OBAMA-BIDEN TRANSITION PROJECT

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U.S. Humanitarian, Refugee, and Asylum Policy

Recommendations and Actions for the Obama Administration and the 111th Congress

December 2008

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U.S. Humanitarian, Refugee, and Asylum Policy Recommendations and Actions

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The following members of Refugee Council USA endorse these recommendations:

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

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EXECUTIVE SUMMARY

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The members of Refugee Council USA (RCUSA) look forward to working with the Administration of President Barack Obama and members of the new Congress in formulating policies that will effectively address the most pressing needs of some of the world's most vulnerable populations: refugees, asylum seekers and others who lack the basic human security that all people deserve. Each brief paper attached includes specific recommendations as well as background information. Common themes of the recommendations include strengthening fundamental American values, developing efficient and accountable systems, and strengthening our partnerships.

RCUSA is a coalition of twenty-four U.S. nongovernmental organizations focused on refugee protection. RCUSA provides advocacy on issues affecting the rights of refugees, asylum seekers, displaced persons, victims of trafficking and victims of torture in the U.S. and across the world. The coalition also serves as the principle consultative forum for the national refugee resettlement and processing agencies as they formulate common positions, conduct their relations with the U.S. government and other partners, and support and enhance refugee service standards.

The attached papers focus on the following challenges:

1. **Humanitarian Funding and Priorities:** Irregular and inconsistent funding, compounded by increasing global emergencies, has considerably weakened the U.S.'s ability to respond to humanitarian crises in recent years, resulting in numerous unmet needs. [Page 4]

2. **Iraqi Humanitarian and Displacement Crisis:** Millions of Iraqis have been violently displaced and made vulnerable since 2003 and yet the U.S. response to this humanitarian crisis has been inadequate, leaving families increasingly destitute and with dwindling hope for the future. [Page 6]

3. **U.S. Refugee Program (USRP):** U.S. refugee admission targets are far below historical averages. Actual admissions levels have fallen even lower. The USRP is further hindered by uneven admissions levels among fiscal quarters and shortfalls in domestic resettlement support, making it difficult for service providers to maintain effective operations. The U.S. must restore its historic leadership in providing protection to the world's most vulnerable persons. [Page 8]

4. **"Material Support" or Terrorism-Related Inadmissibility Bars for Refugees and Asylees:** Vulnerable refugees and asylees in need of U.S. protection have been denied admission, adjustment to legal permanent residency, and family unity due to the overly broad application of anti-terrorism provisions in the 2001 USA Patriot Act and the 2005 Real ID Act. Efforts to correct this widely recognized problem have been slow, short-sighted, and overly bureaucratic. [Page 10]

5. **Office of Refugee Resettlement (ORR):** ORR's historic success in helping victims of persecution rebuild their war-torn lives is seriously threatened due to antiquated programs designed decades ago to serve rather homogeneous refugee groups. The current budget structure does not allow enough flexibility to target specific needs. Insufficient funding further undermines ORR's ability to help prepare today's refugees to become tomorrow's leaders. [Page 12]

6. **U.S. Asylum Seekers:** Access to asylum is restricted, more asylum seekers are deported and detained, asylum determinations are often delayed for years, and the asylum adjudication system is devastated by wide variations in decision-making and "streamlining" changes that undermine the fairness and effectiveness of the immigration appeals process. [Page 14]

7. **Detention of Asylum Seekers and Other Vulnerable Persons in the U.S.:** In the past decade, the U.S. detention of immigrants has skyrocketed, costing taxpayers $1.6 billion this year alone. Asylum seekers, families and other vulnerable individuals who pose no threat to safety are unnecessarily detained in jail-like facilities. The lack of oversight and monitoring of detention facilities has resulted in abuse and ill-treatment. [Page 16]

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Humanitarian Funding Priorities

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PROBLEM

Irregular and inconsistent funding, compounded by increasing global emergencies, has considerably weakened the ability of the U.S. to respond to humanitarian crises in recent years. The practice of under-funding humanitarian accounts in the regular budget and addressing the remaining gaps through supplemental bills has also been deeply problematic and prevents help from reaching people in need. This has resulted in numerous, urgent, unmet needs in areas such as health, education, and programs on violence against women in countries recovering from crisis.

Recommendations

A revitalized USAID and Department of State should adopt significant reforms to respond effectively to growing global needs. This includes better funding mechanisms to allow for a timely and improved response to the quick onset of humanitarian emergencies and better coordination between emergency response and post conflict programming.

Actions

The Administration and Congress should:

- Fully fund humanitarian accounts in the regular budget and use supplemental funding only for truly unanticipated emergencies;
- Double the ceiling for the Emergency Refugee and Migration Assistance (ERMA) Authorization to at least $200 million and allow drawdowns to be certified by the Secretary of State, rather than the President, in order to streamline the approval process;
- Increase aid resources and diplomatic efforts to properly address the needs of internally displaced persons (IDPs) and refugees; and
- Prioritize attention and resources to strengthen efforts for successful transitioning from emergency relief to longer-term development, and ensure uninterrupted services to communities recovering from disasters. This should include improving coordination, increasing funding and streamlining access to those funds.

Results:

By adequately funding the humanitarian accounts in the regular appropriations process and ensuring an effective transition between relief and development assistance, the U.S. will better support states in a critical post-conflict stage and ensure that it remains a leader in humanitarian assistance.

Background:

The United States is one of the world's most generous providers of humanitarian aid in the event of civil strife or natural disasters. However, its ability to respond effectively to these emergencies has been considerably weakened in recent years due to irregular and inconsistent funding. Shortfalls in funding have created urgent, unmet needs in a number of areas, including health, education, and programs to address violence against women. In addition, the mechanisms by which the U.S. government responds to emergencies, and to the transition from emergencies into recovery and development assistance, do not allow for the rapid and flexible response these situations require. By adequately funding the humanitarian accounts in the regular budget, and reforming planning and delivery mechanisms, the U.S. humanitarian program can become more efficient and gain a higher impact for each dollar allocated for emergency response.

Funding Levels for Humanitarian Accounts: Overall funding for Migration and Refugee Assistance (MRA), Emergency Refugee and Migration Assistance (ERMA) and International Disaster Assistance (IDA) needs to be considerably higher in order to meet the current needs of refugees and internally displaced persons, address the impact of the global food crisis and respond to rapidly deteriorating humanitarian conditions in several countries including Afghanistan, the Democratic Republic of Congo and Somalia.

Humanitarian Accounts in Regular Appropriations: Humanitarian accounts such as MRA, ERMA, IDA, food aid and peacekeeping are regularly underfunded by significant amounts in the regular budget, relying on supplemental funding to make up the shortfalls. This irregular process causes scale-backs and shutdowns of live-saving programs, reduces crisis readiness, and creates costly inefficiencies when staff is let go and then re-hired. The humanitarian accounts should be fully funded in the regular appropriations process; supplemental funding should be used for unanticipated needs.

Internal Displacement: The number of Internally Displaced Persons (IDPs) in urgent need of humanitarian assistance has grown significantly. The IDA responds to natural disasters and helps victims of conflict, including internally displaced persons (IDPs). In FY08, funding for IDA reached $650 million through emergency funding, but continued to lag far behind the FY08 recommended level of $1 billion, resulting in woefully inadequate resources for IDPs. The U.S. should increase its assistance to IDPs by bringing the funding for IDA to a level that reflects real needs.

Resources for Unexpected Emergencies: ERMA provides the Bureau of Population Refugees and Migration (PRM) of the Department of State with an emergency pool of $100 million that it can draw on in the event of an unexpected crisis. Currently, draw downs must be approved by the President. This requirement can considerably slow down the process. Moreover, the $100 million ceiling on the account has not been updated in over a decade, even though costs and demands on the account have risen significantly. The ERMA ceiling should be raised to $200 million and the Secretary of State should be given the authority to approve ERMA draw downs.

The "Relief to Development" Gap: Foreign assistance has traditionally been divided into emergency humanitarian aid and development assistance. It has become clear that the U.S. government does not have effective mechanisms for shifting from emergency response to the recovery and development phase. This often results in disrupted services to already vulnerable people, which then contributes to continuing instability. Much greater attention and resources should be devoted to closing the relief to development gap and ensuring that the basic needs of vulnerable people are addressed during the fragile recovery period.

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Iraqi Humanitarian and Displacement Crisis

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PROBLEM

Millions of Iraqis have been violently displaced and made vulnerable since the 2003 war. Inside Iraq insecurity is compounded by a lack of economic opportunities and difficulties accessing basic services. For those who fled to neighboring countries, their savings are quickly dwindling, they cannot legally work, and they fear being forced to return to Iraq.

Recommendations

U.S. leadership in responding to the Iraqi humanitarian crisis has been woefully lacking. The U.S. must work with the Government of Iraq, the UN, and other international stakeholders to develop a comprehensive strategy for meeting the immediate humanitarian and protection needs of displaced and vulnerable Iraqis, both inside and outside of the country. The strategy should include rigorous diplomacy with refugee host countries to ensure refugees have full and legal access to livelihoods, education, health care, and generous U.S. humanitarian assistance funding. There should be an increase in refugee resettlement and appeals to other resettlement countries to also provide refuge. Inside Iraq the U.S. must work to ensure that strategic plans, including property restitution, are in place, so that the displaced can return home in safety and in dignity when the conditions warrant it.

Actions

- Develop a multi-year funding strategy for humanitarian and development assistance funding starting with at least a 50% U.S. contribution to the UN, IOM and ICRC appeals. Lead this assistance with U.S. government civilian agencies, not the military.
- Increase Iraqi resettlement target and enhance domestic capacity and preparedness to address the characteristics of the Iraqi caseload in order to successfully resettle over the next twelve months at least 45,000, half of UNHCR's identified need.
- Create a priority two processing category to resettle Palestinians forced out of their homes in Iraq and particularly those languishing in camps near the Syrian border.
- Increase funding for domestic refugee assistance through the Office of Refugee Resettlement, which is currently inadequate, recognizing specifically the extraordinary mental health needs of this population, many of whom will be torture survivors.
- Fully implement the "Refugee Crisis in Iraq Act" of the National Defense Authorization Act of 2008 and support the "Iraqi Refugee Coordinator" bill.
- Press the Government of Iraq to allocate funding to address the humanitarian needs of the internally displaced and other vulnerable groups.

Results

The above actions will better address the humanitarian and protection needs of displaced and other vulnerable Iraqis and increase the capacity of the Iraqi Government to respond to the needs of its citizens, leading to a more stable and safe Iraq.

Background

Extreme violence, human rights violations, and targeted persecution have touched almost all corners of the Iraqi population. Millions of Iraqis are internally displaced or have sought refuge in neighboring countries, including Jordan, Syria, Egypt, and Lebanon. Others have scattered across the world in search of safety including to places like South America and Southeast Asia. U.S. humanitarian assistance has been limited to date. Many refugees are quickly running out of savings and have no access to legal livelihoods. Others have waited for over two years for access to the U.S. refugee resettlement program. Palestinian refugees in Iraq who have tried to flee have long been refused entry by Jordan and Syria, and currently 3,000 live in dangerous and inhospitable camps along the Iraq- Syria border. Inside Iraq there are millions of internally displaced persons and other vulnerable groups suffering from the lack of basic necessities. While the Government of Iraq has promoted refugee returns, the current conditions cannot support returnees in a safe, sustainable, and dignified manner. There is no strategic plan in place, little humanitarian access, and no property restitution system.

Urgent Humanitarian Needs of Displaced and Other Vulnerable Iraqis

Insecurity, war, neglect and the targeting of many professionals have left Iraq's education and health infrastructure in a state of crisis. Some internally displaced Iraqis, who are squatting in residential or public buildings, are at risk of eviction and further displacement. Many lack access to clean drinking water, food rations, adequate health care, education, income and livelihoods, and other services. Many other vulnerable Iraqi populations, some too impoverished to flee even within Iraq, are struggling to protect themselves and meet their most basic needs. In recent months Iraq's dilapidated sanitation and water system has contributed to a cholera outbreak. Humanitarian access to these vulnerable populations remains limited.

Some Iraqi refugees were initially able to survive on savings, but their savings are rapidly running out, and food and fuel prices in the region have dramatically increased. Jordan and Syria do not provide work authorization for Iraqi refugees. As a result refugees are vulnerable to exploitation and pushed to engage in risky survival strategies, including child labor and prostitution, and for some, return to displacement or persecution in Iraq.

Global humanitarian assistance has been limited. UN agencies lack the funds necessary to provide direct cash assistance to widows and women-at-risk. Some schools are overcrowded and there are limited funds to build new ones. Specialized health care, especially to treat long-term illnesses such as cancer, is expensive and often unavailable. Outreach and identification of the most vulnerable is extremely labor and resource intensive in urban environments.

Vulnerable Groups

Particularly vulnerable groups include but are not limited to religious and ethnic minorities, including the Chaldo-Assyrian Christians, Sabaeans, Yzedis, and Turkmen; refugees in Iraq, including Palestinians, Sudanese, Iranian Kurds, and Ex-PMOI Iranian refugees; women, including widows; children, including orphans or unaccompanied minors; elderly Iraqis with serious medical needs, and victims of torture and violence. Iraqis with real and perceived ties to the United States or international organizations are also extremely threatened.

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U.S. Refugee Program (USRP)

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PROBLEM

U.S. refugee admissions targets are far below historical averages. Actual admissions levels have fallen even lower. The USRP is further hindered by uneven admissions levels among fiscal quarters and shortfalls in domestic resettlement support. These make it extremely difficult for service providers to maintain effective operations. Family reunification possibilities are narrowly defined, leaving many families permanently separated.

Recommendations

The Administration should work with Congress to set a higher admissions target with a more robust reception and placement program. Admissions should be based on data projecting how many refugees are in need of resettlement worldwide. This goal should be achieved by ensuring that the State Department's Bureau of Population, Refugees, and Migration (PRM) and Department of Homeland Security (DHS) coordinate a detailed plan to identify, interview, process and resettle this number of refugees within the fiscal year. There should be a more efficient and expanded family reunification program that is not confined by nationality.

Actions

- Propose admitting 125,000 refugees in fiscal year 2010 and commit to gradually increase the number of refugees admitted each consecutive year, with a goal of admitting 200,000 refugees in fiscal year 2013.
- Set a goal for PRM and DHS to admit 50 percent of the admissions target by mid-year and oversee a steady flow of refugees each quarter.
- Replace the Priority Three refugee program with a family unity priority program that is not nationality restricted and which more efficiently facilitates access to resettlement for first degree relatives, grandparents, and grandchildren with a proven dependency.
- Address inexcusable bureaucratic delays in the processing of I-730 applications for refugees to unite with their spouses and minor children and rescind the regulatory two-year filing deadline for I-730 applications.
- Propose that Congress increase funding for local and national infrastructure to successfully receive and place an increasing number of refugees.
- Ensure that the Consultation between the Administration and Congress, as lawfully required by the 1980 Refugee Act, is held much earlier in the year to ensure it influences the final Presidential Determination.

Results

With these recommendations adopted, the USRP would be restored in its ability to provide vital protection, reception and placement to thousands more refugees in need. A more even flow of refugees throughout the fiscal year will create more stable operations for refugee service providers, and thus improve the warm welcome refugees receive from communities across the nation. An increased commitment to protecting refugees worldwide and to unifying families to the U.S. would be a significant demonstration of U.S. global leadership.

Background

The admissions target has stagnated at around 70,000[1] in the past eight years, a low number considering a historical average of admissions targets closer to 100,000[2] per year. Refugee admissions levels are similarly lower than in past years, and the target-to-admitted ratio has experienced an all-time low between 2000 and 2007[3]. Refugee admissions levels must be determined based on the global need for resettlement. While such determinations should consider the United Nations High Commission for Refugees (UNHCR)'s capacity to make resettlement referrals, it must also include direct embassy referrals, groups of special humanitarian concern (Priority 2 refugees) and family reunification (Priority 3 refugees) that are accomplished without requiring the involvement of UNHCR.

With more than 14 million refugees and asylum seekers worldwide[4], the decreased U.S. admission levels has resulted in tens of thousands of innocent, persecuted people being left without relief. With decreased U.S. admissions, more refugees have suffered in camps and urban areas, away from their families, and without access to healthcare, education, and the ability to work. Also, due to the U.S.'s restricted family reunification program, dependent grandparents, young siblings with no parents to care for them, or disabled adult children are left behind.

While admissions levels are low, the number of refugees admitted drastically fluctuates between the four quarters of the fiscal year. For the past eight years, more than twice as many refugees have been admitted in the fourth quarters as the first quarters. This uneven arrival pattern within the fiscal quarters leads to a severe toll on organizations that serve newly arrived refugee populations. Since funding is allocated on a per cap basis, it is extremely difficult to maintain operations during low levels of admissions in the first fiscal quarter and to increase staff and resources suddenly in the fourth quarter.

On the domestic side there is a need to rejuvenate the resettlement capacity and strengthen the community hosting model at the heart of the program. Per capita funding for local reception was set at $800 in 2001 and is only $850 today, while the actual costs have increased at rates that exceed annual cost of living estimates (particularly housing and utilities)[5]. The initial reception period is critical for the long-term success of refugee integration. The U.S. government must stand up to its role in this public/private partnership to ensure that each refugee is received humanely and with dignity.

Finally, the Refugee Act of 1980 requires consultations by DOS with Congress to determine annual refugee admission numbers. In practice, however, the administration has made its determination prior to consulting with Congress. Thus, it is unclear how the presidential determination is calculated, except that it is done so without the formal consultation of Congress.

[1]Bureau of Population, Refugees, and Migration (PRM) data 2000-2008.
[2]Calculations based on refugee admissions targets 1975-2008.
[3]Calculations based on refugee admissions targets and actual admissions. From 2001-2008, an average of 66.95% of each year's annual target were actually admitted that year, compared with a 89.09% average from 1975-2008.
[4]*World Refugee Survey 2008.* U.S. Committee for Refugees and Immigrants.
[5]If the per capita had 4% cost of living increase every year since 2001, the per capita would be approximately $1,052 in 2008 and $1,095 in 2009.

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"Material Support" or Terrorism-Related Inadmissibility Bars for Refugees and Asylees

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PROBLEM

Vulnerable refugees and asylees in need of U.S. protection have been denied admission, adjustment to legal permanent residency, and family unity due to the overly broad application of anti-terrorism provisions in the 2001 USA Patriot Act and the 2005 Real ID Act. Efforts to correct this widely recognized problem have been limited, short-sighted and overly bureaucratic.

Recommendations

The Administration needs to work closely with Congress to pass legislation that will address the root of this problem, the overly broad definition of terrorist activity. In the interim the Administration must work quickly to amend the current way in which the exemption authority is exercised. For those refugees who have already been admitted to the country and now seek status adjustment, exemption should be immediately forthcoming. For those refugees and asylees who gave "support" under duress to Tier I and Tier II terrorist organizations and who gave voluntary support to pro-democracy groups in their struggle against authoritarianism, exemption should be immediately forthcoming. More information sharing with non-governmental organization and better inter-agency coordination is also required.

Actions

- The Administration should work with Congress on amending the overly broad definition of terrorism to make it consistent with the rest of U.S. Code and the common understanding of the term "terrorism."
- The Administration should work with Congress to pass a duress exception that would protect victims of terrorism from being defined as supporters of terrorism.
- Develop administrative procedures to ensure that all of the refugee adjustment cases currently on hold are adjudicated quickly and fairly.
- All persons who provided support under duress to Tier I and Tier II terrorist groups should be exempted from the bars of inadmissibility.
- Develop alternative more streamlined procedures for processing Tier III cases.
- Develop and implement streamlined procedures for considering waivers for asylum cases in removal proceedings.

Results

If these legislative and administrative recommendations are considered, refugees already adjudicated admissible to our country—and who have been here for many years—will be able to successfully adjust their status. Overseas refugees who need our help and have no other option available to them will be admitted in a timely and secure fashion. Asylees who have proven they have a credible fear of persecution but whose cases are still on hold due to these provisions will be admitted and the subsequent backlog will be cleared. Family reunification cases will resume in a timely fashion.

Background

For nearly four years the U.S. government has been applying counter-terrorism provisions of the USA PATRIOT Act of 2001 and the REAL ID Act of 2005 to bona fide refugees and asylum seekers making them inadmissible to the U.S. The law is so broadly written that the Bush Administration took the position that virtually any civilian who bears arms is a "terrorist" and anyone who gave money, food, water or emergency medical treatment has provided material support to terrorism, even if the act was conducted at gunpoint or under the threat of death. The Department of Homeland Security has barred thousands of otherwise eligible refugees from the United States. Refugees and asylum seekers already admitted to the U.S. have been unable to adjust their status and acquire their green cards and have been informed that they could not bring their spouses and minor children to join them.

There has been widespread interagency agreement that the law was not intended to punish the persecuted and that both legislative and administrative fixes are required to address this problem. Despite years of inter-agency work group meetings aimed to alleviate the ongoing suffering caused by these provisions, the solutions to date have been short sighted and overly bureaucratic.

The Administration has discretionary authority to exempt certain groups from the overly broad application of these provisions. To date individuals who were members of, representatives of, or provided "material support" to or solicited funds from six different Burmese groups are eligible for discretionary exemption. Mustangs from Tibet; Alzados from Cuba; and appropriate groups affiliated with the H'mong or Montagnards from Southeast Asia are also exempted. In addition, those who gave support under duress to Tier III (non-designated) groups are eligible for exemption. Tier I and Tier II groups must be first cleared before individuals can be exempted for having provided support under duress. To date only three have been cleared. Despite this progress, and the issuance of over 7,000 exemptions, hundreds and hundreds of similar groups still need to be exempted before individuals can be admitted, have their status adjusted, or reunite with their families.

On December 27, 2007 the Consolidated Appropriations Act of 2008 was signed into law. The Act contained a provision that would help alleviate some of the impact of the overly broad terrorism-related bars to admission. The new law broadened the Administration's authority to exercise its discretion to exempt any terrorism-related bar to admission unless an individual voluntarily and knowingly engaged in terrorist activity on behalf of a designated terrorist group. This means that the Administration may now admit refugees and asylum seekers that engaged in armed resistance against repressive regimes. Children may now also be considered for waivers, but the current Administration has failed to exercise its authority in a meaningful way.

Still, the exemption authority remains discretionary. Judicial review of a determination to grant or revoke discretionary exemption is limited, and the application of these waivers is extremely slow, bureaucratic, and time consuming. While they have helped some refugees, broadened exemption authority alone will not solve the on-going "material support" problem plaguing refugees and asylum seekers.

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Office of Refugee Resettlement (ORR)

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PROBLEM

ORR's historic success in helping victims of persecution and other vulnerable persons rebuild their war-torn lives is seriously threatened due to antiquated programs designed decades ago to serve rather homogenous refugee groups. The current budget structure does not allow enough flexibility to target specific needs. Insufficient funding further undermines ORR's ability to help prepare today's refugees to become tomorrow's leaders.

Recommendations

ORR needs to fund staffing infrastructure for local resettlement offices and ethnic community based organizations (ECBOs) to help ensure continuity of services. More discretion in their use of funds will better help refugees and other vulnerable populations who enter with different skills. Overall funding levels have been stagnant for years and need to be increased so that refugees continue to become self-sufficient and well integrated in a timely fashion.

Actions

- ORR should work with all relevant stakeholders to significantly alter how it conceives standing and discretionary programs so that they support integration as well as early self-sufficiency.
- ORR should fund staffing infrastructure performed by local resettlement offices and ECBOs to ensure the continuation of services to refugees.
- ORR should have discretion in its use of refugee cash, medical, social services, and targeted assistance in order to ensure that the diversity of populations and specific needs within them are targeted with the resources they need and deserve.
- ORR must further develop DUCS structure and services to make the program more consistent with child welfare principles.
- The Administration should work with Congress to increase overall ORR funding to at least $1.02 billion in FY2009, and they should work with Congress to pass legislation granting ORR the ability to use unspent funds at its own discretion within the same fiscal year.

Results

Implementation of these recommendations would allow ORR to meet effectively the challenges of today's refugee program. It would improve ORR services and greatly contribute to the protection, self-sufficiency and integration of at risk people into their new life in the U.S.

Background

For over thirty years ORR's programs have been the foundation of assistance for refugees and other vulnerable populations such as Cuban entrants, asylees, unaccompanied alien children, and victims of torture and trafficking, who resettle in this country after suffering persecution, extreme violence, torture, and trauma. With very basic and minimal assistance these refugees have successfully adapted to a new language and culture that today they proudly call home.
This historic success is however in grave danger. The basic structure of the current program was designed to serve refugee arrivals and profile patterns that are no longer the norm in resettlement services and to achieve outcomes that are no longer most relevant to receiving communities.

Overall funding for ORR has been chronically insufficient. For example, ORR utilizes a highly successful program known as the Matching Grant Program, which matches federal dollars with private sector contributions of cash, goods, and volunteers. Together, these funds help newly arriving refugees and others become self-sufficient without entering the welfare system. The program is widely recognized as an efficient way to help refugees achieve self-sufficiency. Funding for this program no longer matches the need and available funding runs out three to four months before the new funding cycle begins and often at times when the majority of refugees are being resettled. Likewise, discretionary funding for special populations and needs and preventive health programs is also inadequate. State and local health programs have difficulty responding to the impact of new language requirements, sudden increases in refugee flows, and difficult health conditions brought on by protracted refugee situations and war.

ORR also allocates funds to states, which design their own refugee service delivery system emphasizing job training and placement, English language acquisition, and citizenship services; however, the funds for this line item are inadequate, leading to considerable unevenness in service delivery from state to state. Furthermore, funds are allocated based on a formula using state arrival numbers for a three year period. Funds are allocated on this basis yet don't reflect annual admission numbers and needs.

ECBOs, managed primarily by and for members of particular resettled refugee groups, are invaluable partners in the integration process of refugees. The amount of ORR funding allocated for its "Ethnic Community Self Help" program has actually decreased in recent years. In FY2009, only five new grantees were funded through this program, a terribly small number, given that the network of ECBOs numbers in the hundreds.

ORR incorporates the Division for Unaccompanied and Separated Children Services (DUCS). The political climate in which the DUCS program was created made the shift to a new culture and model based on child welfare principles difficult. While ORR has begun this shift, DUCS continues to be overshadowed by DHS enforcement and suffers from lack of integration with HHS's wider child welfare systems. The continued shift should emphasize flexibility and include differentiation of roles and decision-making within its monitoring, licensing and placement in order to ensure high level care for children, checks and balances, and appropriate oversight. Increased funding would facilitate this process.

Funding for torture survivor services has remained static for more than five years, despite continuing increases in demand. Funding difficulties have forced several centers to close or drastically cut back on services. Many centers also need funding to train other health and related professionals and conduct research on the impact of torture and best practices for healing survivors.

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U.S. Asylum Seekers

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PROBLEM

Access to asylum is restricted, more asylum seekers are deported and detained, asylum determinations is often delayed for years, and the asylum adjudication is devastated by wide variations in decision-making and "streamlining" changes that undermine the fairness and effectiveness of the immigration appeals process.

Recommendations

The Administration should institute reforms and oversight to ensure that asylum seekers are no longer inappropriately detained or at heightened risk of being returned to their persecutors. They should establish a high-level office within DHS to lead this effort.

Actions

- End the arbitrary detention of asylum seekers by providing case-by-case release determinations of all asylum seekers, increasing access to parole and alternatives.
- Create and properly resource a Refugee Protection Office reporting directly to the Secretary of Homeland Security to coordinate and ensure the protection of asylum seekers and refugees throughout ICE, CBP, USCIS and USCG policies and practices.
- Support legislation to eliminate the one-year filing deadline and immediately issue policy guidance that deadline exceptions should be broadly interpreted to minimize the number of asylum applications denied based on the time of filing and not on the merits.
- Improve the Expedited Removal Process by directing CBP to implement procedures to ensure that its officers are held accountable for following DHS rules designed to prevent the return of asylum seekers to their persecutors.
- Direct USCIRF or another bi-partisan Commission to study treatment of asylum seekers and migrants under the recent expansion of Expedited Removal authority to the Border Patrol.
- Ensure that asylum seekers who are not detained nor entitled to public assistance are able to work legally for food and shelter by rescinding the 1995 reform barring asylum seekers from work authorization for 180 days.
- Improve the integrity of the immigration courts by (1) legislatively repealing those aspects of the Real ID Act which insulate immigration judge decisions from administrative review; and (2) administratively requiring Board members to articulate the legal basis for all decisions and rescinding the directive that BIA precedent decisions can be issued by panels; thus, reinstating the requirement that such decisions be made by the full Board.
- Ensure that DOJ and DHS promulgate regulations to clarify that the "particular social group" ground of the refugee definition includes the unwillingness or inability of state authorities to provide protection from gender based harms such as rape and forced marriage and for children who do not have the protection of their parents.

Background

The U.S. has a long history of providing safe haven to refugees who flee persecution. This commitment was affirmed when the U.S. pledged to abide by the protections extended to refugees in the 1951 Convention Relating to the Status of Refugees and its Protocol, including the obligation to ensure that those who face harm in their country of origin are not returned back to their persecutors. The 1980 Refugee Act enshrines these protections in domestic law.

In contrast to this commitment, access to asylum has been restricted, summary deportation and detention of asylum seekers have expanded, asylum determinations have been delayed for years while the various immigration bureaucracies "consult," and the asylum adjudication process has been devastated by wide variations in decision making and "streamlining" changes that have undermined the fairness and effectiveness of the immigration appeals process. Asylum officers and immigration judges have increasingly applied the one-year asylum filing deadline in ways that are inconsistent with Congress's intent and many refugees have been denied asylum because of this deadline. With the transfer of immigration matters to the Department of Homeland Security (DHS) and its various bureaus, an expanding alphabet soup of government bureaucracies now have a hand in asylum matters.[1] The asylum adjudication process is spread out over several agencies or departments and lacks consistency and predictability; asylum proceedings are often protracted, adversarial and depart from U.S. and international law standards. During the process, most asylum seekers receive no work authorization and if they work to support themselves, they are barred from receiving a Green Card even if granted asylum.

In 2005 the bipartisan United States Commission on International Religious Freedom (USCIRF) issued a comprehensive report documenting the treatment of asylum seekers in the United States, finding that critical safeguards for preventing the expedited deportation of refugees were not followed, that asylum seekers were detained in inappropriate prison-like facilities, and that decisions to grant asylum—or instead deport someone back to their country of feared persecution—varied widely depending on which individual immigration judge heard the case. USCIRF found that it was exceedingly difficult to resolve inter-bureau issues relating to asylum within DHS and recommended the creation of an office, headed by a high-level official, to address and coordinate cross-cutting asylum issues. But DHS expanded the use of this flawed process without implementing critical reforms. Studies, statistical analyses and nongovernmental reports have also detailed these and other serious problems plaguing the asylum system.

Federal court judges and other experts have widely criticized the quality of decision making by the immigration courts and the Board of Immigration Appeals (BIA). "Streamlining" changes, made by the Justice Department to speed up appeals by increasing the use of summary and single-member decisions, undermined the quality of decision-making at the BIA and led to a steep drop in its approval of asylum appeals, as documented by USCIRF and others. Several studies have documented the wide variations in immigration court asylum denial rates. Reforms announced by DOJ in August 2006 did not go far enough – and have still not been fully implemented. The BIA has also denied asylum claims based on misinterpretations of long-standing precedent and international standards. These flawed interpretations have inappropriately narrowed eligibility for asylum of many with genuine need for protection.

[1] USCIS, ICE, CBP and other offices within DHS; EOIR, the BIA, and OIL in DOJ; as well as, for refugee matters, PRM at the State Department and ORR, which is part of HHS.

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OBAMA-BIDEN TRANSITION PROJECT

Detention of Asylum Seekers and Other Vulnerable Persons in the United States

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PROBLEM

In the past decade, the U.S. detention of immigrants has skyrocketed, costing taxpayers $1.6 billion this year. Asylum seekers, families and other vulnerable individuals, who pose no threat to safety are unnecessarily detained in jail-like facilities. The lack of oversight and monitoring of detention facilities has resulted in abuse and ill-treatment, including sexual abuse.

Recommendations

Immigration detention should be used only when demonstrated necessary after considering release options that will achieve the government's legitimate goals of ensuring public safety and appearances at court. Immigration detention should never be mandatory, indefinite, or punitive in nature, and should comply with international standards. Detainees should have regular access to family members, legal counsel, interpreters, UN agencies, consular authorities, assistance organizations, and religious services. They should receive high quality medical care. Vulnerable persons should not be detained. Children should not be forcibly separated from their parents. Detention facilities should be regularly monitored by qualified persons.

Actions

- Do not fund any increase of detention bed space.
- Cease the detention of families and parole families with children. Only separate children from their parents when separation is in the best interests of the child.
- Issue enforceable regulations on detention standards to ensure fair treatment, transparency, and accountability at all facilities housing detainees by June 2009.
- Ensure that decisions to detain are done case-by-case and that detention is used only when there is substantial risk of flight or danger to the public.
- Increase the use of parole, ensuring that parole decisions are made in every asylum seeker's case. Increase alternatives to detention; restrict use of ankle bracelets; fund community-based organizations to screen and provide services to those eligible for release.
- Rescind the November 6, 2007 ICE Parole Guidance and reinstate and codify into regulations the December 30, 1997 Parole Guidelines so that asylum seekers who satisfy the criteria (identity, community ties, and no security or other risk) can be paroled from detention.
- Support legislation and regulations that provide judicial review of release decisions.
- Expand and fund system-wide legal orientation and pro bono lawyer programs.

Results

If the proposed actions are implemented, it will be in conformity with international human rights law and standards. The Department of Homeland Security (DHS) will be better positioned to enforce immigration law without resorting to arbitrary and ineffective measures. Private contractors and local prisons will be accountable to detention standards and detainees will be treated more humanely. There will be substantial cost savings.

Background

Under international human rights law, no one should be subject to arbitrary detention. Yet, the U.S. government increasingly detains immigrants, even asylum seekers fleeing persecution and torture survivors who are retraumitized when detained. The number of individuals detained by immigration authorities in the United States has increased to more than 320,000 people per year and more than 30,000 on any given day. With an average cost of about $100 per day for each detainee, American taxpayers are unnecessarily paying millions of dollars each day to lock up individuals who pose no threat to the public.

Although often eligible for release, immigrants and asylum seekers are rarely given the opportunity to apply for release or seek judicial review of the decision to the detain them. Detainees have insufficient access to telephones, their families, or adequate health care. Moreover, detained asylum seekers and other immigrants frequently cannot obtain legal assistance necessary to present viable claims in an adversarial and complex court process. One independent study showed that asylum seekers with counsel are eight times more likely to receive a grant of asylum. The Department of Justice's legal orientation program (LOP) provides group legal orientation, individual evaluation, and access to pro bono lawyers. It not only helps detainees but also improves judges' efficiency and reduces time in detention.

The abuse and ill-treatment of migrants is well documented. A DHS Office of Inspector General report found non-compliance with detention standards at all five ICE detention facilities it visited, including violations of health care, environmental health and safety, general conditions of confinement and the reporting of abuse. In 2008, the *New York Times, Washington Post,* and ***60 Minutes*** reported on widespread poor medical care in detention facilities. There is insufficient oversight and monitoring of detention facilities housing migrants and asylum seekers. As a result, the abuse and ill-treatment suffered by immigration detainees often goes unreported, and no one is held accountable.

Unenforceable Standards

Although guidelines for the detention of migrants and asylum seekers exist, they do not have the force of law and are not enforceable in private, state, and county jails where the vast majority of immigrants and asylum seekers are currently being housed. Despite well-documented abuses, reportedly no federal contract has ever been terminated due to a violation of the guidelines at private, state or local jails.

Release to the Community as a Detention Alternative, Not Ankle Bracelets

DHS has implemented alternative to detention programs but has used electronic ankle bracelets on far too many individuals who could simply be released or paroled. Electronic bracelets are dehumanizing and highly burdensome especially when used on pregnant or nursing women, the disabled and elderly, and other vulnerable groups. Especially for asylum seekers, DHS should release them on bond or parole or if individuals have no community ties, to a community group that can provide ongoing orientation and services that help those released to pursue their claims and meet their obligations to the court.

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… 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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