Early on the morning of 17 April this year a Rwandan woman and her two children—boys, aged 9 and 10—were attacked in their room at a refugee accommodation centre in the suburbs of Nairobi. The family had been in the Kenyan capital for 11 months and were close to leaving for resettlement in Australia. Both the boys were killed 'with a single deft knife slash to their necks', according to Agence France Presse; their mother, who survived the attack, received multiple stab wounds.

Although the first report in the Kenyan Daily Nation described the attack as a 'fight', the evidence that emerged over the next few days suggests that the sleeping children were sedated in some way, then stabbed. Their mother was woken by two attackers who held her down while they attempted to kill her. Police from the nearby Kilimani station say they found no evidence of a break-in; a kitchen knife from the centre, believed to have been used in the attack, was found two days later. Acting on the assumption that the attackers were among the other 180 or more people housed at the centre, the police eventually arrested two Rwandan men, who, it was reported, claimed to be deserters from the Rwandan army.

It wasn’t until a week after the attack that the incident was recounted in the international media. The early reports highlighted the fact that the woman was a close relative of the former Rwandan president, Juvenal Habyarimana, a Hutu politician whose death was the pretext for the genocidal campaign against Tutsis and moderate Hutus in 1994. Two (or three, according to some reports) children from the woman’s first marriage had been killed in Rwanda, and she had fled to Uganda with the two younger boys in 2000. When it was clear they were not safe there, she was transferred to Nairobi by the UNHCR (the United Nations High Commissioner for Refugees) in May last year.

The interest of the international press was stimulated by a statement from the New York-based organisation, Human Rights Watch, which was highly critical of the long delay in processing the family for resettlement. ‘This case highlights the current failure of the UNHCR in Nairobi to provide speedy resettlement for refugees whose lives are at risk,’ said the organisation’s refugee policy director, Rachael Reilly. According to Reilly, the process should have moved much more quickly, given the woman’s background and her experience in Uganda.

Nairobi isn’t necessarily the safest place for people fleeing persecution in Rwanda. The two sides in the 1994 genocide are still settling old scores across eastern Africa, and there has been at least one fatal attack in recent years in Nairobi. But it appears that the UNHCR didn’t recognise the potential danger to the family. Although the local newspapers described the facility where the attack occurred as ‘a refugee centre’, the international news reports called it a ‘safe house’ or, in one case, a ‘special protection facility for high-risk refugees’. If it was a safe house, then it
is puzzling that the men, who had admitted to links with the present government in Rwanda, were placed in the same facility as a woman related to the president of the former regime. If it wasn’t a safe house, then that too is evidence that the UNHCR didn’t recognise, or at least act on, the potential danger.

The report about the incident in the Australian media was published in The Age on 25 April 2002. The article quoted a spokesman for Immigration Minister Philip Ruddock, who denied that Australia had dragged its feet in dealing with the UNHCR’s request for resettlement. He added—with only slight exaggeration—that Australia is one of ‘only a handful of countries’ resettling refugees from that region.

From Australia’s point of view, the attack on the Rwandan family raises important questions. A woman and her two children, waiting in the ‘queue’ to come to Australia, are attacked and the children killed. Despite the apparent urgency of their case, it had already taken 11 months for them to reach this stage in the approval process. And, while this shocking crime took place, around 250,000 refugees from surrounding countries—for many of whom resettlement outside eastern Africa is the only safe, long-term option—were waiting in Kenya for the chance at one of the relatively few places in the resettlement ‘queue’ offered by a small group of countries.

Tall, dark and immaculately dressed, Sergio Calle-Norena could easily be taken for a European banker spending a few days in Nairobi looking at prospects for a branch office. But the setting—a plain, prefabricated office reached through a maze of corridors and temporary walkways at the UNHCR compound—isn’t quite right, and Calle-Noreña’s animation as he discusses his work doesn’t fit the image either. ‘My son was shocked when he first came in here,’ he says as we walk across a make-shift ramp from one part of the complex to another. ‘He said, “Papa, Papa, this looks like a prison, not an office!”’

Fifteen minutes by car from the centre of Nairobi, the UNHCR’s Nairobi branch is in a busy part of town, fronting a noisy arterial road opposite the Westlands shopping mall. Across the road, a car park full of battered taxis is standing by for customers; the drivers are smoking and chatting together and look as if they’ve settled in for a long wait. Like the central city, this part of Nairobi is crowded and run down. Through the louvred office windows, the sound of traffic is constant.

Calle-Norena has been running the protection division of the UNHCR’s Nairobi office—the division that tries to find long-term solutions for refugees—since November 2000. He arrived just after a UN taskforce began investigating allegations that staff in the office had been accepting bribes to expedite refugee applications. Calle-Noreña’s job was to begin rebuilding the protection division ahead of the results of the investigation.

The investigation eventually revealed that refugees had been charged US$25 simply to get in the front gate of the UNHCR compound and up to US$200 for an initial interview, with some paying thousands of dollars by the end of the process. Nine people, including three Kenyans, were charged with fraud.

Since Calle-Noreña arrived, nearly all the division’s staff have been replaced or redeployed. But the shake-up has disrupted operations, work on routine resettlement cases was suspended last year, and even now only ‘urgent’ and ‘emergency’ cases are being processed. It’s been reported that the backlog of cases from the period of reorganisation still hasn’t been cleared. Meanwhile, demand for the UNHCR’s services has remained intense.

Something of an oasis in a region convulsed by war within and between countries, Kenya has attracted refugees and asylum seekers from countries throughout north-eastern Africa. According to the best estimates, around 148,000 Somalis, 70,000 Sudanese, 20,000 Ethiopians, 6000 Ugandans and 7000 other refugees—something like a quarter of a million people—are living in Kenya. Most of them are in two refugee camps near the border, and most of the rest are in Nairobi.

The Kenyan government makes life difficult for refugees and for the UNHCR. It requires that all refugees are confined to the camps unless the UNHCR makes a formal determination that they would be in danger there. Most of the refugees in Nairobi are therefore regarded as illegal and, according to Human Rights Watch, are harassed by police and forced to pay bribes to avoid arrest. Living conditions are squalid, and even refugees approved by the UNHCR have had their documents ignored or destroyed by police. According to Human Rights Watch’s refugee policy fellow, Alison Parker, who was in Nairobi when the attack at the refugee centre took place, there is persuasive evidence that politically motivated attacks—sometimes by security agents from other countries—are an ongoing problem for a significant number of refugees.

Since 1991, in breach of its obligations under the 1951 Refugee Convention, the Kenyan government has refused to process any refugees itself. In some cases refugees have been returned to their country of origin despite evidence that their lives are in danger. And perhaps most significantly of all, the government won’t allow any refugees to settle permanently in Kenya. This deprives the UNHCR of one of the three options it has when attempting to find a ‘durable solution’ for individual refugees.
The two remaining options for the UNHCR are to return refugees to their homeland or resettle them in a third country. Where it's feasible and safe, repatriation is in many ways the most desirable option—providing conditions in the home country are safe and stable. But the political landscape in the countries around Kenya isn't encouraging. 'Somalia is still in chaos. Sudan is still in chaos,' says Calle-Norén. 'The persecution going on in Ethiopia doesn't open opportunities for repatriation. The old cases have already gone back to Uganda, but we have new cases; most of them are members of the opposition who are certainly not going to be able to go at this point.' Some refugees have been able to return to Burundi, but Rwanda and the Democratic Republic of Congo (formerly Zaire) have been at war until very recently, with no guarantee that their peace agreement will stick.

Which leaves resettlement. And that's where the 'queue'—which has been such an important image in the Australian government's attacks on boat people—comes into the picture.

The Rwandan woman and her two children were waiting in that 'queue'. The family was classified as an urgent case, but it appears the UNHCR didn't realise they faced any immediate danger. 'You must remember,' says Calle-Norén, 'that the wife and daughter of President Habiyarima are moving around in the streets of Belgium with no problems.' But he concedes that the family had been attacked more than once in Uganda, and for that reason had been shifted to Nairobi.

It's at this point in the story that things become complicated. The accommodation centre is run on behalf of the UNHCR by GOAL, an Irish aid agency. Under an agreement with the UNHCR, no one at GOAL would talk to me about the case, so I couldn't ask them whether they were alerted to any potential danger. After my meeting with GOAL was cancelled by their deputy director, I tried—without success—to get an answer to this question from the UNHCR.

What information I do have, though, suggests that GOAL staff were not made aware of any threat to the family. This failure on the part of the UNHCR could well be a symptom of the stress the branch is operating under following the corruption inquiry and the clean-out of staff. No one I spoke to questioned Calle-Norén's competence or his dedication to the job, one non-government aid worker described him as among 'the best' of the UNHCR people she'd met during a long career working in the field, and says he is one of the few senior UNHCR staff to meet and talk to refugees.

Any UNHCR office operating in Africa faces an underlying resource problem. Internationally, the organisation operates in a state of constant financial uncertainty. In June the head of the UNHCR, Ruud Lubbers, estimated that, of the US$748 million in fresh funding the organisation needs during 2002, there is a shortfall of US$99 million. [Australia's core contribution to the UNHCR was reduced from A$14.3 million to A$7.3 million in the May 2002 Federal Budget.] The problem for Africa is that a significant proportion of the UNHCR's income is earmarked, by donor governments, for specific countries or regions. The imbalance between funding commitments and need is so great that the average spending per refugee in Africa has been estimated at less than a third the amount spent per refugee in Europe.

Whatever the reason for the failure at the Nairobi office, the warning was not made to GOAL and, meanwhile, the protection division was taking too long to process the application for resettlement. 'The case took a bit longer than it usually takes,' Calle-Norén acknowledged. 'But they don't take much less time.'

Lottery or queue?

Outside the UNHCR office in the late afternoon, there is a stream of peak-hour traffic. Although it's winter, the air is warm and dusty as people queue for crowded, battered old buses. Beside the main road is a market selling food, clothes and fabric, and it's here that I meet three young men who are living nearby while they wait for an appointment at the UNHCR.

These men depend on charities for food and sympathetic locals for a place to sleep. Each has a quite different story to tell about why he left his home country and how he came to be in Nairobi. One of them, a Ugandan, tells me how his father, a member of the political opposition, was jailed in 2000.

'They took my father's documents and then they took my brother on top of that. And then, from there, I managed for myself,' His mother, a businesswoman, had died in 1996, so he was living alone near the international airport at Entebbe.

'I was getting assistance from some other friends. There was a certain man who was a teacher, he was the best friend of my father, so he was the one guiding me. And then recently he was knocked by a vehicle, just an accident, so I became stranded. I don't know where to go. And then on top of that those people, they were still coming there to ask me for my father's documents. So I decided to come to this UNHCR to see if they could give me assistance for my better future—that's just my aim of coming here.'

'I came here by a bus, and the transport was given to me by some friends of mine who we had been studying together. It's 21,000 Ugandan shillings. I've now stayed here six-and-a-half months.' The young man first applied for an appointment at the UNHCR in May this year, his first appointment was for 27 August, just a few days after we met.

Although the political situation in Uganda has improved significantly in recent years, it is a one-party state and the government—still at war with rebel movements in the north and west of the country—has a low tolerance for dissent. This young man will need to convince the UNHCR that he has a well-founded fear of persecution if he returns to Uganda. If he succeeds, he'll probably be told to go to one of the camps near Kenya's border, where refugees can't work and—according to a staff member of the International Organisation for Migration—the food being issued to camp residents at the moment 'is not enough to live on', and health problems, including malaria, are rife.

Or the young Ugandan might succeed in convincing the UNHCR that he has an urgent case for resettlement. In which case he'll join the wait for the relatively small number of places being offered by a dozen Western countries and a handful of others.

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time either. Let's say an urgent case takes between three and six months and a normal case takes one to two years. This case was submitted, upon her arrival, in May 2001, but for various reasons—people on leave, this and that—the formal submission from the UNHCR to the Australian High Commission was not effectively made until August.' (The Australian government says that the case wasn't brought to the attention of our High Commission until November.) Then, according to Calle-Noreña, there was a delay in obtaining extra information requested by Australia, including a clearance for the woman from the International Court of Justice for Rwanda. 'In November, yes, the case was—in its content—sorted out, and it went to the High Commission until ... January, February, March ... until April, when they decided, which is normal: three months for them to decide on what we call an urgent case.'

Central to the Australian government's case against the boatloads of asylum seekers that have arrived in Australia in recent years is the argument that these people have been taking places away from needier refugees waiting patiently in camps in countries like Kenya. Yet even the Immigration Department's figures suggest that there's something wrong with that argument. In 2001-2002, according to the department's website, 33.2 per cent of Australia's offshore humanitarian visas went to people born in Africa and 32.1 per cent to people born in Europe—far from a true reflection of relative numbers or need on those two continents.

But, as the Minister's spokesman remarked in response to the attack in Nairobi, at least Australia is taking refugees from that region. We are one of only eight countries—the others are the US, Canada, Sweden, Norway, Finland, New Zealand and Denmark—which take most of the estimated 100,000 refugees resettled each year. Another eight or nine countries take up to a couple of thousand refugees between them. The United Kingdom, the former colonial power in Kenya and several neighbouring countries, takes no refugees directly from the region, Africans (or anyone else for that matter) must make their way to the UK to seek refugee status there.

So the sheer shortage of resettlement places—and places for Africans in particular—is the first barrier for those many refugees for whom repatriation is impossible and local integration ruled out by the Kenyan government. But does the existing process guarantee that the limited places that are available go to the neediest?

'Hit and miss' is how Lena Barrett, policy and advocacy officer in the Nairobi office of the Jesuit Refugee Service, describes the process by which refugees eventually qualify for resettlement. In her office in Lavington, another suburb of Nairobi, she describes to me how the lengthy approval process can lead to immense suffering for individuals regardless of whether, as in the case of the Rwandan family, there is a politically motivated threat. Women in particular are extremely vulnerable to violence and exploitation, and in some cases that means they are never able to complete the approval process.

Although the UNHCR does treat 'women at risk' as a priority group, and several countries (including Australia) have established a similar priority in their own selection process, the resettlement countries put barriers in the way of specific groups of refugees. Anyone with a connection with a rebel group, says Barrett, will find it very difficult to get a place in any of the major resettlement countries, even if they were forcibly recruited.

At the Refugee Consortium of Kenya, set up in 1998 in response to the increasingly complex refugee situation in Kenya, Eva Maina echoes Barrett's comments. There is, she says, 'quite a gap between how things should be and how they are' in the processing system. Because of the backlog of cases, a person arriving in Nairobi in January, for example, will often not be given an appointment at the UNHCR until May, and even then it might be postponed for up to another two months. In the meantime they will be housed in one of the camps—where the UNHCR is struggling to feed refugees adequately and where there's the risk of violence from political enemies—or, illegally, in Nairobi or other Kenyan cities and towns. Once through the UNHCR's procedures, they'll come up against the backlog of cases at the embassies and high commissions of the resettlement countries—a backlog that's grown significantly since September 11 led to a slowdown in US approvals.

To illustrate the difficulties faced by specific groups of refugees, Maina
describes the situation of refugees from the Democratic Republic of Congo (DRC)—officially there are about 2000 of them—living in Kenya. Up until a few weeks ago, the government of the DRC was effectively at war with two neighbouring countries, Uganda and Rwanda, which were each backing rival rebel movements. To get to Nairobi by the most direct route, refugees from the DRC pass through Uganda and Rwanda. But when they seek refugee status they will often be asked why they didn’t stay in Uganda or Rwanda, because they are the first countries they passed through. ‘Because Uganda and Rwanda are heavily involved in the fighting in the DRC, these are not options for them,’ says Maina. ‘They come to Kenya because Kenya is the only country around them that’s not involved in the war. But for a number of them the principle of “first country of asylum” has been used to disqualify them from being recognised as refugees.’

A large community of people who have fled the DRC are living in the slum area of Kabiria, not far from the consortium’s office, faced with a catch-22 situation. They’ve been told, they say, that they’re not refugees because they didn’t take advantage of the first country of asylum. Maina says, ‘And yet when they say to the authorities, OK, since you’ve rejected me can you repatriate me, they’re told, “There’s war in the DRC, so you can’t go back home.”’

Those are just some of the barriers facing those refugees for whom resettlement is the only long-term solution. Sergio Calle-Noreña outlines for me a few others. Anyone suffering from HIV/AIDS will be rejected out of hand by most resettlement countries, as will people with other potentially expensive health problems. ‘At this stage,’ he says, ‘the United States and Canada have accepted people who are HIV-positive, but the rest of the countries don’t.’ According to Australia’s guidelines, applicants will be refused ‘if they have a medical condition which is likely to result in a significant cost to health care and community services or prejudice Australians’ access to health care or community services—a potentially large group of needy refugees.

Although the guidelines don’t say so, Calle-Noreña says that Australia is reluctant to accept unaccompanied minors as well—or at least through Nairobi. ‘That’s a delicate point,’ he says, ‘because we have a lot of unaccompanied children and Australia says, “For us it’s very costly, we don’t have the infrastructure.”’ According to Philip Ruddock, though, that’s not the case. ‘During 2001–2002 there were 74 unaccompanied minors granted visas worldwide. Since 1 July 2002, [the Australian High Commission in] Nairobi has granted 10 visas,’ he said in a written response to my question on this point.

When Mr Ruddock says that the boat people are taking the place of the neediest refugees, he doesn’t mention the fact that a significant group—people with health problems—is excluded by our guidelines. He certainly doesn’t refer to the UNHCR’s perception that unaccompanied minors aren’t welcome. Nor does he make it clear that conditions in countries like Kenya can prevent refugees with strong cases from successfully negotiating the UNHCR’s procedures and then finding a resettlement country to respond to their need.

Using the ‘neediest’ as a weapon against boat people avoids facing up to this reality. It avoids admitting that Australia’s resettlement program is significantly less generous now—our refugee/humanitarian program is down from 20,000 per year in the early 1980s to 12,000 this year—than it has been in the past. And, by focusing on the victims, it avoids the obvious point that we should be pressuring other Western countries to institute orderly resettlement programs and increase rather than reduce their support for the UNHCR.

After the attack at the GOAL facility in Nairobi, the Rwandan woman was taken to a city hospital. Calle-Noreña visited her there early that morning when, he says, she still wasn’t aware that her sons had died in the attack. After seeing her he asked police to make sure that samples of the children’s nightclothes were kept for analysis; to his surprise he later found out that this had not been done.

A few days later she was shifted to a guarded convent, where she was looked after by nuns while the police investigation proceeded. Now classified as an emergency case, her approval for travel had come through from the Australian High Commission. At around the time the two Rwandan suspects were released from custody, she left Kenya for Australia. No further arrests have been made.

Peter Browne works at the Institute for Social Research at Swinburne University and is editor of Australian Policy Online (www.apo.org.au).