioning strategies, tailored to the particular group, best designed to elicit information that might reveal terrorist connections or other security problems. Finally, PRM and DHS should cooperate to develop the guidelines required by the International Religious Freedom Act of 1998.

### **D. Interview procedures, including the use of interpreters [details to be supplied]**

### **E. WRAPS [details to be supplied]**

### **F. Security screening**

Recommendation: Much progress has been made since the changed security screening procedures were introduced after September 11. After many months of confusion, inefficiency, and delays, security screening is now being worked into the normal routine of processing in most cases. The intelligence agencies need to assure continued full staffing of the security advisory opinion (SAO) process so that all initial review will be completed within the stated time-frames (currently 45 days), and so that hits may be resolved promptly. All agencies involved should set a deadline for closing cases dating to 2001 and 2002, making a firm decision on eligibility or not and promptly notifying those whose cases have been in suspense. Eventually SAO processing for refugees should return to the Consular Affairs (CA) bureau -- certainly no later than completion of the larger SAO reform process -- and that process should include plans for the resumption of this function by CA.

### **G. Processing at the port of entry**

Recommendation: In the short term, DHS should revise and streamline its procedures for issuing employment authorization documents at the port of entry, so that the per-plane limit of 35 refugees can be significantly increased. Immediate issuance of such a document at the port of entry, as required by § 602 of the Enhanced Border Security and Visa Entry Act of 2002, has carried great advantages for the reception and integration of refugees once they reach the destination city. As DHS considers more extensive medium- to long-term changes in EAD issuance, it should make every effort to assure that refugees receive the document upon arrival.

### **H. Adjustment of status**

Recommendation: DHS should revise the I-485 form to include specific boxes and questions for use in connection with refugee adjustments.

## **Chapter VI**

### **The Role of the Office of the UN High Commissioner for Refugees**

#### **A. UNHCR's development of a group referral capacity**

Recommendation: The US government should do all it can to support the further development and early deployment of UNHCR's group referral mechanism. It should give such referrals quick and favorable consideration for inclusion in the US Refugee Program, and it should encourage other nations to join in the resettlement effort, perhaps through a pledging conference mechanism.

#### **B. Improving UNHCR registration**

Recommendation: The US government should continue to give strong support to early deployment of improvements in UNHCR registration practices. It should also encourage UNHCR to mandate biometric identifiers in registration documents and records wherever possible. Improved registration can provide a payoff for assistance purposes immediately. Its benefits to resettlement will appear only in the long run, but the advances in avoiding fraud, minimizing magnet effects, and improving initial decisions about access will be substantial.

## Chapter VII Possible Changes to the Refugee Statutes

Proposing statutory changes always runs some risk, because a well-crafted bill may be radically changed in the course of congressional consideration, or even if unchanged, become the vehicle for ill-considered additions. Nonetheless, 23 years of experience under the Refugee Act reveals some portions of the statute that have not worked out as intended or have had unforeseen negative effects. The following changes should be given serious consideration:

1. Repeal ceiling on asylee adjustments.
2. Repeal ceiling on refugee and asylee status grants based on coercive family planning.
3. Allow congressional consultation by both Cabinet secretaries and deputy secretaries.
4. Provide for continued refugee movements at the beginning of the fiscal year, even if the Presidential Determination is delayed.
5. Admit overseas refugees as lawful permanent residents and eliminate the requirement to apply for adjustment of status after one year.
6. Allow the President to designate specific classes of persons to be admitted as § 207 refugees without requiring lengthy interviews applying the Convention definition. (This idea could be implemented in a stronger version or a softer version. Drafts of each are attached as an annex.)

## Annex to Chapter VII Possible Statutory Amendments Affecting Refugee Admissions under INA § 207

### Option 1 -- amend the first sentence of INA § 101(a)(42) to read:

(42) The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion., **or (C) in such special circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specify, any person who is a member of a specific group designated by the President that is unable or unwilling to return to the country of nationality or, in the case of groups composed in whole or in part of persons having no nationality, the country of last habitual residence, owing to a genuine risk of serious harm in that country, and whose resettlement in the United States is justified by humanitarian concerns or is otherwise in the national interest. A designation under subparagraph (C) shall have no bearing on decisions to grant relief under section 208 or protection under section 241(b)(3) or under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.**

### Option 2 -- amend INA § 207(c)(1) to read:

(1) Subject to the numerical limitations established pursuant to subsections (a) and (b), the Attorney General may, in the Attorney General's discretion and pursuant to such regulations as the Attorney General may prescribe, admit any refugee who is not firmly resettled in any foreign country, is determined to be of special humanitarian concern to the United States, and is admissible (except as otherwise provided under paragraph (3)) as an immigrant under this Act. **In order to enhance the efficiency of the refugee admissions program, the President may, in such special circumstances as the President after appropriate consultation (as defined in subsection (e)) may specify, designate specific groups or categories of persons whose members shall be presumed to meet the definition of refugee set forth in section 101(a)(42) solely for purposes of admission under this section. Any such designation or presumption shall have no bearing on decisions to grant relief under section 208 or protection under section 241(b)(3) or under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.**