

AFGHANI ASYLUM SEEKERS AND REFUGEES IN THE REPUBLIC OF INDONESIA

First Report

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April 2004

Hassan Ghulam traveled independently to Indonesia in February and again in March 2004 in response to direct invitations from Afghan asylum seekers stranded for more than two years after smugglers' boats were forcibly returned to Indonesian waters by the Australian navy. The asylum seekers had landed on Ashmore Reef, Australia in October 2001. UNHCR Jakarta Office assessed and rejected their claims for protection and rejected them again in the internal appeal process. IOM, funded by Australia, was contracted to provide basic accommodation, food and health services to asylum seekers living in the community, without work rights. Their current hopelessness and destitution is a human tragedy.

Hassan Ghulam is the President of the Hazara Ethnic Society in Australia, Inc based in Brisbane. An Australian citizen, he became involved in a voluntary capacity with refugees on temporary visas from the time of their release into the community in 1999. An independent spokesman, free to speak out, he is frequently interviewed by national and international media on asylum seeker and refugee policy and how policy and practices affect people. He is very active in human rights and social justice networks in Brisbane and elsewhere, resources permitting.

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NOTE: This report is also accessible online at <http://www.safecom.org/hassan-report.htm>

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My heartfelt thanks go to *all the friends around Australia* who so generously helped finance my travel costs and shared their fine and sensitive feelings via cards and condolences. I am grateful to have been with my family in Germany to bury my Mum and to celebrate her remarkable life. She will remain an inspiration.

My compliments and thanks to the Chief Officer of Immigration in Lombok. Thanks to IOM officers in Jakarta, Lombok and Situbondo for efforts to protect me.

My deepest gratitude to all asylum seekers who shared their lives' important stories with me. A million thanks for the warm welcome and magnificent hospitality that I enjoyed. My apologies to the women and children, for whom I had not nearly enough time.

Memorable and caring friends: Sean, Melody and Robert. Dear friend, sister Freddie Steen, whose inputs from the beginning to the end have been and are the absolute highlights. Thank you for editing my Dari-Deutsch-English into "report English".

1 BACKGROUND

Indonesia

Indonesia is the transit country for asylum seekers using so called 'people smugglers' to reach Australia. It is also the place where they had to prepare themselves for a death defying, dangerous journey. But this country of thousands of island is not a signatory to the Geneva Convention of 1951, leaving the legal principles of international law to the mercies of Indonesian national and domestic immigration law.

At the time of a downturn in their economy, when the currency was losing its value, and political instability accompanied unemployment and historical changes in society, Indonesia saw an unprecedented influx of thousands of asylum seekers from Iraq, Afghanistan, Palestine, and Iran. This undoubtedly added further to unease in Indonesian society.

The refugees had between \$US 2,000-10,000 each – often borrowed - to pay for their journey. This inflow of cash made up in part for the downturn in local tourist trade, and created income and work for underused fishing boats and ferries, the cheapest form of transport. No wonder then, that criminal people smugglers could competitively purchase the services of poor local fishermen to navigate their often unseaworthy boats towards Australia.

A political factor was also at play. There was some level of unhappiness with Australian government policies regarding East Timor, which made Indonesian authorities reluctant to control the so-called illegal migration. Well-organized international smuggling rings to south-east Asia had well established connections at many levels of Indonesian society.

For Indonesian authorities to be generous with a stamp on a so-called 'travel document' was simple. "Why not?" was the attitude. These suffering refugees have been mistreated by sanctions and USA-manipulated wars. If they were able to reach Australia there was no harm to Indonesia. So a little money in the pocket, and turning a blind eye, was not difficult.

Afghanistan

As the merciless march of the Taleban continued across Afghanistan, financially supported by certain Arab states, the ground for Hazara and Shia populations was burning. The only way to survive was to flee and take refuge. Moving from one place to another internally, as well as leaving Afghanistan. This created a market environment for people smugglers.

Displacement was not new. It goes back to the beginning of the defeat of Hazara people by King Abdul Rahman Khan who created the first wave of refugees, and pushed them into three directions - Quetta Beluchestan in the south, Mashhad in Iran in the west and Uzbekestan in the North. The relocation for Hazara from all corners into a geographic area where their ethnicity, language and religion would not be questioned, seemed to be the appropriate solution.

In the Islamic Republic of Iran they had no place, not even those who had sacrificed time, money and risked their lives during Iran-Iraq war. In Pakistan, the Fatwas of Sepah-e-Sahabah and Lashkar-e-Tayyebah (which covered thirty-six organizations) encouraged persecution and the Madrasa (schools) similar to those producing the Taleban, continued on their mission, which included acts of terror against Hazara and Shia. In Arabic countries, even with valid visas, they had no legitimacy - no right to enjoy the income received from work, to have a business under their own name, or to live as equal human beings. Escaping from religious war and Jihad and running away from the shame of defeat to far-flung hiding places - like Australia - seemed the answer, not withstanding that they had to leave every thing behind.

At the peak of antagonism between world power USA and the Taleban over the delivering up Osama Bin Laden, then hiding in Afghanistan, two parallel events significantly affected the mostly Muslim asylum seekers in transit in Indonesia: the aftermath of September the 11th attack on the USA and Australia's naval interception program, including the refusal to let MV Tampa disembark 433 asylum seekers rescued at sea.

Australia

Onshore, in Australia, there was some public knowledge of immigration detention, though diminished by distance and isolation, and by very limited media access. Freedom of the press was also compromised. Even by late 2003 what happened offshore, on Christmas and Manus Islands and on Nauru, was largely unknown: out of sight, out of mind. Nauru, under Australian duress, was a no-go zone, for journalists, lawyers, and human rights advocates. Even less was known about asylum seekers and refugees in Indonesia, who had failed in the last part of their refugee journey and were returned from Ashmore Reef to Indonesian waters by force and against their will. Most Australians remain unaware of this and other breaches of Australia's international obligations.

It took the gruesome 30 day hunger strike by 45 men on Nauru, isolated and abandoned there for more than two years, to remind Australia and the world last Christmas of the continuing violation of the human rights of 284 men women and children held there in indefinite Australian detention. The protest was reported by grassroots refugee advocates, based on their telephone and email communications with protesters and, thankfully, picked up by the media.

News of the hunger strike on Nauru reached the asylum seekers stranded in Indonesia. Surviving in the local community, however they had access to the Internet, radio and television and were aware of the protest occurring on Nauru. In desperation they decided to protest also and commenced a hunger strike on 8th January 2004 to draw attention to their tragic situation. Please read their own statements on www.nauruwire.org (Lombok Listener)

What happened to asylum seekers repelled by the Australian navy at the direction of the Prime Minister and returned to Indonesia?

Allegations and accusations of mistreatment, corruption, denial of human rights and systematic neglect of asylum seekers were recorded in the 2002 Human Rights Watch report on Australia. I heard the same and more. (See Attachment 2). The following questions arise:

Were United Nations High Commissioner for Refugees (UNHCR) officials in Indonesia in league with people smugglers and encouraged and bribed to slow down the processing of asylum applications to build a rich 'pipeline' of customers for the journey (or repeat journey) to Australia? Asylum seekers complain of 3, 4 even 5 failed attempts in leaking boats that, thankfully, turned back to shore and did not founder at sea. They grieve for the estimated **600-1,000 people lost at sea** between Indonesia and Australia.

What official and unofficial payments did Australian officials make to UNHCR or UNHCR officials personally in Jakarta? Why were the survivors of the SIEVX dispatched with such unseemly haste? There are accusations that Australia paid a lot of money to an UNHCR officer in Jakarta - that "x (an official) said while this UNHCR official has authority, no refugees will be resettled in Australia..."

The hastily devised 'Pacific Solution' in September 2001 was followed by arrangements and Memoranda of Understanding (MOU) which outsourced to UNHCR and the International Organisation for Migration (IOM), the delivery of services to asylum seekers who are Australia's responsibility in Indonesia, on Nauru and in Papua New Guinea. These arrangements seriously distorted the traditional roles of UNHCR and IOM and raise questions of conflict of interest and serious departures from their mandate and mission. Details of these arrangements, and their cost to the Australian taxpayer, have been suppressed or disguised.

Were there 'encouragements' offered to UNHCR officials by the Australian Government for them to both refuse granting refugee status and turn the asylum seekers around, and to actively promote "voluntary repatriation"? Were the delays in processing and review designed to dis-able and harass asylum seekers, and drive them to return to the country of their persecution?

Asylum seekers claim UNHCR officials:

- neglect their needs,
- do not communicate with them regularly,
- gave them no access to legal advice,

- made errors in the processing of their initial claims,
- do not provide independent reviews,
- do not communicate decisions in the language of the claimant,
- do not act on complaints of interpreter bias, and
- do not monitor the asylum seekers' deteriorating living conditions and health.

They complain of their life in limbo – no permission to work, no access to education for their children, no opportunity to integrate. They are adamant it is unsafe for them to go home.

Conservative governments and parties in the rest of the world have considered and adopted some of the Australian policy and practices to keep out of the “first world peoples from the third and fourth worlds” who are fleeing persecution, starvation and poverty. This has negated their commitment to the Geneva Convention of 1951 and undermined the UN in general. Understandably this attitude has done its mileage and it is declining.

The Pacific Solution's 'failed asylum seekers' on Lombok

After more than two years surviving in Indonesia, asylum seekers whose claims had been rejected by UNHCR acted to bring some kind of resolution to their miserable lives. A UNHCR review of 32 Afghani asylum cases (**Attachment 1**) took place in the wake of a hunger strike in the city of Mataram, Lombok, Republic of Indonesia, from 8-16th January 2004. A letter received by the asylum seekers from UNHCR dated 15th January provided a fresh start to a process of review, and ended the stalemate between the asylum seekers and UNHCR officials.

The review of all remaining 32 cases was planned for early March, with a detailed process to be determined in consultation between UNHCR Jakarta, the proposed asylum seekers' lawyer/migration agent Marion Le and their appointed community representative, Hassan Ghulam. Prominent human rights advocate Marion Le, an independent migration agent based in Canberra, had been approached by UNHCR in mid-January to be the authorized agent for the asylum seekers but this arrangement did not materialize. Parity with the review arrangements put in place for rejected asylum seekers on Nauru had been a demand from the protesters, i.e. proper legal process, access to information and advice. In other words, justice and their human rights.

This first report

In this report I am trying to explain what is wrong. *Why* it is today that asylum seekers and refugees are destitute in Indonesia, absolutely hopeless, without hope, without a life, without a future. They have lost all their money, all their assets have been lost at sea or were stolen, and they are totally dependant on the inadequate support provided by IOM under contract to the Australian Government: basic accommodation, basic food twice a day, one toy per child per year... Family members are separated, children are denied education. Adults denied their human rights and stripped of their human dignity are falling apart. They are strangers in a strange land which will not allow them to live with full rights as human beings.

These asylum seekers remain the responsibility of the Australian Government under the UN Convention (which is why we pay IOM to care for them). And the vulnerable, courageous women and children, fully adjudicated by UNHCR and found to be in need of protection, deserve *derivative protection* under the UN Convention. Under Australia's recently increased refugee program, they could be resettled in Australia where their husbands and fathers were granted refugee status years ago. *In the name of humanity, this situation of suffering cannot go on.*

2 GENEVA MEETINGS -5th AND 6th FEBRUARY 2004

In early February 2004 I had visited the Geneva offices of UNHCR (Andrew HARPER) and IOM (Jian ZHAO and Christopher Lom). I briefed them on the critical issues affecting nearly 300 refugees on Nauru, as personally known to me, and gave details of their 30 day hunger strike last December/January. I had been intimately involved in reporting the issues and deteriorating conditions to the Australian and international media and had been in direct telephone contact with spokesmen for the refugees for most of the preceding two years. (This contact was made possible by generous donations from Australian supporters and the email and letter writing efforts of Elaine Smith and her network.) During the hunger strike we maintained regular contact by telephone and email, including with the hunger strikers themselves.

I commented that the issues in Lombok appeared to be similar to those on Nauru. Both involve people who had fled tyranny and persecution and whose lives were in limbo. Both groups were in the indirect care of Australia and had been forcibly transported or directed to their destination by Australian Government.. Both groups continue to suffer, without hope of a future. Complete despair drove both groups to protest through a hunger strike, and to ask for a humane and lasting solution. Knowledge of the claims of the Lombok refugees, their treatment by Australia, their abandonment and isolation has only recently come to the notice of advocate networks in Australia.

I expressed my personal opinion regarding the human rights violations, miscarriages of justice, and the resulting serious damage to Australia's reputation as a supporter of human rights. I informed the officials of legal action by Julian Burnside and others, in regard to what they alleged is the illegal incarceration of asylum seekers on Nauru and children in detention, and described for them the growing mass movement of Australians opposed to the current government policy of mandatory, indefinite and non-reviewable detention. I also described the regime of temporary three or five year visas for refugees, fully adjudicated as being in contravention of the 1951 Refugee Convention and 1967 Protocol to which Australia is a signatory.

I expressed the view that identified breaches of human rights and international law were the clear focus of those calling for reform in Australia, and that partnerships between the Australian Government, UNHCR and IOM on Nauru and in Indonesia were perceived to compromise the latter. For instance, serious concerns are held about violations of human rights of people in the care of IOM in the 'offshore border prison camp' of Nauru.

I requested the officials to pass on our plea for a visit to Australia by Ruud Lubbers the Head of UNHCR, to take up the major issues human rights issues with the Australian Government and to demonstrate that UNHCR HQ stood behind the public position, which had been taken by their Regional Representative in Australia. I noted that the Representative was highly regarded in his difficult and sensitive role, and for withstanding sustained criticism and opposition by the Australian Government. The effective behind the scenes work, and the negotiations with New Zealand, were greatly appreciated by refugee advocate networks in Australia.

3 JAKARTA MEETINGS - 24th AND 25th FEBRUARY 2004

Geneva HQ facilitated a good welcome by the IOM and UNHCR in Jakarta Indonesia. I met with Protection Officer Tony Garcia and Stephane Jaquemet, Deputy Regional Representative, and made clear the nature of my role with the Afghan asylum seekers in Indonesia. I told them I was not a lawyer or accredited migration agent. They were clearly aware that hunger strikers in both Nauru and Lombok had appointed me to represent them and their claims in discussions with UNHCR, IOM and government. Yet UNHCR's recognition of my status as nominated representative and spokesman was only token.

In the meeting with Garcia, conditions of my participation in the UNHCR review process was determined. I was not to be allowed to record the proceedings.

I would be

- Allowed to participate
- Allowed to observe the conduct of interviews, without interference
- Permitted to take notes
- Make comments at the end, for not more than 10 minutes

During my first visit to Indonesia (21st February -1st March) I made contact with the Afghan asylum seekers in Lombok (Attachment 1) and also with UNHCR recognized Afghan refugees waiting in Surabaya and in Chepong and Jakarta for resettlement and/or family reunion (Attachment 3).

Through my years of advocacy work I have become familiar with the letter and the spirit of human rights and refugee conventions, and I was disturbed to hear from asylum seekers widespread accusations, allegations and comments which reflected on the fairness and honesty of UNHCR processes in Indonesia. All of these interviews were recorded on video by me, and this fact has been communicated to the UNHCR Jakarta office to Tony Garcia in Jakarta Office.

My aim is to help both UNHCR and the asylum seekers through the conduct of a free, fair and just review process and a just result, which is humane and lasting.

4 UNHCR REVIEW - LOMBOK, 8th MARCH 2004

I returned to Indonesia (Bali) from Brisbane on 6th March and traveled by ferry the next day to Lombok. At 8:30 am on 8th March I was at the Immigration Office of Polda Polisi (District Police), where a meeting was being held between the head of Immigration Office of Lombok and the male and female Protection Officers, Mr Reuben and Mrs Selvi who had come from the UNHCR Malaysian Office. The interpreters, Mr Mahmoud and Mrs Darwis, were present at the discussion. After 9 am I was called to participate and required to show my passport. The matter of my tourist visa was raised and it was noted that I had no work permit and, therefore, could not be actively involved in work.

I made clear my volunteer status and that I assisted refugees and asylum seekers in an unpaid, honorary capacity. I stated that I would obey the laws of the country. I explained that the agreement reached between UNHCR and myself two weeks before included my conditional participation – see above.

Several telephone calls were made to UNHCR Jakarta, resulting in my participation being limited to observation and note taking only. However, if I wished I could make a written submission following the interview. In the absence of an alternative, I agreed to this, and said as a protest, I would never surrender my rights to speak. UNHCR officers and their interpreters, on the direction from the Jakarta office, I believe, subsequently avoided direct communication with me, to the extreme extent of avoiding even common courtesies like “Good morning?” or “How did you sleep?” Maintaining this distance for seven days was a memorable act on their part.

(A personal note. This rejection served to remind me of my ethnic and cultural history. This is not first time that the Hazaras have been treated like this, nor is it likely to be the last. More recently, the Australian government included Gholam Abbas in a delegation to meet asylum seekers on Nauru, even though (or, possibly, because) he was not a widely recognized ‘community leader’ and was in fact compromised through his previous paid participation as a member of a Department of Immigration delegation to Nauru tasked with encouraging voluntary repatriation. For the record, I note that the Nauru asylum seekers had delivered a signed document nominating me as authorized to speak for them as their chosen representative, to IOM on site and UNHCR by fax.)

Drawing on the details in the:

- **UNHCR Review Interviews: Attachment 1**
- **Complaints and Allegations : Attachment 2**
- **Java Interviews: Attachment 3**

4 RECOMMENDATIONS

I respectfully offer the following recommendations.

Hassan Ghulam

April 2004

TO THE AUSTRALIAN GOVERNMENT

- As a matter of priority, reunite UNHCR recognised refugees in Indonesia with their families in Australia.
- Monitor and report on the arrangements made with UNHCR and IOM in Indonesia to care for refugees and 'failed asylum seekers' who had reached Australian waters.
- Immediately improve the living conditions of those in IOM care – especially access to mental health care, education and support for communication.
- End the 'Pacific Solution' - assess and care for asylum seekers onshore and do so in a fully accountable manner and to humane and Australian standards.

TO UNHCR

- Review the operations of the UNHCR Jakarta office, including investigation of complaints and allegations of corruption, staff and interpreter bias and incompetence, unjust assessment procedures, denial of natural justice and neglect of asylum seekers and refugees in UNHCR's care.
- Review and monitor qualifications and performance of interpreters and translators, especially with regard to knowledge of essential ethnic languages and dialects, so as to protect the rights of asylum seekers and the integrity of UNHCR's own procedures.
- Report publicly on negotiations that have been completed or are in progress regarding the resettlement of refugees with acknowledged links to family members already in Australia who have refugee status.
- Publicly report on the number of refugees granted resettlement places in Australia under Australia's refugee and humanitarian programme since 1999.

TO IOM

- End all contracts with the Australian Government, for the care of asylum seekers in Indonesia (and Nauru) as these compromise IOM's reputation and integrity.
- Protect IOM's integrity by avoiding involvement in voluntary and involuntary repatriation of asylum seekers, thus forcing governments to accept direct responsibility for their actions.
- Publicly report on the contractual arrangements made by the Australian Government, including the standards of service specified and IOM's ability to meet these standards in Indonesia within current resource contracts.

General Comments

UNHCR needs to consider revising its approach and methods, to bring them into line with contemporary expectations and technology. Doing this would, in my opinion, have a major positive

effect on its reputation and credibility.

UN organisations should be demonstrating themselves as independent, in fact and in appearance. Even if they receive large amounts of funding from a single government. Especially if the funds are in conjunction with a specific project.

- UNHCR, the Indonesian Immigration Department and IOM need to take a different, more welcoming approach, to asylum seekers and institute trust-building measures.
- The UNHCR needs to provide legal information sessions for asylum seekers, regarding Human Rights and the legal framework and responsibility of their organisation under the UN Conventions, International law and the domestic law of the host country.
- The above organisations have to provide counseling and support services for traumatised people, especially children and young adults.
- Interviews should take place in a non-threatening environment with personal security and cultural issues fully considered.
- Interviews should be video taped and a copy provided to the asylum seeker.
- Freedom of information should be standard practice (i.e. provision of a copy of all relevant documents to asylum seekers).
- For the final status determination a public tribunal, including asylum seeker legal representatives, should be established.
- All accusation of war crimes or incorrect statements must be dealt within An independent public tribune, as noted above.
- No family should be involuntarily separated, except via divorce procedures.
- Provision of services must meet international standards, especially with regard to families with school age children.
- Adequate education, training and essential social and sporting activities should be provided while under asylum seekers assessment.
- Repatriation should only voluntary and with guarantees of follow-up monitoring and support.
- Translators and interpreters used, should have an accreditation from a college or a university equivalent to a semester of full-time study and be accredited in the language of the asylum seeker.

ATTACHMENT 1 - UNHCR LOMBOK REVIEW CASES: OBSERVER'S REPORT

Background

I visited Lombok twice, the second time to observe the UNHCR review interviews on 8th March 2004. My first trip to Lombok (19 Feb) was to meet with the asylum seekers who had contacted me by phone in Brisbane and who had organized and participated in the January 8-16th hunger strike. The end of the strike was brought about by UNHCR's commitment to a review of all cases. It was made clear by UNHCR that being on hunger strike would prevent the review of every hunger striker's case.

I heard their story of two years of neglect and despair and noted their complaints of unjust initial refugee assessments, biased attitudes and inadequate interpreter services. They have had no access to legal representation. As well, there were complaints about the punitive actions of local authorities, such as putting people into jail with criminals, on the grounds that they should not try to make an attempt to reach Australia. It was intended as punishment and deterrence, so as to teach others a lesson. It mirrored the 'deter and punish' culture of Australian border detention camps/prisons.

I returned to Mataram, Lombok on 7th March in my capacity as the appointed representative for 30 asylum seekers. The understanding reached with UNHCR was that I would be permitted to participate in the interviews. (See Jakarta meeting, above). Two asylum seekers had been absent from a meeting (on 27th February 2004) and only 30, therefore, provided a signed authority, which was faxed to UNHCR in Jakarta. In a vote (18 to 14) the asylum seekers opted for review interviews to be held in the first week of March rather than a month later, which was my preferred option.

Interview preparation

I stayed in Mataram (19-21 Feb) and visited them at their hostel Wisma Nusantaria-JLR Soeprapto No 28 Mataram for three consecutive days and was available for almost 18 hours per day. Sessions were held for the whole community, with groups and with individuals. They utilized my services very intensively and effectively. Listening to people tell their stories was a useful preparation for them. Given the circumstances of the last two years, it was important to encourage them to be optimistic and hopeful and not be discouraged or intimidated by what had happened to them in earlier UNHCR interviews. I urged them to have faith in themselves and in their true stories and was rewarded with confidentiality and trust.

For those who were angry and felt aggrieved, it was useful to encourage them to separate their complaints about previous processes and problems with interpreting from their statement of claims for refugee status. Their focus had to be on their claims. The complaints I would take up separately. Again they would be interviewed without legal representation and with only a silent community representative present. I was assured by them that this was better than no independent observer and witness.

The principles of the Geneva Convention were explained in detail – something new for most if not all of them - with discussions of how their personal claims of persecution might best be presented to the Protection Officers. A major contribution to their preparation was information about Afghanistan, and what had happened since their forced departure. Country information was discussed, and educated and skilled people among them made good use of internet sources and the links provided by Australian friends. It was indisputably the internet and skills of a few which enabled them to break out of their isolation and (re)connect with friends and supporters worldwide.

INTERVIEWS – 8th MARCH

The UNHCR Team from their Malaysian Office was Ms. Selvi (with Ms. Darwis local interpreter) and Mr. Reuben (with Mr. Mahmoud local interpreter). Both Protection Officers were young and professional in their approach. Their introduction was standard, as was their explanation of

interview procedures.

A total of 32 people were interviewed and I participated in 27 interviews and had a short preparatory session with those to be interviewed the next day. One man very politely asked me not to attend his interview. My flight departure time caused me to miss the interview with another man – a case about which I had concerns. With two teams in action, I moved between them and spent about 65% of my time observing the more problematic interviews with Ms Selvi.

The boundary between an 'interview' and 'interrogation' was not clear. Missing from the process was a friendly approach and the use of 'ice breaking' techniques for setting a comfortable, trusting atmosphere. Audio recording of the interviews or taking photos was not allowed.

The interviews took place in the local District Police Office (Polda Polisi) after the asylum seeker was searched in the presence of a security guard. The guard was busy sending regular SMS and knew few words of Persian and even Hazaraghi. It was hot, and there was no air-conditioning or even a fan on the first day. Cold drinking water on the first day was a luxury; but water was provided by the host Police Office. Noise from neighboring rooms bordered on disturbance and included whistling. By the second and/or third day no drinking water was provided. A European gentleman, self-assured and with an aura of authority who did not introduce himself, then provided the cooler and water. I guessed he was involved with intelligence/security as all others deferred to him and he was accompanied by security people.

Interview process

The applicant was asked up front to state their satisfaction with the interpreter. After only a few sentences from the interpreter, this was hard to judge and a number said they would give their judgment at the end of the session. There was no response to this.

There is no disputing that asylum seekers were given enough time to say if they had something to say. But a traumatized person was very much in need of counseling before the interview. Unfortunately, the Protection Officer does not have counseling duties.

I observed a tension between decision makers wanting to get to the rational facts of the case, following a set format, and the asylum seekers wanting them to listen to their story. For the interviewer, the focus is on protection claims and for the asylum seeker their refugee case is the story of their life. Every part is related to people, places, political groupings (Afghani style) and above all, to the complex ethno-linguistic, religious and regional characteristics and issues of Kouchi - Pashtun nomads - land and water and direct or indirect connection with foreign forces Supr powers and neighbouring countries.

The culture of story telling is part of Afghani life. A story has a beginning, middle and an end, and the culture of story telling does not permit interruption. A Protection Officer pursuing facts does interrupt and their interpersonal skills are constrained by the need to establish facts contributing to decision-making. The expectations of the asylum seeker are dashed, and there is a clear clash of expectations and cultures.

Asylum seekers commented to me that the manner of this interview was different from their initial interview for protection, where the approach was far more pressured in time, militaristic and hard line, and lacked understanding and compassion. They complained that they had not been listened to. In the review interview, checking personal identity, date of birth and place of residence presented the usual complications associated with uneducated people and the vagaries of Afghan culture about such facts so important in European cultures. People genuinely do not have exact answers, and it was not clear that the interviewer was fully sensitive and accepting of this. The common, incorrect assumption is that a refugee claimant would have the level of knowledge of an educated person, regarding Afghanistan geography, politics and events, confused and humbled the uneducated, especially those from isolated mountain villages. This is unfair and inappropriate. Subsequent answers become even more vague under pressure.

Demands to "Answer the questions!", "Be precise!", "Don't repeat, otherwise we will be here for the whole day..." were discouraging, especially as the case officer seemed not to be aware of problems with translation. The approach often was adversarial and negatively pitched, seeking to find deception and inconsistency and looking for complications. And absolute reliance was placed

on the interpreter, when in fact there are serious concerns about accuracy, cultural sensitivity, bias and gratuitous advice. (See Complaints see Attachment 2)

Each mistaken approach or misunderstanding of all three parties to the interview - UN officer, asylum seeker and interpreter - tended to have a 'multiplier effect' and often led to long delay and disappointments, even before decisions were announced.

ATTACHMENT 2 - COMPLAINTS AND ALLEGATIONS

Comments, complaints and allegations from asylum seekers and refugees are reproduced in a close to a verbatim manner as possible.

- Why is UNHCR not listening to us, answering our letters and telephone calls?
- Why does UNHCR not give us assistance with appeals and independent review of our initial rejection, which was not a fair process?
- Why does UNHCR not provide us with interpreters who understand our language and dialects?
- Why does UNHCR not provide us with the reasons for the rejection of our claims and the reasons why they reject our appeal against their rejection? We had no document from them to support the refusal decision for our individual case in the first interview.
- Why does UNHCR accept the uninformed and biased advice of Pashtun and Tajik employees in relation to Hazara asylum claimants?
- Why does UNHCR not assess equally the claims of nationality by different ethnic groups from Afghanistan? Why do they think we are not Afghanistani?
- Why do UNHCR and IOM not have a confidential system to receive and investigate complaints?
- Why does UNHCR not ensure natural justice when canceling refugee status of about five cases – one which appears to be a case of mistaken identity
- Why does UNHCR not listen to and report on the crimes committed against us?
- Why does UNHCR split a family – accepting the female members only?
- Can UNHCR tell us what happened to our countrymen who were ‘persuaded’ by wrong information while in their care that it was safe to return to Afghanistan? We know one brother died and where are the others?
- Why can UNHCR not speak up more loudly that in Indonesia asylum seekers do not have effective protection? And that our arbitrary detention is inhumane. Must it go on until we die? If it was safe, would we not chose to leave this place?
- Why does IOM not care for us better- give access to counseling, mental health, better food, more things for our children, better education and activities for adults?
- Why does IOM not obtain psychologist reports on people reported as being mentally ill? Why do protection officers not consider the advice of family and friends that a man has all the signs of mental problems?
- Why did UNHCR reject a family which did not attempt the boat journey to Australia and were accused of having lived in Saudi Arabia, when they had not. How did false papers to this effect appear on their file?

INTERPRETATION AND TRANSLATION: qualification and competence

The accreditation, qualifications and competency of interpreters in action has been the most criticized aspect of the interview process. Both interpreters were from Iran, resident in Indonesia, and had some experience with Dari language.

The interviews were conducted in English, which was not the first (native) language of any of the three parties involved – Protection Officer, asylum seeker or interpreter. This, naturally, increased the possibility of errors occurring.

Duration of interview from a minimum of forty minutes to a maximum of 5½ hours, inclusive of many call backs this time give the asylum seekers the needed assurance of fairness.

I identified the following spoken dialects of Dari heard during the interviews as:

- Hazaragi,
- Shamali (northern region of Kabul)
- Tajiki of Qunduz,
- Dari of Mazare Sharif with Bayati accents,
- Kabuli (Dari of Kabul)
- Paghmani,
- Logari,
- Dari with very strong Kandahar Pashtu accent,
- Dari with strong Iranian influence due to religious connection or through traveling and living in Iran.

In relation to the Persian language, literature and education, Iranians outstrip Afghans. Unfortunately, this advantage does not provide them with the ability to know the existing dialects and unique words of Dari not available in Iran, or not in common usage. Nor does knowledge of the existence of antique Persian words not in common use, make a person an interpreter for the Dari language. Language knowledge acquired through contact and experience may not be enough when the stakes are an asylum seeker's life and future.

Mr Kazimi from Iran, a renowned Afghan linguist with expertise in this field (Persian/Dari) provides a listing of differences in meanings as well as pronunciations for over 300 words. So, if an average person uses 1,000 words, possibly one third difference exists between Iranian Farsi and Afghanistan Dari.

Beside the unique characteristics of Dari there is the fact of the population mix of Afghanistan and the decentralised and regionalised nature of the country, with populations contained in isolated valleys, as in Papua New Guinea. This shows itself first in dialects, and secondly in the existence of Uzbek, Turkmen, Kazak, Pushtu, Baluchi and Pashaiee words, with some old historical roots originating far away from Afghanistan and even further away from Iran.

Professional standard interpreting and translating requires accuracy in concept, facts, meaning and emotion. In interpretation, the positioning of words on the grammatical platform does not matter, as long as the meaning is not distorted. With the translation the accuracy of grammar is much more important, and expression and meaning should be accurate and parallel with original text.

The subject matter of being an asylum seeker and having claims of persecution assessed in interview is, by its very nature, highly emotional. This expressed itself during the interviews again and again. The human dignity of the asylum seeker must be respected by the interviewer and the interpreter, and consideration given to their past suffering. An important aspect is the rhythm of the conversation. Contradictory sequences and approaches are distressful to the asylum seeker, who will lose the thread of their thoughts and the logical basis of the concept.

To be informed and to have some level of expertise in the subject matter and its particular vocabulary is essential to the fair process and outcome. So is competency. In my view, the performance of one interpreter was compromised by a physical disability, which resulted in a flawed translation of the asylum seekers' stories and claims. This was a case of inability to do the job at an acceptable standard, nothing more. I observed the stress this created for the interpreter, for the Protection Officer and for the asylum seekers, through a number of interviews where even simple translation mistakes were made, and juxtaposition of hot for cold, east for west, for example, affected the integrity of the claims and claimant. I was told by asylum seekers that this had been a feature of the same interpreters' performance throughout their employment with UNHCR.

Because of problems with the use of one word with different contemporary meanings in, for instance, Afghanistan and Iran and therefore confusion of understanding, additional effort is

required to ensure that the intended meaning is understood. This additional effort required time and could also caused misunderstandings. For example, the word *sharwal* in Afghanistan means 'mayor' of a town, and was translated as 'tax collector' – which has major implications regarding the position of the person.

A person who knows two languages (reading, writing and speaking) is able to interpret, but when dialects, regions, ethnicity and level of education come into play, problems arise. If the person is not trained to be a translator and interpreter this is more serious, because training ensures knowledge of principles, ethics/morality and, importantly, professional techniques. Beyond this, some level of expertise in the subject matter is needed, as is impartiality while shifting from one language to another so frequently. Also important is to be able to shift the grammatical platform as the language changes. Otherwise the goulash will be not palatable.

With the Taleban in retreat from the capital, Kabul, the naive assumption was made that Afghanistan was safe for the return of all who had fled the Taleban and that asylum seekers in Indonesia could go home. Many individuals with Afghani background were employed by UNHCR and IOM (as well as the Australian Department of Immigrati on Multiculturalism and Indigenous Affairs - DIMIA) to work towards aso-called 'durable solution'. Many had Tajik and Pashtun ethnicity, and were members of the Islamic Sunni religious sect, whereas the absolute majority of asylum seekers left on Lombok (and Nauru) were Hazara and of the Islamic Shia religious sect. All the asylum seekers and refugees have bad memories, many with horrendous personal experiences, of the atrocities committed by Shoray-e-Nezar and the Taleban.

The Tajik and Pashtun employees assisted with the personal identification of claimants and the certification of the places where they had lived. They are alleged to have been judgmental and biased against those who opposed the Mujahadeen. Their knowledge of areas such as Lashkargah in Helamand Province and many areas of Central Afghanistan (Hazarestan) was faulty and totally inadequate, and the mistakes made were likely to have undermined the asylum seeker's credibility as truthful people to the Protection Officer

These employees harassed and advised asylum seekers that if they did not have money (for bribes) with them, better that they go back straight away. A UNHCR official arranged for another person to help asylum seekers prepare their case for UNHCR (they had no access to legal advice). Payment was cash, gold and/or wristwatches. There are accusations also of a sexual nature made by the asylum seekers against two UNHCR officials .

An Iranian asylum seeker protested against the perceived preferential treatment given to homosexuals and the neglect of other cases, by sewing his lips together. Accusations with sexual implications were made by a very stressed father whose health is precarious, following dramatic weight loss since his wife and three beautiful daughters were separated from him following incidents of domestic violence. The family of two adults and five children were living in two small rooms, and an elderly American journalist intervened in the family dysfunction. The father does not know the current whereabouts of the four women. Have they been sold into prostitution in Jakarta? He is now threatened with the removal of his two sons aged nine and eleven. What is UNHCR doing? How is it that half of the family (mother and daughters) have been recognised as refugees, while the father and two sons have not been recognised as refugees?

NATIONALITY, LANGUAGE, POROUS BORDERS

Accusing Hazara asylum seekers that they are not from Afghanistan is an easy and long standing tactic of discrimination. No such accusations or negative judgments are made about Pushtuns living on both sides of the Durand line, or about Tajiks who spend many years in Tajikestan or about people from Herat who frequently travel to Iran. A good example of this ethnic discrimination on Afghanistan's borders is that Shaowray-e-Nezar (a political and military alliance) has nothing against Pushtuns and Beluchhs who travel back and forth to Beluchestan or Pakistan on a daily basis, but the Hazaras of Quetta are always stopped as foreigners. The same discrimination appears in the processing of Hazara asylum seekers in Indonesia and Australia.

The attempt to link language now spoken with former place of residence - and therefore nationality - has lead Australia to spend millions of dollars on language testing of Hazara people who give

Afghanistan as their home country. Given the history of more than a century of persecution, the resultant dispossession of land and property and a transient life for many ethnic Hazara, survivors acquire the words and accents of those around them wherever they are. Teachers in Australia have told me that rapid language acquisition appears to be a notable gift among Hazara survivors of persecution. Hence, a language test cannot be an exact tool to define residence and thereby nationality; nor can the judgment of Tajik and Pashtun employees be relied upon by a UNHCR Protection Officers to determine nationality. Nor should it divert attention away from the core issue of persecution associated with ethnic, religious, language and cultural identity. The tragedy of Ali Bakhtiary (in Baxter Detention Centre) and his family (living in the Adelaide community) is a reminder of the lengths to which the Australian Government is willing to go to exclude asylum seekers.

Independent review of cancellation of refugee status

Carrying over traditional or recent animosities of Afghanistan is not appropriate when assessing refugee status. What are the legal safeguards in the process used by UNHCR, which led them to cancel the refugee status it gave to General Ahmadi, and then accuse him of war crimes? Who is investigating his claims that this is a case of mistaken identity? Without resources and the help of an advocate, how can he obtain justice?

General Ahmadi told me was given his title of General when he was working on logistics of Hezbe Wahdat in Mazare Sharif at the time first invasion of Taleban in that city. He never fought in a battle. He studied law, worked in west of Kabul in public projects and he is a poet and writer. There was a warlord with the same name, about 15 years older and now dead. He has produced dozens of documents in support of his innocence, but nobody is ready to look at them. He lost his financial support and is living in poverty, but fighting on to clear his name and reputation. This accusation was acted on by UNHCR, reportedly without giving Ahmadi legal recourse.

CRIMES COMMITTED AGAINST US

Below are a series of quotations from interviews with asylum seekers:

Asylum seekers described aspects of "Operation Sting." "Holes were drilled in the boat and stuffed with a piece of wood. (In Dari this is called "fana" - translation 'bung'). As the pressure of the load on the boat increased, this wooden plug popped out and the ship took on water".

"We reached a remote island off Indonesia. As we were unloading our things, local people with red mouths came to help us unload. They took all our belongings. We walked for some hours along a narrow path. Suddenly we met with an Australian man. We were exhausted, tired and hungry. He give us the IOM telephone number. The next day we saw our Captain and his crew in the office of..."

"Our boat was taking water and the Australian authority pushed us back to the Indonesian waters. During the journey the pump provided by the Australians was pumping water out from the inside. Then they took the pump away and showed us which direction to go. As the boat sank our feet could touch the ground. If this had happened few meters further away, we would have been dead."

"Back from the unsuccessful journey a young man due to his hunger ate the wild nut and died few hours later."

"A young man in Jakarta was accused by a UNHCR Protection Officer of having a sexual relationship with his sister. He committed suicide."

"A young man who had nothing to live on became a male prostitute and suffered a sudden death."

A returnee from Indonesia to Afghanistan, who was unable to survive in the country and left for Quetta died in last Ashura's terrorist attacks.

ATTACHMENT 3 - RECORD OF INTERVIEWS WITH REFUGEES ON JAVA

JAKARTA

Friends in Jakarta provided invaluable guidance and contacts. They said "Tebet the hippy suburb of the sixties in south central Jakarta where the refugees are accommodated is not a good place to go. It is a 'no go zone'."

1. The truth of this statement was confirmed by a young mother of two children, her brother and mother-in-law. She said: "Many times in the middle of the night people were chasing each other with an axe, to kill. The horror of each night has additionally traumatised us. We are Shia from Herat and our facial features are different from Indonesians, and they think we are Arab and we have a lot of money...."

Supposedly under the protection of IOM and UNHCR, the living circumstances of young women and children without husbands, fathers or other male relatives in the middle of a drug and crime zone, is unacceptable.

2. Another mother of two young teenage boys has been living with a family from Herat in a block of units divided by a three-metre corridor, not far from the exclusive high-rise apartments of Jakarta but close to the canals, the known sources of dengue fever and malaria. Both families are recognized by UNHCR as refugees. The husbands and fathers of the children are refugees on Temporary Protection Visas in Australia, denied the right to sponsor them.

There was much crying and complaining about denied access to education, poor food and water, and fear of drugs and the lack of personal safety as destitute people in a foreign city. This is the tragedy of Australia's denial of family reunion. It would be humane to grant dependent family members "derivative protection" so the family could be together again. I fear for them in their vulnerability and hopelessness.

CIPAYUNG

Cipayung lies about 80km outside Jakarta, close to a green tropical highland with a flowing river. The human tragedy is the same. There I spoke with 14 refugee families assessed by UNHCR whose husbands/fathers are in Australia and whose attempts to reach the Australian mainland failed. They have now waited for more than two years, and are keen to be reunited as a family. Some risked death at sea four or more times. Children know their father only through rare phone calls and the little money he can send them. They are not smiling or adjusting to the society around them.

All attempts at learning English and using computers have not been rewarded by being reunited with daddy. Children conclude that Daddy's promises have been "broken and broken," he is fading in their lives, becoming a person of no consequence to them, a faded memory. The mothers worry all day long. Their motivation to calm their children is diminishing rapidly.

I sat with them while the IOM officer watched. It was an encounter with tearful eyes, broken voices. To support myself through this gut wrenching interview I held the children tight, a response to their emotional needs and in solidarity with my brothers, their absent fathers. What words can describe the disturbing regime of temporary visas that decides not to reunite separated family members? That builds walls beyond the ocean between loved ones. Is this valuing family?

The house with its courtyard is adequate. They have built a *tandoor* oven in the corner to bake bread in the traditional manner. The soccer field is small and muddy, and there are no goal posts. Sometimes chickens join the game too. Iraqis and Afghanis are living in the same complex and each family has one room. The rooms are crowded. In one corner is the kitchen. Not far away is the toilet and with running water for washing.

As the ladies talk, the pain of separation from husbands and loved ones is visible in their movements and how they hold their bodies. Their chadors are resettled again and again as they speak of their desire to be united with the father of their children, even if it was on a visa for one

week. They have missed them every day, and for so long.

I have recorded the facts and their statements and I have promised to make representations to the Minister for Immigration and to ask for her compassionate intervention to allow the family to be together again, in Australia.

SURABAYA

1. I traveled to Surabaya by plane and on to Situbondo, East Java by taxi. A four-hour journey and a very dangerous one. I must compliment the accuracy of eyesight and the courage of Indonesian drivers. The scenery all along was my reminder of the journey of all those asylum seekers who didn't make it. I went to Situbondo to visit Nasima with her three daughters and a son, whose story and whereabouts I already knew from contact with their husband and father in Sydney.

When I called her she was ready to see me immediately. I had asked her to give me time for only that night. In the morning she and her delightful darling daughter were at the door of the hotel. I enjoyed their company for breakfast. Then we went to her place, where the girls were getting lunch ready.

The signs of being inactive, eating more and lower quality food items were present. The hostel is in a nice place near the beachfront, but only has one room for four persons. The front veranda lies in the shadow of a poinciana tree, a few strands of wire for drying the washing provided additional color. A bathroom plus toilet, with one corner to be used as kitchen, is the sum total of accommodation for five people.

Ideal for a restful holiday for someone like me, I thought, but not for a young Afghan woman without her husband, with no privacy from neighbors, and burdened by fear and traumatized by the loss of two of her children. Pushed back from Australian waters twice, and witnessing the death of an infant.

Until six months ago she believed that her husband had been killed by the Taliban on the way home to Jaghoory, most probably in infamous area of Sange-pusht. Her elderly father, who wanted to be with his daughter and grand children, left them to return home after one failed nightmare sea journey. Taking his old bones back to the old country was better than dying in an alien country, he decided.

The UNHCR had rejected the application of this family, and their appeal against refusal was unsuccessful. Meanwhile the husband was discovered to be living in Sydney and legal representations were made which convinced UNHCR to reassess the case. Her refugee status has recently been acknowledged by UNHCR. The youngest daughter told me that she barely remembers her father.

2. In the same compound is an elderly lady of Tajik ethnicity, who is waiting to be reunited with her two sons in Australia. She tried her luck twice and seems to be running out of fighting energy. Her existence is that of incarceration in a beach hotel in Situbondo for an unknown, indeterminate number of days. A lonesome life. Waiting like those not yet sentenced, waiting to be judged and convicted. Why this love of punishment and conviction? She peeled me an apple so beautifully and reminded me of my petit grandma. She understands that a \$60,000 sponsor guarantee is needed for her entry to Australia. She is not sure of the details of her sponsorship or when she may join her sons – the latest information that she is awaiting reinterview by UNHCR.

3. Seven young refugee men who had made a number of attempts at the sea journey to Australia made specific complaints about UNHCR officers –who have also been named by others) about the inadequacies of interpreter services for their interviews.

The food items given to them were basic and similar to those provided in the hostel. No cash support was provided, nor did they have the right to work. For clothing they were given only Rupiah 100,000 per year - enough to buy a T-shirt. The cost of transport, telephone costs, any English classes or the basic computer and literacy training has to be paid from the re sale of food items to the locals.

This support program is handled by IOM and financed by Australia. What is in the agreement? What is the individual entitlement? Is Australia monitoring the program? Is there corruption in the administration of the program, short changing powerless asylum seekers?

ATTACHMENT 4 - UNHCR LETTER 15 JANUARY 2004

Arya Building, 14th Floor Jl. Kebon Sirih Kav. 75
Jakarta 10340 Telephone: 62213912888
Date: 15 January 2004
To the attention of the Afghans in Mataram

Dear Afghan people in Mataram,

I would like to refer to the two points raised yesterday by you with Mr. Shinji Kubo, Protection Officer, during his visit to Mataram, as follows.

1. You asked for assurances that UNHCR/Jakarta will apply the same procedures to the review of your cases, as the ones being applied to the Nauru cases.
2. You would like to hire a lawyer and have him/her fully involved in terms of presenting/defending your cases.

I would like to assure you that UNHCR as an organization seeks to apply the same approach and standards when dealing with the same group of persons regardless of their location or the location of a particular Office. As such, we are seeking to harmonize the review process as much as possible with our office in Canberra. However there are two important differences to be taken into account: (a) Australia is a signatory to the 1951 Convention, whereas Indonesia is not; and (b) The cases on Nauru are in detention, whereas you and other Afghans elsewhere in Indonesia enjoy freedom of movement. These are important differences between the two situations and are taken into account as we review whether a person is in need of international protection and under what conditions.

As to the second point, I would like to inform you that UNHCR allows legal representation. Normally an asylum seeker may be accompanied by a lawyer during the interview, who may have the opportunity to make a brief submission at the end of interview. For the process to work smoothly, we expect that the lawyer will be knowledgeable about refugee law, that he/she will not interrupt the applicant during his/her statements, and that he/she will not be obstructive during the interview. They will be allowed to have access to the information provided by you and to submit any supporting information on your behalf. We would require that any one of you who decides to avail himself/herself of the services of a lawyer, to provide written consent for our own records.

As we have stated before, we anticipate that the review will be completed by 1 March 2004 subject to our being able to obtain any necessary answers to questions from our Office in Kabul. In order not to raise any undue expectations, I would like to reiterate that there is no guarantee that the review process will grant refugee status to all. The results of the review may lead to both positive and negative decisions, which will be final, or to the need to conduct a further interview.

Best regards

Robert Ashe

Regional Representative