

### THE REFUGEE STATUS DETERMINATION PROCESS: TASK FORCE REPORT

The report on Canada's refugee status determination process prepared by the Task Force on Immigration Practices and Procedures which was established by the Honourable Lloyd Axworthy, Minister of Employment and Immigration, was released in November, 1981. The report provides a comprehensive examination of the policies and practices employed by Canada both at home and overseas in determining who is a refugee and who may come to Canada as a refugee, in the context of Canada's international obligation with respect to refugees.

The Task Force establishes that Canada's refugee determination procedures ought to reflect "Canadian standards of procedural fairness as they have become manifest in our general legal concept of a 'fair hearing'." In a decision on refugee status, a person's life may be at stake; and our standards for procedural fairness in refugee determinations, and our willingness to allocate the resources necessary to achieving that standard, ought to be comparable to those we demand of our other tribunals charged with decisions of equally serious consequence.

#### **Procedures for claims in Canada**

The bulk of the report deals with the process of making a refugee claim in Canada. This process currently involves an examination of a claimant by a senior immigration officer; the review of a transcript of that examination by the Refugee Status Advisory Committee (RSAC); the giving of advice by the RSAC to the Minister; a decision by the Minister or his delegate with respect to refugee status; and in some cases an appeal to the Immigration Appeal Board and possibly to the Federal Court of Appeals.

The report recommends many specific changes in these procedures which could be implemented without emendation of the Immigration Act, including the appointment of sufficient members to the RSAC for it to discharge its duties fairly and cease such current time-saving practices as screening out "manifestly unfounded" claims. The Task Force also stresses the need for the members of the RSAC to be independent of any government departments, lest they be influenced by such foreign policy considerations as what effect a finding of persecution might have on Canada's relations with the country involved, or such immigration considerations as a claimant's ability to settle in Canada successfully, which are not proper considerations in refugee determinations.

The report also observes that the "give and take" of oral argument is important to our concept of a fair hearing, and suggests ways that oral hearings could be incorporated into the existing process at various stages.

However, the report suggests that it would ultimately be preferable to amend the Immigration Act to replace the present fragmented refugee determination process with a central tribunal which would hear and determine refugee claims.

### **Overseas Policy**

The report also discusses some of the inequities inherent in our system for processing claims abroad. For example, a handicapped or unskilled refugee could not legally be expelled from Canada. However, such a person *could* be denied *admission* 

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to Canada on the grounds that he would be unable to settle here successfully or would be too much of a strain on health services. The report acknowledges Canada's obligation to "cooperate with other countries in the world to share the refugee burden" and recommends that the government "pursue with private sponsorship groups and the provinces greater support for the admission of handicapped and unskilled refugees."

Similarly, the report observes that the current practice of denying a visitor's visa to a person on the grounds that he may intend to claim refugee status indirectly denies refuge which could not legally be denied directly; and the report recommends that a person should not be denied a visa *solely* on the basis that he intends to claim refugee status.

However, the report does suggest that a visitor's visa should not be granted for the *sole* purpose of claiming refugee status and that, in cases of large-scale abuse of Canada's immigration and asylum policies, the government should "impose a visa requirement on the citizens of any country

generating a significant volume of frivolous refugee claims, where the government of that country is not a gross and flagrant violator of human rights."

The report also commends Canada's special humanitarian programmes which have provided temporary refuge in situations of crisis, most recently for individuals from Poland and El Salvador.

Copies of the full report - well worth reading - are available from:

Distribution Unit Public Affairs Division Employment & Immigration Canada 12th Floor, Phase IV, Place du Portage, Hull, Quebec K1A 0J9

The implementation of the recommendations in the report and other issues will be discussed at a national symposium on the protection of refugees in Canada, tentatively scheduled for February 19, 20 and 21, 1982, in Toronto.

#### REFUGEE DEFINITION: DRAFT GUIDELINES PROPOSED

The report recommends that the Minister of Immigration issue guidelines to the Refugee Status Advisory Committee with respect to the application of the definition of a refugee, and suggests draft guidelines for this purpose. These include:

<sup>-</sup> When the application of the refugee definition to a claimant is in doubt, the claimant must receive the benefit of the doubt.

• In addition to the definition provided in the Immigration Act, account shall also be taken of the remainder of the U.N. Convention which has not been incorporated into the Act, but to which Canada is signatory. A person who no longer has a well-founded fear of persecution will still be recognized as a refugee if, arising out of previous persecution, he has compelling reasons for refusing to avail himself of the country of his nationality.

• Looking, as it does, to the future, the refugee definition is concerned with possibilities and probabilities rather than with certainties. A wellfounded fear may be based on what has happened to others in similar circumstances. Where a person has not been persecuted simply because he has not yet come to the attention of the authorities, he need not wait until he has been detected and persecuted before he can claim refugee status. Nor need he be under the threat of imminent persecution.

• Interference with personal freedom is not the only form of persecution within the refugee definition. Arbitrary interference with a person's privacy, family, home or correspondence may constitute persecution. Deprivation of all means of earning a livelihood, denial of work commensurate with training and qualifications, or pay low out of all reason may constitute persecution. Relegation to substandard dwellings, exclusion from institutions of higher learning, enforced social and civil inactivity, denationalization, passport denial, constant surveillance and pressure to become an informer may all constitute persecution.

• Persecution may take the form of indiscriminate terror. Persons may be persecuted for no apparent cause at all, other than for the purpose of instilling fright in a population at large. Persons with a wellfounded fear of becoming victims of governmental terrorist tactics are refugees.

• Immigration considerations must not be brought to bear on the application of the refugee definition. The possibility that, if one person is given refugee status, many others might also be entitled to claim refugee status, is not relevant to whether the claimant is a refugee.

• A person is a political refugee if he has a well-founded fear based on political opinion. He need not have a well-founded fear based on political activity. Political opinion means what is political in the opinion of the government from which the refugee flees, not what is political in the opinion of the refugee, or in the opinion of Canadian officials. A person may have been totally inactive politically and have no political opinions of his own. Yet he may, nonetheless, be a political refugee.

• A well-founded fear of persecution need not arise before the claimant has left his country. It may be based on what has happened in the country since the claimant has been abroad.

• In determining whether there is a well-founded fear of persecution, what is relevant, is the practice in the country the refugee flees. The legal structure in the country is not, in itself, conclusive.

### **POLISH REFUGEES**

Employment & Immigration Minister Lloyd Axworthy has appealed for private sponsorships for Polish refugees. In 1981 only 169 applications (for a total of 390 persons) were received from private sponsorship groups interested in assisting refugees from Eastern Europe. 2,211 Poles entered Canada under the government's 1981 refugee quota. In addition, 1,624 Poles already in Canada on visitor's visas have been able to stay here under special measures announced in October whereby those with relatives here eligible and willing to assist them, were able to be landed as permanent residents without having to leave the country; and those in Canada who did not have relatives able to assist them could be granted permission to work here for a period of 12 months, pending a review of the situation in Poland.

### CANADIAN ATTITUDES TO IMMIGRATION

A detailed portrait of Canadians' attitudes to the role of immigration in Canada's economy was included in a research report prepared for the Canada Employment and Immigration Commission. The survey showed that although there is a fairly widespread opinion (55% of those interviewed) that the number of people permitted to immigrate to Canada is higher than people think it should be, overall there is a desire to see some compassion and humanitarianism reflected in the country's immigration policy. Fifty-nine percent of those interviewed believe that Canada has a moral responsibility to allow oppressed people to immigrate into Canada.

### FAMILY REUNIFICATION FROM VIETNAM

The government of Vietnam and the United Nations High Commissioner for Refugees (UNHCR) agreed on measures to accelerate legal departures of persons wishing to leave Vietnam in order to live abroad, at a meeting of a delegation of the Ministry of Foreign Affairs of Vietnam with the UNHCR and with representatives of interested receiving countries, including Canada, in Geneva in October, 1981. A minimum monthly target of 1,000 departures on the two weekly UNHCR charters from Ho Chi Minh City to Bangkok is expected.

With respect to individuals wishing to leave to join their relatives in Canada, the Orderly Departure Programme is progressing well, with Canadian immigration officials going into Ho Chi Minh City regularly, and departures becoming steady:

### CANADIAN CHURCHES URGE BETTER PROTECTION FOR SALVADORAN REFUGEES IN HONDURAS

The churches in Canada have appealed for more adequate protection measures for Salvadoran refugees and relief workers in Honduras. Refugees have been abducted and killed by Salvadoran soldiers in Honduras and relief workers there have been murdered. In such incidents, according to the churches, the Honduran military have offered no protection.

Canadian, American and European churches have been sending teams to the Honduran border region to provide an international presence in the camps. On their return these representatives have emphasized the need for increased security in the area. Presently only two UNHCR representatives alternate to provide protection along a long and tense border area containing at least 30,000 refugees, both in and outside of camps. Now the UNHCR is attempting to increase protection by moving the refugees inland to a new camp near San Marcos.

But according to the church representatives who have been to Honduras, many of the Salvadorans want to stay near the border where they are close to El Salvador and where they have ties with the Honduran peasants who have shared their homes and scant land and food with them. They also feet that their presence ensures that the border is kept open to other refugees and provides some security to the Honduran civilians who have befriended them. The UNHCR has planned several reception centres along the border; but according to the Inter-Church Committee for Refugees, it is likely that once the refugees are gone, without any strong presence of protection staff supported by the UNHCR and the Honduran government, the military will have free rein in the area.

Until recently the relief workers in the area agreed with the refugees who want to stay; but after the recent military terror, they have agreed to the move. The move has been progressing slowly due to the extremely poor conditions in the camp at San Marcos; meanwhile the Canadian churches are continuing their efforts to obtain protection from the UNHCR and the government of Honduras for the refugees both crossing the border and at the new camp near San Marcos.

	LEGAL DEPARTURES FROM VIETNAM												Partial	
	June-Dec. 1979	1980	Jan.	Feb.	Mar.	Apr.	1981 May	Jun.	Jul.	Aug.	Sept.	Oct.	Nov.	Total 1981
For resettlement in Canada TOTAL	58 1986	341 4706	67 840	168 300	135 392	105 547	39 591	70 458	111 771	84 639	187 908	96 1551	213 819	1275 7816



### **"DOING WHAT YOU CAN":** EMPLOYMENT COUNSELLING FOR SOUTHEAST ASIAN REFUGEES

#### by Anne Hume

Mr. Lam is a dignified, slightly-built man who looks much older than his 58 years. He sits erect in his chair, smiling politely, uncomprehending, while his son interprets for him. He has been in Canada for a year and is still unemployed. A tailor in Vietnam, he ran his own shop for over 30 years. But his eyesight is failing, and he is unfamiliar with the operation of electric sewing machines.

After some deliberation, the counsellor in Operation Lifeline's employment office telephones the manager of a small metal company, who has hired a number of ethnic Chinese refugees. The employer can use a man to do odd jobs and general cleaning at a starting wage of \$3.75 an hour. The son translates the information. Mr. Lam looks animated. Yes, he'd like to go and see if he can do the work. The counsellor makes arrangements for the son to take him out to the company. Taking written directions and details about the job, they leave, expressing their gratitude.

Mr. Southavone is 31 and speaks English hesitantly but clearly. He was a carpenter in Laos, making household furniture, but he has never used power tools. His wife can't work because there are six young children to care for. Mr. Southavone needs a starting wage of at least \$5.00 an hour to support his large family. The counsellor contacts a number of woodworking companies before he finds an employer who might be willing to teach him ...

It is applicants such as these who will most miss the services of Operation Lifeline's employment office, which closed at the end of 1981. Begun as an emergency job counselling service for Southeast Asian refugees in September, 1979, a group of committed volunteers and one paid part-time coordinator have handled over 4,000 interviews in the past two and a half years.

#### **CECs often not enough**

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Although the initial purpose of Operation Lifeline's employment office was to assist privatelysponsored refugees, the office has seen more government-sponsored refugees. The former seemed to find a ready-made network within their sponsorship groups, while government-sponsored refugees, who had been expected to make use of the Canada Employment Centres (CECs), tended not to use the CECs. It gradually became apparent that these newcomers needed a greater degree of support and personal attention than most CECs in Toronto could provide, and insufficient English and timidity made it impossible for them to make use of the CEC notice boards on which job openings are posted. Also, a considerable degree of experience with the special problems of refugees is crucial. For instance, when a counsellor unfamiliar with Southeast Asian refugees learns that a 22-year old man is single, he may quite reasonably assume that he has no dependants; although among this group of refugees it is quite possible that such a person might be supporting younger siblings while their parents are still in their former country.

Overcoming these obstacles seems to have been made possible by the fact that the counsellors in Operation Lifeline's employment office were volunteers. The group of men and women who contributed their skills and care to the demanding and often frustrating work of employment counselling were able to provide an atmosphere of friendliness and support, and a degree of personal time and attention that paid workers in a professional organization simply could not duplicate.

When faced with difficulties, we tended to resort to the philosophy, "You do what you can." This might mean asking an applicant to return another day because no suitable jobs were available. On one occasion it meant escorting an applicant with serious mental health problems to a hospital and persuading him to talk with a Chinese-speaking social worker. And it sometimes meant not managing 'to do anything other than offer understanding and encouragement.

As an emergency service, we tended to stick to the practical goals of finding someone a suitable job at a reasonable wage at a manageable distance from his home. Our attempts at employment orientation did not extend beyond a printed hand-out on Canadian "job etiquette" and occasional assistance in resume preparation. Nor did we take a strong political role of vigilantly watching for possible exploitation by employers.

# Character of applicants changing; sense of urgency less acute

But the peculiar advantages of this kind of office seem to be becoming less and less necessary. Throughout the past year, the counsellors have begun to notice changes in the needs of the job applicants. Many have been in Canada for as long as two years, and now have Canadian work experience. Many have moved to Toronto from small towns and rural communities across the country, often joining relatives who have settled here, hoping that the city will offer even better jobs. A number of applicants are already employed and wish to improve their lot. The sense of urgency is less acute.

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Miss Nguyen, for example, a 26-year-old seamstress, told a counsellor she did not want to work in the garment industry. Several alternative suggestions of available work failed to satify her and after a few false starts the counsellor made an appointment for her at the Immigrant Women's Job Placement Centre. Miss Nguyen is being particular. She knows what she wants, and very likely has the spirit to go and find it on her own.

There was also Mr. Tran, a young man who explained that he had just left a \$6.00 an hour job at the airport because his brother had also left there and he owned the car. This young man got a rather stiff lecture on how \$6.00 an hour jobs are hard to come by for a young unskilled worker with little English; how October was a foolish time to give up his job; and how he could have got to work by public transit. His explanation may of course be false - the two men might have left these jobs because of other difficulties they did not wish to discuss. But then he rejected a factory job with union wages and benefits at a starting pay of \$4.20 an hour with guaranteed regular raises. Mr. Tran needs to do some learning the hard way.

Thus, on the recommendation of a majority of the volunteers, the employment office closed at the end of 1981. Toronto has developing communities of ethnic Vietnamese, Lao and Cambodians who are becoming increasingly self-supporting; and a large Chinese community. The recent arrivals from refugee camps are joining relatives here and therefore have the beginnings of their own networks through which they can find jobs. On the whole we feel reasonably confident that the employment needs of most refugees in the Toronto area can now by met by CECs or individual ethnic associations. or the Immigrant Women's Job Placement Centre.

Nonetheless, a certain ambivalence remains as we gradually wind down operations. Is it too soon, given the significant number of people still coming for assistance? Has the gap in services been sufficiently bridged? What about the bleak winter months ahead? What of the Mr. Lams? The Mr. Southevones? Even the job seekers with reasonable English who arrive in the office with the daily paper, having circled specific want ads, often lack selfconfidence and an awareness of the fact that they are capable of finding a job on their own. The distinction between offering emergency services and fostering dependency can be a very fine one.

#### Long-term considerations

Looking ahead, it is difficult to anticipate the specific needs of future refugees. Not every group might need employment counselling to the extent that the Southeast Asians did. But our experience tempts us to urge that funding for special employment counselling for refugees must be assured where inadeqacies in existing services are perceivable, and great sensitivity to the special needs of refugees must be used in judging when such inadequacies exist. Several cities in Canada have met this need through non-governmental, multi-ethnic agencies that provide job placement assistance to refugees and immigrants of all national origins, and work hand-in-hand with the network of ethnic-specific agencies that deliver other kinds of services. We would like to see ... continued on next page.

#### OUTREACH

The Canada Employment and Immigration Commission's Outreach programme provides funding for special programmes designed to extend employment-related services to people who, for one reason or another, are unable to benefit from the services of Canada Employment Centres. Refugees, partly because they are assisted through special settlement programmes, have never been a priority target group for this funding programme. However, a few orogrammes assisting refugees and immigrants are currently being funded by Outreach, and community needs are assessed locally. Toronto follow this example.

Most important, of course, is a receptive climate in the community. A number of employers have risked financial sacrifices in hiring refugees, and have demonstrated considerable faith and goodwill when communication is strained by language limitations or cultural misunderstandings; and for many the risk has paid off.

For all of us, if we have the imagination to grasp what refugees resettling here are enduring, and the compassion to help them adjust, perhaps we can enhance their courage and determination and, therefore, their chances of succeeding. This may be another variation of "doing what you can".

Anne Hume is the former Employment Co-ordinator for Operation Lifeline, Toronto.

### VIETNAMESE IN THE YUKON: CONTENT TO STAY WHERE THERE ARE JOBS

by Nancy MacMillan

Nancy MacMillan is the former Co-ordinator of the Vietnamese Support Project, Whitehorse.

Snow, cold, isolation, long dark days, perhaps even an igloo. These are images that many people have of the Yukon — and moving 70 people here from the steamy climate of Vietnam may seem like madness.

But the first thing that any Yukoner, whether "ative, English, French or Vietnamese, will set you straight on is that conditions are not so barbaric as many people think. The summers are beautiful and the long daylight hours make for a very active season. The winters may seem as long as they are cold, yet out of the 70 Vietnamese who settled here during the past two years, 60 have not yet been lured away to the bright lights and warmer climates of Edmonton and Vancouver. Living in this small community has some compensations to offer.

The Tran family was the fourth of thirteen families to settle in Whitehorse. They arrived on a snowy November day and their sponsors settled them into a townhouse. By various means of sponsorship, other Tran family members have also come to Whitehorse, making an extended family of 23, which has meant a great deal of mutual support. Having other families here already also made it much easier to understand and cope with the new surroundings, says 16-year-old Mi Tran. It has also meant a sufficiently large and cohesive body of people to support a food-ordering service from Vancouver, allowing the families here to enjoy their own type of food.

#### Sense of belonging

The Vietnamese acknoweldge that learning English is easier in Whitehorse than in a larger city where it would be easy to find lots of Vietnamese- or



Summer outings for Vietnamese young people in Whitehorse.

Chinese-speaking friends. Also, the sense of belonging that comes with living in a small community, walking down Main Street and exchanging greetings with people you know, is a pleasure much appreciated after a vacation in Edmonton or Vancouver, and one that is causing several families to think twice before moving "Outside".

#### High pay helps family sponsorship

Most important, pay is generally quite good in the North. Because becoming self-sufficient and capable of sponsoring other family members is top priority for many of the Vietnamese, the comparative boredom and isolation are of secondary importance.

Even 800 miles north, in Inuvik, Northwest Territories, where people from Whitehorse are considered "Southerners", the one Vietnamese couple still there is satisfied for the time being, because they have good jobs. Myli is making Inuit parkas at the sewing centre, and Nhan is a truck driver for the army. The other three couples who were placed there left, Myli says, because of boredom and because of relatives in other cities. But Myli and Nhan are saving money to sponsor their parents in Vietnam and only afterwards, they say, will they move to a bigger city.

The question has been raised as to whether refugees should be placed in such isolated, extreme areas. Obviously each person's adaptive ability is different. It does seem however, that on the whole most situations can be gotten used to, as long as job security is present. In such areas as the east coast where unemployment is high, it is no surprise to see such high secondary migration. It also seems only rational to ensure that several families be settled in the same area, providing each other with the support that can make the process of becoming a Canadian citizen a smooth and manageable transition.  $\Box$ 

## REFUGEE RESETTLEMENT AROUND THE WORLD

### THE UNITED KINGDOM

Between April 1975 and the end of December 1980, ~12,884 Southeast Asian refugees were admitted to the United Kingdom. Three voluntary agencies shared the task of receiving and resettling the refugees: the British Council for Aid to Refugees, the Ockenden Venture and the Save the Children Fund.

With government funds, each agency ran a number of "reception centres". On arrival the refugees stayed in the centres for three to six months, during which time they received intensive tuition in the English language, as well as some orientation to British society and any necessary medical care.

During the refugees' stay in the centres, the staff of the agencies - which included social workers, nurses, teachers, individuals aquainted with Southeast Asia - tried to familiarize themselves with the resettlement needs of each family, its employment potential, its ties with other families in the U.K.; and then to arrange its move into the most appropriate available public housing.

Two features of the British experience might be of particular interest to Canadians:

#### Settlement in clusters

• The Vietnamese resettlement operation has followed a policy of establishing "clusters" of between five and thirty families within walking distance or an easy bus ride of each other.

#### Self-employment

• Prospects for employment are bleak and the level of jobs most refugees get is so low that they must still receive state benefits. The agencies have therefore concentrated on assisting people to become self-employed: Save the Children Fund established a fund to provide the necessary tools of trade for refugees to become self-employed — for example, an industrial sewing machine for a seamstress or tools for a plumber; and the agencies have been successful in getting banks to provide loans for such labour-intensive enterprises as a window-cleaning venture and a bicycle repair business.

## **RESOURCE EXCHANGE**

### **GUIDE FOR NEW CANADIANS**

The Immigrant Services Society of British Columbia has developed a booklet about Canadian institutions and culture specifically for newcomers from Southeast Asia. It details customs about punctuality, eating, socializing; explains concepts like volunteer work and our expectations of civil servants; outlines civil and human rights protected in Canada, and more. The guide was written by a Canadian who lived many years in Southeast Asia. It is available in English, French, Vietnamese, Lao and Chinese.

Contact: Miss C.E. Anderson 3420 East 28th Avenue Vancouver, B.C. V5R 1T3

### **SLIDE-TAPE: INDOCHINESE CULTURE**

The Multicultural Association of Nova Scotia has produced a 20-minute slide-tape programme which presents Vietnamese, Lao and Cambodian customs that Southeast Asians have maintained in their new lives in Nova Scotia. The programme is intended to help sponsors and teachers better understand Indochinese cultures. It was developed by Xuong Ngo and Patty Ha, who arrived in Canada in the summer of 1980.

Contact: Xuong Ngo

Multicultural Association of Nova Scotia 5516 Spring Garden Road Suite 305 Halifax, Nova Scotia B3J 1G6

### UNHCR

At its annual meeting in October, 1981, the Executive Committee of the Office of the United Nations High Commissioner for Refugees (UNHCR) noted that, in line with various recent United Nations General Assembly resolutions requesting UNHCR assistance in Africa, UNHCR has broadened its category of "persons of concern to UNHCR" to include not only Convention refugees defined in terms of fear of persecution but also persons who are forced to flee their country because of serious conflicts there, such as external aggression or civil conflict.

UNHCR officials and representatives of nongovernmental agencies also expressed concern at the increased scale and seriousness of violations of the physical safety of refugees, including pirate attacks in Asia, bombardments in Southern Africa and kidnappings in Latin America.

The Executive Committee also approved the projected financial requirements for 1982 programmes for UNHCR, which are shown in the Statistical Survey on page 8.

## STATISTICAL SURVEY

Summary of UNHCR Programme Funding Requirements for 1982 (in U.S. dollars).

Africa	. \$149,153,000
Latin America	23,377,400
Asia*	174,393,600
Europe	9,301,100
Oceania	231,200
Overall Allocations**	72,882,400
TOTAL	429,339,200
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\* including \$71,000 for Afghan refugees in Pakistan

\*\* covering the limited needs of individual refugees or small groups of refugees in countries where no specific allocation or country programme exists.

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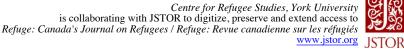
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NOTE: The following governments indicated their intention to make announc ents al I later date: Federal Republic of Germany, Ireland, Italy, Japan, New Zealand, Somalia. Spain, Trinidad & Tobago, United Kingdom and Zaire.







Contributions to 1982 Programmes announced at the UNHCR Pledging Conference, November 20, 1981 (in U.S. dollars)