

Sent: Thursday, 16 October 2003 3:24 PM
To: Sands, Alistair (SEN)
Subject: MINISTERIAL DISCRETION INQUIRY: RESPONSES TO QUESTIONS ON NOTICE

Dear Alistair,

Further to my e-mail message of 9 October 2003, I am now forwarding, in attachments below, responses to Questions on Notice in Groups A, H and K (as listed in Attachment A of my letter to you of 19 September); together with responses to Questions asked at the hearing on 5 September by Senator Bartlett (Hansard, p.36) and Senator Ludwig (Hansard, p.86).

The response to a Question asked by Senator Wong (Hansard, p.81) remains outstanding. Senator Wong asked the Department to provide information with regard to how many scheduled cases in a year on which the Minister requested a full submission. Providing a response has proved to be very resource-intensive, involving manual searches. The Department is continuing to gather whatever information may be provided to assist the Committee in this regard.

I will advise you as soon as this information becomes available.

We apologise for the delay in finalising these responses.

Thank you for your assistance.

Yours sincerely

Andrew Endrey
Director
Parliamentary Coordination
DIMIA

A. Process for dealing with requests for ministerial intervention

Question A1

Is there a set process for assessing a request for ministerial intervention?

Answer

Yes. A response to this question was provided to the Senate Committee on 5 September 2003, and is at pages 15-19, 22-23, 25, 35, 39, 52, 55, and 76 of Hansard. This issue was also addressed at paragraphs 168-184 and Attachments 11 and 12 of the DIMIA submission to the Committee.

Question A2

Are there written guidelines on how such a request should be handled?

Answer

Yes. The Department's submission at Attachment 2 - the Migration Series Instruction (MSI) 387 "Minister's Public Interest Powers" - and Attachment 9, MSI 386 "Guidelines on Ministerial Powers Under Sections 345, 351, 391, 417, 454 and 501J of the *Migration Act 1958*" - provide information on how such requests are to be handled.

Question A3

How are requests usually received?

Answer

A response to this question was provided to the Senate Committee on 5 September 2003, and is at page 29 paragraphs 5 and 7 of Hansard. This issue was also addressed at paragraph 168 of the DIMIA submission to the Committee.

Question A4

Where a request is not received in writing, who decides whether it constitutes a request for ministerial intervention or not?

Answer

In the first instance a decision about whether an oral communication amounts to a request would be made by the person receiving the communication. In line with the Minister's clear preferences, an officer identifying an oral request would generally ask that this be made in writing to the Minister. However, the Minister's Guidelines require that DIMIA officers bring all cases to the Minister's attention where they fall within the ambit of the Guidelines.

Pressing or significant developments relating to a case may well be advised orally to the Department. DIMIA officers can choose to initiate preparation of a submission on receipt of oral information without requiring that it be made as a formal written request and without awaiting the arrival of a request.

Question A5

Are all requests acknowledged in writing?

Answer A5

All written requests to the Minister for intervention that provide a return address receive a written response and may also receive an interim or 'holding' letter pending the dispatch of the full response. Note that referrals from the MRT and the RRT of cases which might fall within the ambit of the Minister's guidelines are not treated as requests.

A response to this question was also provided to the Senate Committee on 5 September 2003, and is at page 22 of Hansard.

Question A6

What role do areas of DIMIA other than the Ministerial Intervention Units have in processing requests for Ministerial intervention?

Answer

- Ministerial and Communications Branch, Parliamentary and Legal Division – register written requests into the Parliamentary Correspondence Management System (PCMS) and coordinate tabling statements.
- Onshore Protection Branch, Refugee, Humanitarian and International Division – develop and implement procedures and training for DIMIA's Ministerial intervention processes in relation to sections 417, 454 and 501J requests.
- Migration Branch, Migration and Temporary Division – develop and implement procedures and training, in consultation with ACT Regional Office, for DIMIA's Ministerial intervention processes in relation to sections 345, 351 and 391 requests.
- Legal Services and Litigation and Visa Framework Branches, Parliamentary and Legal Division – provide legal advice on legal policy and litigation matters.
- DLOs – coordinate all paperwork between the Minister's office and the Department (also see Question A7 below).

Question A7

What is the role of Department Liaison Officers in the Minister's office?

Answer

The DLOs provide a coordinating and liaising role for all requests for the Minister's public interest powers. Their role is to ensure that all requests for the Minister's public interest flow in and out of the Minister's office smoothly.

Documentation for such requests that the Minister exercise his public interest power (such as schedules and submissions) is checked by a DLO before being forwarded on to the Minister to ensure that all relevant material is appropriately ordered.

Where necessary, the DLO coordinates with the relevant MIU or policy area on urgent cases.

The role of the DLO is set out in paragraph 4.3 of the MSI at Attachment 2 of the Department's submission.

H. NATIONALITY OF THOSE GRANTED MINISTERIAL INTERVENTION

Question H1

Can DIMIA provide figures of the nationality of people granted ministerial intervention before 2000?

Some of this information (for s417) was provided to the Senate Legal and Constitutional Committee in 1999 (Submission 69E, pp1680-1730).

Answer

Statistical tables and graphs on the nationality of people granted visas through the exercise of the Minister's s351 and s417 Ministerial intervention powers are provided in Attachment H1. Please note it is not possible to directly match the statistical information contained in the attachment to the table published in the Department's submission to the Senate Legal and Constitutional Committee in 1999 (Submission 69E, pp1680-1730). The s417 statistics provided in that context were cohort statistics, and were based on the year of application. The Department is unable to extract or replicate this data from current systems – data now available are based on year of intervention. Data relating to the nationality of people granted visas through Ministerial intervention is not available prior to the 1997/98 financial year due to major changes in DIMIA computer systems since the Department made its submission to the Senate Legal and Constitutional Committee in 1999.

Question H2

Can you collate the data provided to the Legal and Constitutional Committee in 1999 to produce tables and graphs similar to those at attachments 22, 23 and 24?

Answer

Please refer to Attachment H2. The statistics contained in the attachment to the table in the Department's submission to the Senate Legal and Constitutional Committee (Submission 69E, pp1680-1730) relate only to s417 interventions. Major changes to the Department's computer systems mean that it is not now possible to extract or replicate equivalent data for s351 interventions from current systems.

Question H3

Can equivalent data (by nationality and year) be produced with regard to the Minister's intervention power under s351 over the same time period?

Answer

Please refer to Question H2.

Question H4

Can the department offer an explanation of what factors have led certain nationalities to be highly represented in the number of visas granted through ministerial intervention (as per figures in Attachments 22-24)?

Answer

There can be a range of factors that cause certain nationalities to be more highly represented. These can include:

- some countries may undergo internal disruptions or changes that give rise to a fear of harm which is not Convention related or serious enough to amount to persecution;
- some nationalities may have low approval rates through the protection visa process, giving rise to a greater likelihood that nationals of those countries will be seeking access to intervention grounds as distinct from normal criteria for visa grant. Conversely, very high visa grant rates for particular countries would limit the number of people with that nationality seeking access to Ministerial intervention;
- some nationalities may have more people who are more likely to have links with Australians which raise the public interest. This could be because they are likely to be long term residents, or they have age profiles which could mean they are likely to have formed relationships or had Australian born children.

Question H5

Does the Minister receive a higher number of requests for ministerial intervention from certain nationalities?

Answer

The Department does not collect nationality information in respect of Ministerial intervention requests in a reportable form. As such, we are unable to answer this question.

Question H6

Can the department provide figures of the number of requests received relative to number of times ministerial discretion has been exercised by nationality?

Answer

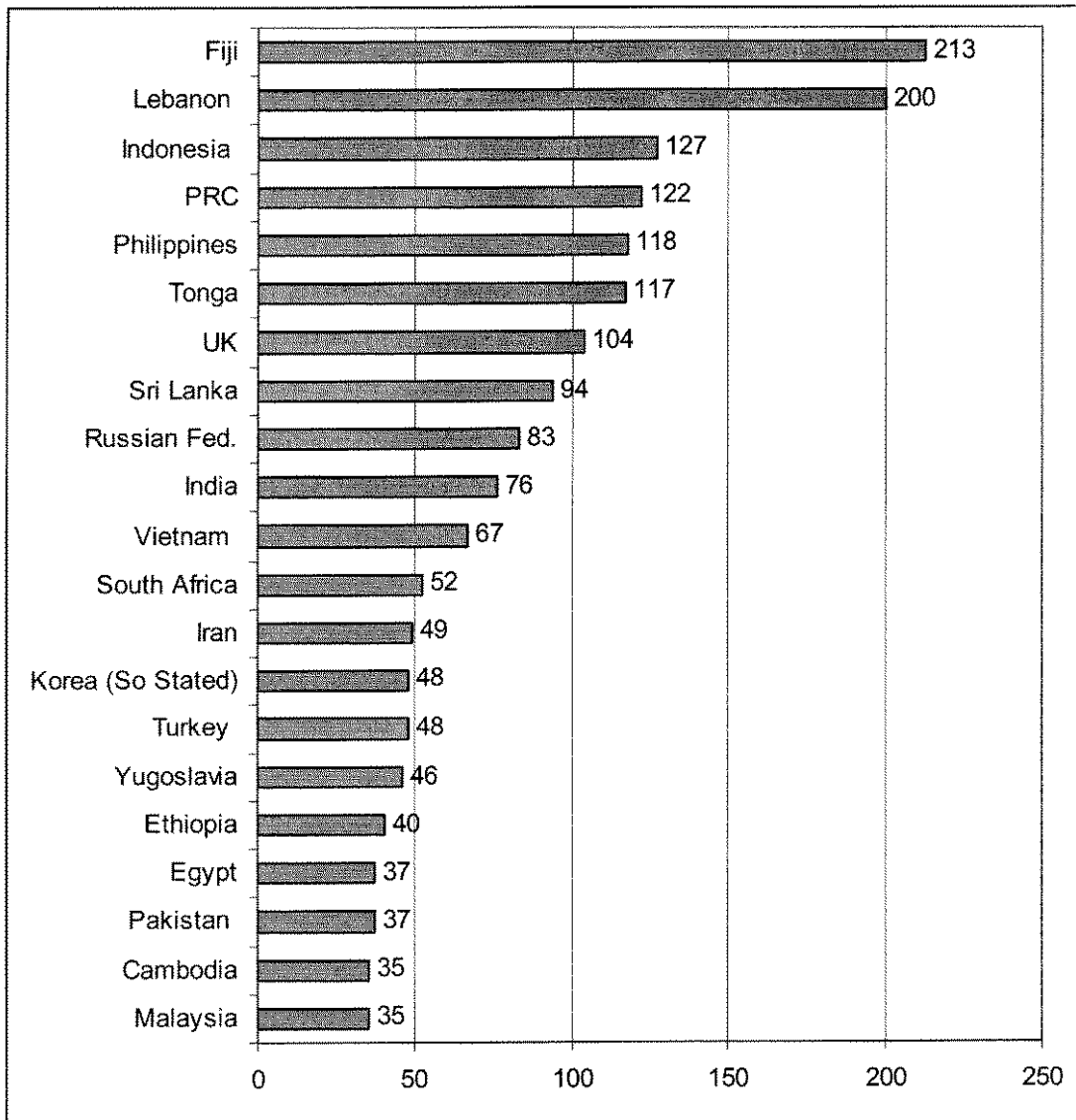
See answer H5. The Department is unable to answer this question.

**Table H1-1: Nationality of Total Interventions (Persons)
1 July 1997-30 June 2003**

Nationality	Number	Nationality	Number	Nationality	Number
Afghanistan	11	Indonesia	127	Romania	15
Albania	9	Iran	49	Russian Fed.	83
Algeria	7	Iraq	16	Samoa	5
Argentina	2	Ireland	3	Senegal	2
Armenia	11	Israel	20	Sierra Leone	1
Austria	1	Italy	8	Singapore	13
Bahrain	1	Japan	8	Slovakia	1
Bangladesh	12	Jordan	8	Somalia	26
Belarus	2	Kazakhstan	4	South Africa	52
Benin	1	Kenya	3	Spain	1
Bolivia	3	Korea (North)	1	Sri Lanka	94
Brazil	5	Korea (So Stated)	48	Stateless	14
Bulgaria	6	Korea (South)	7	Sudan	4
Burma (Myanmar)	30	Kuwait	1	Sweden	6
Cambodia	35	Kyrgyzstan	1	Switzerland	2
Canada	12	Laos	5	Syria	19
Chile	9	Latvia	6	Taiwan	9
Colombia	30	Lebanon	200	Tanzania	6
Congo	1	Liberia	3	Thailand	21
Croatia	2	Libya	3	The Netherlands	12
Cuba	1	Lithuania	4	Tibet	1
Cyprus	1	Luxembourg	1	Tonga	117
Czechoslovakia	5	Macedonia	12	Tunisia	1
East Timor	6	Malaysia	35	Turkey	48
Ecuador	10	Malta	1	Tuvalu	1
Egypt	37	Mauritius	6	Uganda	1
El Salvador	7	Morocco	6	UK	104
Eritrea	5	Mozambique	1	Ukraine	16
Estonia	7	Nepal	20	Unknown	4
Ethiopia	40	Nicaragua	1	Uruguay	5
Fiji	213	Nigeria	18	USA	13
France	9	Pakistan	37	USSR	3
Gaza Strip	1	Palestine	3	Vanuatu	1
Germany	10	Papua New Guinea	1	Venezuela	6
Ghana	16	Paraguay	1	Vietnam	67
Greece	11	Peru	10	Western Samoa	18
Guyana	2	Philippines	118	Yugoslavia	46
Hong Kong	15	Poland	9	Zimbabwe	1
Hungary	7	Portugal	9		
India	76	PRC	122		

Note: The statistics above represent annual activity figures and are a consolidation of various departmental statistical records collected and collated manually. For the reasons outlined in attachment 25 of DIMIA's submission to the Committee, it is not possible to interrogate current DIMIA systems to obtain this information. The above data incorporates data previously provided at Attachment 21 of the Department's submission. Data relating to nationality of Ministerial intervention grant recipients is not available in a reportable form prior to the 1997/98 financial year.

**Graph H1-1: Top 20 Nationalities of Total Interventions (Persons)
1 July 1997- 30 June 2003**



Note: The statistics above represent annual activity figures and are a consolidation of various departmental statistical records collected and collated manually. For the reasons outlined in attachment 25 of DIMIA's submission to the Committee, it is not possible to interrogate current DIMIA systems to obtain this information.

Data relating to nationality of Ministerial intervention grant recipients is not available in a reportable form prior to the 1997/98 financial year.

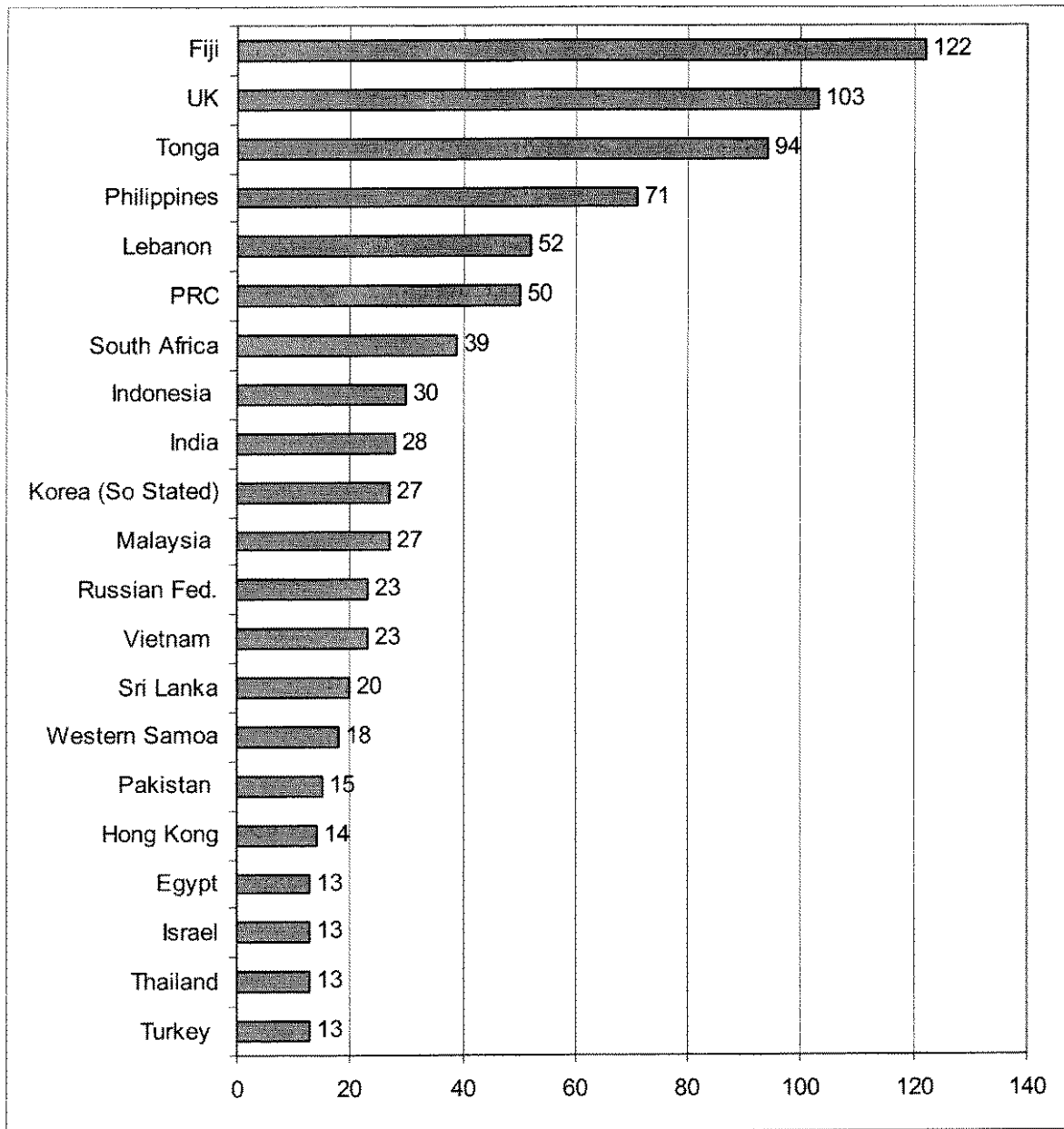
**Table H1-2: Nationality of s351 Interventions (Persons)
1 July 1997-30 June 2003**

Nationality	Number	Nationality	Number	Nationality	Number
Afghanistan	0	Indonesia	30	PRC	50
Albania	1	Iran	9	Romania	9
Algeria	0	Iraq	3	Russian Fed.	23
Argentina	0	Ireland	1	Samoa	0
Armenia	7	Israel	13	Senegal	0
Austria	1	Italy	8	Sierra Leone	0
Bahrain	0	Japan	7	Singapore	10
Bangladesh	5	Jordan	1	Slovakia	1
Belarus	0	Kazakhstan	0	Somalia	0
Benin	0	Kenya	1	South Africa	39
Bolivia	0	Korea (North)	0	Spain	1
Brazil	2	Korea (So Stated)	27	Sri Lanka	20
Bulgaria	0	Korea (South)	3	Stateless	2
Burma (Myanmar)	5	Kuwait	1	Sudan	0
Cambodia	8	Kyrgyzstan	0	Sweden	4
Canada	9	Laos	0	Switzerland	2
Chile	2	Latvia	1	Syria	4
Colombia	4	Lebanon	52	Taiwan	9
Congo	1	Liberia	0	Tanzania	0
Croatia	2	Libya	0	Thailand	13
Cuba	0	Lithuania	1	The Netherlands	12
Cyprus	0	Luxembourg	0	Tibet	0
Czechoslovakia	0	Macedonia	12	Tonga	94
East Timor	0	Malaysia	27	Tunisia	0
Ecuador	0	Malta	1	Turkey	13
Egypt	13	Mauritius	4	Tuvalu	1
El Salvador	0	Morocco	1	Uganda	0
Eritrea	0	Mozambique	0	UK	103
Estonia	0	Nepal	7	Ukraine	3
Ethiopia	3	Nicaragua	0	Unknown	3
Fiji	122	Nigeria	5	Uruguay	1
France	9	Pakistan	15	USA	11
Gaza Strip	0	Palestine	0	USSR	0
Germany	9	Papua New Guinea	1	Vanuatu	1
Ghana	1	Paraguay	1	Venezuela	6
Greece	7	Peru	2	Vietnam	23
Guyana	2	Philippines	71	Western Samoa	18
Hong Kong	14	Poland	2	Yugoslavia	10
Hungary	0	Portugal	2	Zimbabwe	1
India	28				

Note: The statistics above represent annual activity figures and are a consolidation of various departmental statistical records collected and collated manually. For the reasons outlined in attachment 25 of DIMIA's submission to the Committee, it is not possible to interrogate current DIMIA systems to obtain this information.

Data relating to nationality of Ministerial intervention grant recipients is not available in a reportable form prior to the 1997/98 financial year.

**Graph H1-2: Top 21 Nationalities of s351 Interventions (Persons)
1 July 1997-30 June 2003**



Note: The statistics above represent annual activity figures and are a consolidation of various departmental statistical records collected and collated manually. For the reasons outlined in attachment 25 of DIMIA's submission to the Committee, it is not possible to interrogate current DIMIA systems to obtain this information.

Data relating to nationality of Ministerial intervention grant recipients is not available in a reportable form prior to the 1997/98 financial year.

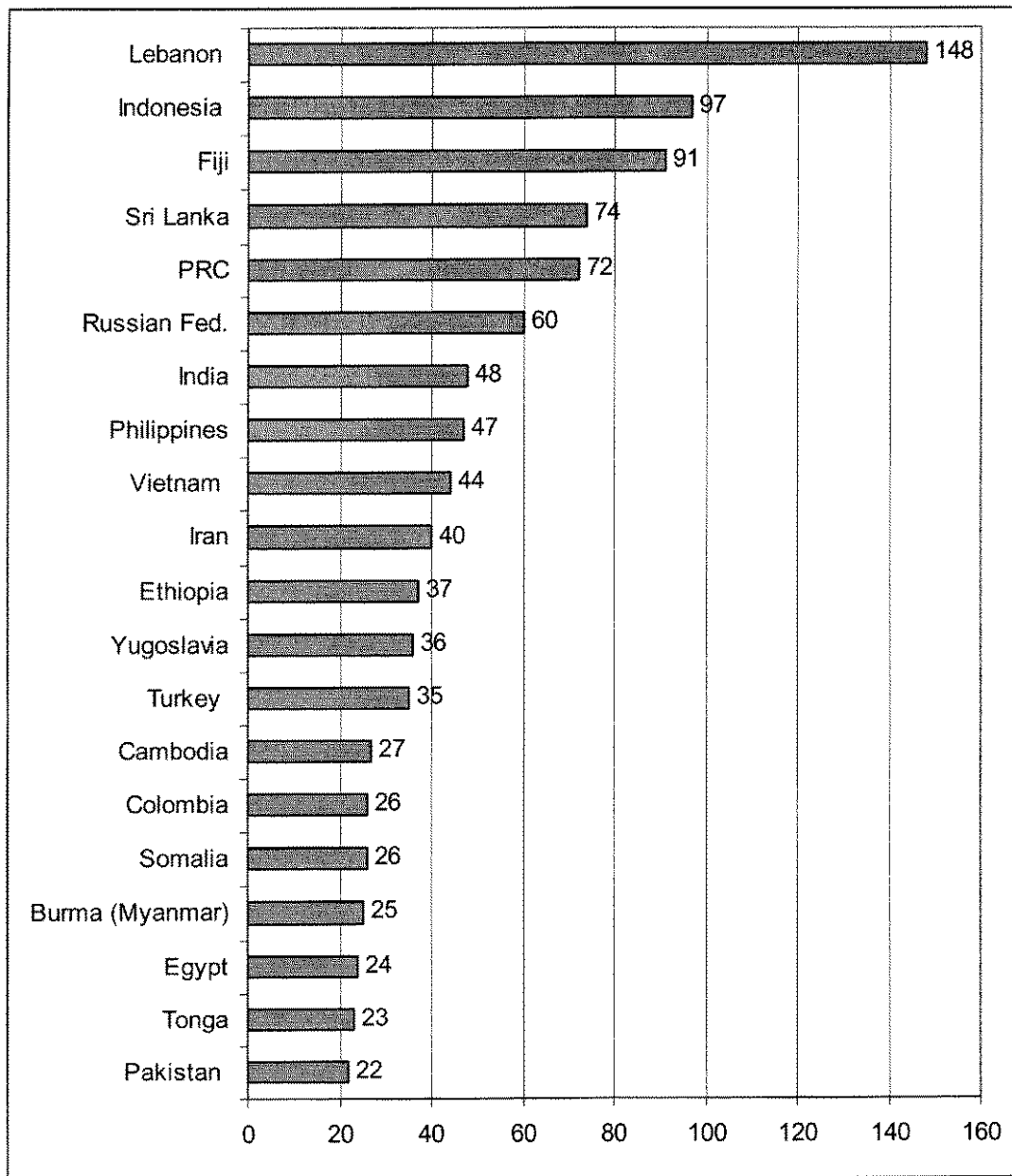
**Table H1-3: Nationality of s417 Interventions (Persons)
1 July 1997-30 June 2003**

Nationality	Number	Nationality	Number	Nationality	Number
Afghanistan	11	India	48	PRC	72
Albania	8	Indonesia	97	Romania	6
Algeria	7	Iran	40	Russian Fed.	60
Argentina	2	Iraq	13	Samoa	5
Armenia	4	Ireland	2	Senegal	2
Austria	0	Israel	7	Sierra Leone	1
Bahrain	1	Italy	0	Singapore	3
Bangladesh	7	Japan	1	Slovakia	0
Belarus	2	Jordan	7	Somalia	26
Benin	1	Kazakhstan	4	South Africa	13
Bolivia	3	Kenya	2	Sri Lanka	74
Brazil	3	Korea (North)	1	Stateless	12
Bulgaria	6	Korea (So Stated)	21	Sudan	4
Burma (Myanmar)	25	Korea (South)	4	Sweden	2
Cambodia	27	Kuwait	0	Switzerland	0
Canada	3	Kyrgyzstan	1	Syria	15
Chile	7	Laos	5	Taiwan	0
Colombia	26	Latvia	5	Tanzania	6
Congo	0	Lebanon	148	Thailand	8
Croatia	0	Liberia	3	The Netherlands	0
Cuba	1	Libya	3	Tibet	1
Cyprus	1	Lithuania	3	Tonga	23
Czechoslovakia	5	Luxembourg	1	Tunisia	1
East Timor	6	Macedonia	0	Turkey	35
Ecuador	10	Malaysia	8	Tuvalu	0
Egypt	24	Mauritius	2	Uganda	1
El Salvador	7	Morocco	5	UK	1
Eritrea	5	Mozambique	1	Ukraine	13
Estonia	7	Nepal	13	Unknown	1
Ethiopia	37	Nicaragua	1	Uruguay	4
Fiji	91	Nigeria	13	USA	2
France	0	Pakistan	22	USSR	3
Gaza Strip	1	Palestine	3	Venezuela	0
Germany	1	Paraguay	0	Vietnam	44
Ghana	15	Peru	8	Western Samoa	0
Greece	4	Philippines	47	Yugoslavia	36
Hong Kong	1	Poland	7		
Hungary	7	Portugal	7		

Note: The statistics above represent annual activity figures and are a consolidation of various departmental statistical records collected and collated manually. For the reasons outlined in attachment 25 of DIMIA's submission to the Committee, it is not possible to interrogate current DIMIA systems to obtain this information.

Data relating to nationality of Ministerial intervention grant recipients is not available in a reportable form prior to the 1997/98 financial year.

**Graph H1-3: Top 20 Nationalities of s417 Interventions (Persons)
1 July 1997- 30 June 2003**



Note: The statistics above represent annual activity figures and are a consolidation of various departmental statistical records collected and collated manually. For the reasons outlined in attachment 25 of DIMIA's submission to the Committee, it is not possible to interrogate current DIMIA systems to obtain this information.

Data relating to nationality of Ministerial intervention grant recipients is not available in a reportable form prior to the 1997/98 financial year.

Table H2-1: s417 Interventions by Nationality 1993-2000¹

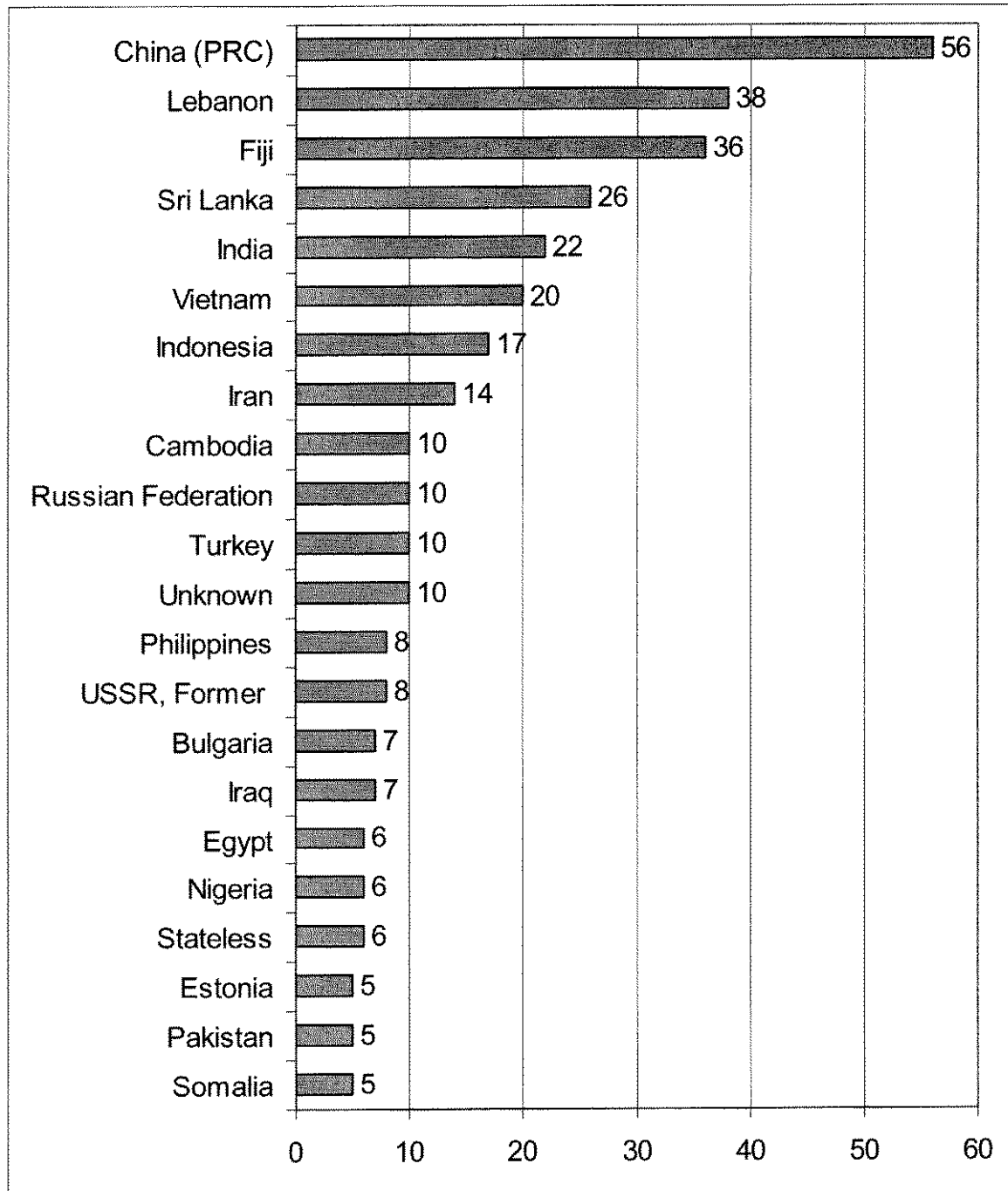
The following table shows, by nationality, cases where the Minister intervened under s417 in the financial years 1993-94 to 1998-99, where the original PV application was lodged after 1 July 1993.

Nationality	Interventions	Nationality	Interventions
China (PRC)	56	Malaysia	3
Lebanon	38	Peru	3
Fiji	36	Syria	3
Sri Lanka	26	Belarus	2
India	22	Chile	2
Vietnam	20	Mozambique	2
Indonesia	17	Nepal	2
Iran	14	Portugal	2
Cambodia	10	Sweden	2
Russian Federation	10	Tonga	2
Turkey	10	Ukraine	2
Unknown	10	Afghanistan	1
Philippines	8	Africa (So Stated)	1
USSR, Former	8	Albania	1
Bulgaria	7	Burma	1
Iraq	7	Ecuador	1
Egypt	6	El Salvador	1
Nigeria	6	Germany (So Stated)	1
Stateless	6	Japan	1
Estonia	5	Jordan	1
Pakistan	5	Latvia	1
Somalia	5	Liberia	1
Algeria	4	Lithuania	1
Colombia	4	Mauritius	1
Fmr Yugoslavia	4	Morocco	1
Korea, South	4	Poland	1
South Africa, Republic of	4	Romania	1
Ethiopia	3	Taiwan	1
Ghana	3	Tunisia	1
Korea (So Stated)	3	United Kingdom	1
Kyrgyzstan	3	Total¹	408

¹Note: based on cohort figures for PV applications lodged between 1 July 1993 and 30 June 1999. As such the total varies from annual activity statistics published on page 1679 of Submission 69E provided to the Senate Legal and Constitutional Committee in 1999.

Graph H2-1: s417 Interventions by Top 22 Nationalities 1993-2000¹

The following table shows, by nationality, cases where the Minister intervened under s417 in the financial years 1993-94 to 1998-99, where the original PV application was lodged after 1 July 1993.



¹Note: based on cohort figures for PV applications lodged between 1 July 1993 and 30 June 1999. As such the total varies from annual activity statistics published on page 1679 of Submission 69E provided to the Senate Legal and Constitutional Committee in 1999.

K. Humanitarian vs Non-humanitarian interventions

Question K1

Can you explain how the figures in Attachments 17 and 18 of the submission have been arrived at?

Answer

The statistics provided in Attachments 17 and 18 were compiled from various DIMIA systems and manually maintained records. Please refer to Attachment 25 of the Department's submission to the Committee for further information on this data.

Question K2

Does this data suggest that the rate of intervention (calculated as the percentage of total requests granted intervention) in non-humanitarian cases has increased in proportion to the rate of intervention in humanitarian cases over the past six years?

Answer

Calculated in the manner requested, this is the case. However, deriving intervention rate trends by comparison with the numbers of requests is unreliable because:

- letter writing campaigns, particularly a feature for post RRT cases, can result in hundreds or thousands of s417 requests being recorded relating to only one person or family unit;
- the PIGA* process for post RRT cases means s417 intervention can occur, irrespective of whether a request has been made; and
- Section 351 interventions in 1996-97 and 1997-98 were too low (9 and 35 respectively) to rely on to make even general assumptions about intervention rates.

Given the exceptional nature of the public interest criterion for interventions, it should be expected that there will be volatility in the number of cases in which the Minister intervenes.

A more reliable indicator of intervention rates – although still far from perfect – would be to compare the number of interventions to the number of tribunal decisions made in a given year which uphold a visa refusal. Of course, the interventions in a year may not all relate to tribunal decisions made in that year and it is only in more recent years that the volumes of decisions affirmed by the two tribunals and the volumes of interventions have been sufficiently high for a reasonable comparison. Comparing intervention rates since 2000-01 by using this methodology shows little difference in intervention rates between the tribunals. Intervention rates over the 2000-01, 2001-02 and 2002-03 financial years have ranged between 4.4% and 6.6% per annum for the MRT and between 4.4% and 6% per annum for the RRT.

*Note: PIGA is the automatic assessment of all affirmed cases following RRT consideration, and was referred to in the Department's submission at Attachment 11.

Question K3

Is there any reason why the rate of intervention in non-humanitarian cases would have increased more than that in humanitarian cases?

Answer

See answer to Question K2 above. When comparing rates for intervention as a percentage of tribunal decisions affirming a visa refusal in a given year, there does not appear to be a significant difference in intervention rates between MRT and RRT cases.

QUESTION TAKEN ON NOTICE

SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Bartlett asked (Hansard page 36) – Has any analysis or research been done as part of those considerations (in terms of creating a new visa subclass which would allow applicants, who were the subject of a unfavourable decision, and who accept that they have no or little chance at merits review, to waive their rights to merits review and seek intervention immediately) at any stage that we might be able to get access to?

Answer:

Yes. This issue has been considered from time to time in the Department since the establishment and subsequent winding up of section 6A(1)(e). In the light of the experience with the s6A(1)(e) process, there are a number of difficult issues with an onshore visa class irrespective of whether that is accompanied by attempts to require applicants to choose between a refugee and a humanitarian application.

As noted during the Hearing on 5 September 2003, a range of significant issues arise:

- the intervention powers are non-compellable and making them compellable would establish an opportunity for litigation with the potential for the test for intervention being widened and potentially lowered;
- if the person was required to waive their rights to merits review in order to access Ministerial intervention at an earlier stage, persons unsuccessful in this choice will no doubt want to restore access to merits review and, with potential for Convention obligations to be owed, it would be difficult to deny this. This would create considerable potential for misuse of the processes by those wishing to prolong their stay and frustrate their removal from Australia. Alternatively permitting access to Ministerial intervention at an earlier stage, but in parallel with access to merits review, is likely to be cumbersome and complex; and
- the principle underpinning the non-compellable intervention powers is to resolve first whether individuals are able to obtain visas through normal processes. In the case of protection visas, the protection visa process identifies and protects the large majority of individuals owed non-refoulement obligations under the CAT and ICCPR. This leaves only small numbers of such people to rely on the Ministerial intervention mechanism for protection, as the Refugees Convention tests are in many respects broader and lower and the level of protection provided is higher than for CAT/ICCPR.

QUESTION TAKEN ON NOTICE

SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Ludwig asked (Hansard page 86) – I was wondering whether with respect to the information you provided to Senator Santoro there was a case file or a document detailing the investigation that was done by your department that might provide the information to the committee in a more fulsome way.

Answer:

The Department sought urgent advice from the Australian Embassy Islamabad on 9 October 2002 about the cause of Mr Ahad's death.

The request and responses were made through the DFAT cable network. The text of these communications is attached. The attachments are detailed below.

Attachment 1 – text of DIMIA's request by cable of 9 October 2002 for information on the death of Bilal Ahad.

Attachment 2 – text of a cable of 14 October 2002 from the Australian Embassy to DIMIA providing an initial response.

Attachment 3 – text of a cable of 7 November 2002 from DIMIA seeking response to request at Attachment 1.

Attachment 4 – text of a reply by cable dated 14 November 2002 from the Australian Embassy providing advice on the progress of inquiries into the death of Bilal Ahad.

Attachment 5 – text of cable dated 20 November 2002 from DIMIA providing additional personal information on Bilal Ahad.

Attachment 6 – text of a cable dated 25 November 2002 from the Australian Embassy requesting Bilal Ahad's passport and identity card numbers.

Attachment 7 – text of a cable dated 5 December 2002 from the Australian Embassy providing the outcome of inquiries into the death of Bilal Ahad.

Attachment 8 – text of a Country Information Service entry of information provided by the Australian Embassy by cable dated 6 March 2002 and referred to in Attachment 2.

SENATOR LUDWIG – HANSARD P86. ATTACHMENT 1

**TEXT OF DIMIA CABLE DATED 9 OCTOBER 2002 TO DFAT POST
REQUESTING INFORMATION REGARDING BILAL AHAD**

“FOR DFAT FROM COUNTRY INFORMATION SERVICE, PROTECTION
DECISION SUPPORT SECTION, DIMIA, CANBERRA

GRATEFUL FOR URGENT ADVICE TO ASSIST IN THE PROVISION OF
APPROPRIATE INFORMATION. A RESPONSE BY 11/10/02 WOULD BE
APPRECIATED IF POSSIBLE.

2. BACKGROUND

3. IT IS ALLEGED THAT A PAKISTANI FAILED ASYLUM SEEKER, MR
BILAL AHAD, WAS KILLED SOME TIME AFTER BEING RETURNED TO
PAKISTAN.

4. MR BILAL AHAD (DOB: 23/01/1984), A PAKISTANI NATIONAL OF
AFGHAN PASHTUN ORIGIN, FROM THE REGION AROUND PESHAWAR
ARRIVED IN AUSTRALIA ON 7 MARCH 2001 ON A TOURIST SHORT
STAY VISA. HE OVERSTAYED AND WAS DETAINED FOLLOWING A
COMMUNITY DOB-IN UNDER S189(1) OF THE MIGRATION ACT AT
VILLAWOOD IDC (SYDNEY) ON 24/01/02.

5. MR AHAD LODGED A PROTECTION VISA APPLICATION ON 29/01/02
AND WAS REFUSED AT PRIMARY 12/03/02. HIS CLAIMS WERE BASED
ON HIS INVOLVEMENT IN AN ANTI-DRUG CAMPAIGNING MOVEMENT,
FOUNDED BY HIS FATHER AND GRANDFATHER AND THAT THE LIVES
OF HIS FAMILY AND HIS OWN LIFE WERE THREATENED BY DRUG
SMUGGLERS. HE CLAIMED THAT THE PAKISTANI AUTHORITIES WERE
UNWILLING TO PROVIDE PROTECTION. THE ORGANISATION HE
CLAIMED TO BE INVOLVED WITH IS ‘TAHRIK KHATM MANCHIAT’ OR
‘TEHRIK KHATAN-E-MANCHIAE (TKEM)’.

6. HE SOUGHT REVIEW WITH THE RRT, WHICH AFFIRMED THE
REFUSAL DECISION ON 9/05/02. THE RRT FOUND THAT THE
APPLICANT LACKED CREDIBILITY AND THAT NEITHER HE, NOR HIS
FAMILY, WERE ACTUALLY INVOLVED IN ANTI-DRUG CAMPAIGNING. IT
WAS DETERMINED THAT HE DID NOT MEET THE MINISTER’S PUBLIC
INTEREST GUIDELINES ON 14/05/02. HE WAS REMOVED TO PAKISTAN
UNDER S198 OF THE ACT ON 01/06/02.

7. QUESTIONS

A. PLEASE PROVIDE ANY INFORMATION ON THE ALLEGED MURDER,
INCLUDING LOCATION, DATE, TIME, PERSONS AND/OR
ORGANISATIONS WHICH MAY HAVE BEEN INVOLVED.

B. DOES AN ANTI-DRUG CAMPAIGNING MOVMENT ORGANISATION 'TAHRIK KHATM MANCHIAT' OR 'TEHRIK KHATAN-E-MANCHiate (TKEM)' EXIST?

C. IF SO, PLEASE SUPPLY SOME DETAILED INFORMATION ON THE ORGANISATION, INCLUDING AIM AND LOCATIONS.

D. ANY INFORMATION ABOUT MR AHAD WOULD BE GREATLY APPRECIATED."

SENATOR LUDWIG – HANSARD P86. ATTACHMENT 2

TEXT OF AUSTRALIAN EMBASSY RESPONSE DATED 14 OCTOBER 2002 TO DIMIA INQUIRY REGARDING BILAL AHAD

"FOR COUNTRY INFORMATION SERVICE, PROTECTION DECISION SUPPORT SECTION, DIMIA, CANBERRA

START OF SUMMARY

POST HAS BEGUN SEARCHING FOR INFORMATION REQUESTED IN REFTEL AS A MATTER OF PRIORITY. HOWEVER, POST WILL REQUIRE MORE TIME TO ANSWER QUESTION A FROM REFTEL. POST WOULD LIKE TO DRAW ATTENTION TO ITS PRIOR REPORTING ON "KHATM-E-MANCHIATE" ** ((*CABLE IDENTIFIER DELETED*) OF 06/03/2002 REFERS). *CABLE IDENTIFIER DELETED* PROVIDES INFORMATION WHICH SHOULD ENABLE QUESTIONS B AND C OF REFTEL TO BE ANSWERED. IT IS HIGHLY LIKELY THAT "KHATM-E-MANCHIATE" AND THE ORGANISATION MENTIONED IN REFTEL "TEHREEK KHATM MANCHIATE" ARE THE SAME ORGANISATION. FROM URDU "TEHREEK" CAN BE TRANSLATED INTO ENGLISH AS "MOVEMENT".

END OF SUMMARY"

** ATTACHMENT 8 PROVIDES GENERAL INFORMATION ON THIS GROUP.

SENATOR LUDWIG – HANSARD P86. ATTACHMENT 3

TEXT OF DIMIA CABLE DATED 7 NOVEMBER 2002 TO POST

“FOR DFAT FROM COUNTRY INFORMATION SERVICE, PROTECTION
DECISION SUPPORT SECTION, DIMIA CANBERRA

GRATEFUL FOR RESPONSE TO REFTEL (*CABLE IDENTIFIER DELETED*)
WHICH IS STILL URGENT AS THE DEPARTMENT WILL BE NEEDING A
RESPONSE WITHIN THE NEXT FORTNIGHT.”

SENATOR LUDWIG – HANSARD P86. ATTACHMENT 4

**TEXT OF AUSTRALIAN EMBASSY RESPONSE DATED
14 NOVEMBER 2002 TO DIMIA**

"FOR COUNTRY INFORMATION SERVICE, PROTECTION DECISION
SUPPORT SECTION, DIMIA CANBERRA

START OF SUMMARY

CABLE PROVIDES A RESPONSE TO THE COUNTRY INFORMATION
SERVICE, PROTECTION DECISION SUPPORT SECTION, DIMIA
CANBERRA ON THE REQUEST FOR INFORMATION CONCERNING THE
ALLEGED MURDER OF BILAL AHAD.

END OF SUMMARY

POST HAS MADE EXTENSIVE EFFORTS TO FIND INFORMATION WHICH
WOULD ENABLE IT TO RESPOND TO QUESTION A FROM FIRST
REFTEL. HOWEVER, WE HAVE BEEN UNABLE TO FIND ANY
INFORMATION ON THE ALLEGED MURDER OF BILAL AHAD. DESPITE
THE EFFORTS OF AGENCIES AT POST, INCLUDING DFAT, DIMIA AND
AFP, AND OF DIMIA DUBAI, A PARTICULAR STUMBLING BLOCK HAS
BEEN THE LACK OF SPECIFIC INFORMATION ABOUT THE ADDRESS OF
BILAL AHAD IN PAKISTAN.

2. POST RESPONSES TO QUESTIONS B, C AND D OF FIRST REFTTEL
REMAIN VALID (SECOND REFTTEL REFERS)."

SENATOR LUDWIG – HANSARD P86. ATTACHMENT 5

TEXT OF DIMIA CABLE DATED 20 NOVEMBER 2002 TO POST

“FOR DFAT FROM COUNTRY INFORMATION SERVICE, PROTECTION
DECISION SUPPORT SECTION, DIMIA, CANBERRA

GRATEFUL FOR RESPONSE TO QUESTIONS A) AND D) IN CABLE
(*CABLE IDENTIFIER DELETED*) OF 10/10/02 IN THE LIGHT OF FURTHER
INFORMATION PROVIDED BELOW. A RESPONSE BY 04/12/02 WOULD
BE APPRECIATED IF POSSIBLE.

2. THANK YOU FOR YOUR EFFORTS TO OBTAIN ANSWERS TO THESE
QUESTIONS. IN YOUR ANSWER CABLE O.IS5495 OF 14/11/02 YOU
POINTED OUT THAT YOUR INVESTIGATIONS HAD BEEN SEVERELY
HAMPERED BY THE LACK OF DETAIL ABOUT MR AHAD, AND
PARTICULARLY THE LACK OF AN ADDRESS FOR HIM IN PAKISTAN.
DETAILS ARE PROVIDED BELOW.

3. AHAD'S DOMICILE CERTIFICATE (DATED 3/6/2000 IN SWABI) LISTS
HIM AS HAVING BEEN BORN IN THE VILLAGE OF BAM
KHEL/BUDLAKHEL IN THE DISTRICT OF SWABI. HIS PERSONAL
PARTICULARS FOR CHARACTER ASSESSMENT (A DIMIA FORM) GIVES
HIS PLACE OF BIRTH AS SWABI IN NORTH WEST FRONTIER PROVINCE
IN PAKISTAN. THE SAME FORM GAVE HIS CURRENT ADDRESS WITH
HOUSE NUMBER AND STREET IN PAKISTAN AS: MOH, BUDLA ICHEL
VILL 880, BAMKHEL (SWABI). ALTHOUGH THE WRITING OF CURRENT
ADDRESS IS SOMEWHAT UNCLEAR.

AHAD'S PASSPORT FROM PAKISTAN GIVES HIS PERMANENT
ADDRESS AS MOH, BUDLA ICHEL VILL, P.O. BAM ICHEL TEH IDISII
SWABI. (NOTE THE WRITING OF THE LAST TWO CHARACTERS OF THE
WORD 'IDISII' ARE UNCLEAR).

4. OTHER DETAILS ARE: BILAL AHAD'S PARENTS WERE BORN IN
SWABI, NORTH WEST FRONTIER PROVINCE, AND BOTH CURRENTLY
RESIDE IN UNITED ARAB EMIRATES. BILAL AHAD LEFT PAKISTAN IN
NOVEMBER 2000 AND RESIDED IN DUBAI, UNITED ARAB EMIRATES
UNTIL MARCH 2001 WHEN HE CAME TO AUSTRALIA. PASSPORT
NUMBER AND IDENTITY CARD NUMBER ARE AVAILABLE IF NEEDED.

5. THANK YOU FOR YOUR ASSISTANCE”

SENATOR LUDWIG – HANSARD P86. ATTACHMENT 6

**TEXT OF AUSTRALIAN EMBASSY RESPONSE DATED 25 NOVEMBER
2002 TO DIMIA**

“FOR COUNTRY INFORMATION SERVICE, PROTECTION DECISION
SUPPORT SECTION, DIMIA CANBERRA

START OF SUMMARY

THANKS FIRST REFTTEL. POST WILL ENDEAVOUR TO FIND
INFORMATION SOUGHT IN SECOND REFTTEL. TO ASSIST OUR
INVESTIGATIONS, WE WOULD BE GRATEFUL IF YOU COULD PROVIDE
BILAL AHAD'S PASSPORT NUMBER AND IDENTITY CARD
NUMBER (FIRST REFTTEL REFERS).

END OF SUMMARY”

SENATOR LUDWIG – HANSARD P86. ATTACHMENT 7

TEXT OF DFAT RESPONSE DATED 5 DECEMBER 2002 TO DIMIA ENQUIRY REGARDING BILAL AHAD

"FOR COUNTRY INFORMATION SERVICE, PROTECTION DECISION SUPPORT SECTION, DIMIA CANBERRA

START OF SUMMARY

CABLE PROVIDES INFORMATION FOR COUNTRY INFORMATION SERVICE, PROTECTION DECISION SUPPORT SECTION, DIMIA CANBERRA ON THE ALLEGED MURDER OF BILAL AHAD.

END OF SUMMARY

AFTER EXTENSIVE ENQUIRIES WE HAVE BEEN ADVISED THAT MR BILAL AHAD DIED APPROXIMATELY TWO TO THREE MONTHS AGO OF WHAT WERE REPORTED TO BE NATURAL CAUSES. BILAL AHAD IS KNOWN TO PEOPLE FROM HIS HOME DISTRICT OF SWABI AS "BILAL AHMAD" AND IS LISTED AS THE SON OF FAZAL BACHA, MOH BUDLA KHAIL, VILLAGE BAMA KHAIL, SWABI, NORTH-WEST FRONTIER PROVINCE (NWFP). IT WAS SUSPECTED THAT MR AHAD/AHMAD'S DEATH WAS CAUSED BY A HEART CONDITION. AT THE TIME OF DEATH THERE WAS NO EVIDENCE WHICH WOULD SUGGEST THAT MR AHAD/AHMAD HAD BEEN MURDERED. NO REPORT TO THE LOCAL POLICE WAS MADE CONCERNING MR AHAD/AHMAD'S DEATH AND NO MEDICAL REPORT WAS ISSUED."

SENATOR LUDWIG – HANSARD P86. ATTACHMENT 8

TEXT OF DFAT ADVICE PROVIDED IN CABLE OF 6/3/02 AND PLACED ON CISNET

“BACKGROUND

THE APPLICANT CLAIMS THERE IS A GROUP CALLED KHATM-E-MANCHIATE WHO HAD AN ANTI-DRUG AGREEMENT WITH THE GOVERNMENT OF AFGHANISTAN, THE NATIONAL AWAMI PARTY OF PAKISTAN (LED BY KHAN ABDUL WALI KHAN), TEHRIK-E-SURKHPOSHTAN AND TWO GROUPS ASSOCIATED WITH THE KHAD, IN THE MID 1980'S.

THE GROUP MAY HAVE A PRESENCE IN THE NWFP OF PAKISTAN OR AFGHANISTAN, AND IS CLAIMED TO HAVE THE BACKING OF THE NATIONAL AWAMI PARTY.

QUESTION: [05/02/02]

PLEASE PROVIDE ANY GENERAL INFORMATION ABOUT THIS GROUP.

WHAT IS THE CURRENT STATUS OF THIS GROUP?

ANSWER: [06/03/02]

KHATM-E-MANCHIATE WAS AN ANTI-DRUG ORGANIZATION WHICH HAD A CLOSE RELATIONSHIP WITH THE NATIONAL AWAMI PARTY, ONE OF THE LARGEST POLITICAL PARTIES IN PAKISTAN'S NORTH-WEST FRONTIER PROVINCE (NWFP). KHATM-E-MANCHIATE WAS FORMED IN THE MID 1980'S, HOWEVER ITS IMPACT ON PREVENTING DRUG USE IN THE NWFP WAS LIMITED. THE GROUP, ALTHOUGH TECHNICALLY STILL IN EXISTENCE, IS NO LONGER OPERATIONAL. BOTH KHATM-E-MANCHIATE AND THE NOW DEFUNCT TEHRIK-E-SURKHPOSHTAN (AN ANTI-COLONIAL MOVEMENT FORMED IN NWFP BEFORE PARTITION) HAD CLOSE ASSOCIATIONS WITH THE AFGHAN INTELLIGENCE AGENCY, KHAD.

END”