

21. Rights of Refugees

Tikanga o ngā Tāngata Rerenga



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Universal Declaration of Human Rights, Article 14

Introduction Timatatanga

The human rights of refugees are specified in the 1951 United Nations Convention Relating to the Status of Refugees (the Refugee Convention) and its 1967 protocol. The International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment 1984 (CAT) also contain provisions relevant to refugees. New Zealand has ratified all three treaties and they are reflected in a variety of domestic legislation. For example, the Crimes of Torture Act 1989 was enacted as a precursor to New Zealand's ratification of the CAT; the New Zealand Bill of Rights Act 1990 (BoRA) affirms New Zealand's commitment to the ICCPR; and the Immigration Act 1987 was amended in 1999 to ensure that New Zealand met its obligations under the Refugee Convention.¹

Since the Commission's review of human rights in 2004, new immigration legislation has been enacted. The Immigration Act 2009 came into force in 2010. One objective of the act is to ensure compliance with New Zealand's 'immigration-related' international obligations.² Therefore, the act not only continues the convention regime introduced in 1999, but also codifies certain obligations under CAT and the ICCPR.

Article 1(a2) of the Refugee Convention defines a refugee as:

[A person who] ... owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is

unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the New Zealand context, refugees fall into a number of categories: quota or mandated refugees, spontaneous refugees or asylum seekers, and family members of refugees resident in New Zealand. Spontaneous refugees are people who claim refugee status on arriving at the border or after entering New Zealand. Typically, people in this situation arrive without papers, or claim refugee status before or after the expiry of a temporary permit. They can be divided into those awaiting a decision on their refugee status and those who have already been granted refugee status (when they become known as convention refugees).

Quota refugees are recognised as refugees by the United Nations High Commissioner for Refugees (UNHCR). They are chosen by the New Zealand Government for resettlement in New Zealand while still overseas. They are selected on the basis of need and come from a variety of backgrounds: some having spent time in refugee camps, others coming to New Zealand from their home countries or an initial country of resettlement. New Zealand is one of only 21 countries which accept an annual quota of refugees for resettlement.³ New Zealand is one of 10 countries considered by UNHCR as core resettlement countries.⁴

A small number of people are also accepted annually as New Zealand residents under the Refugee Family Support category. This came into effect in 2007, replacing the Refugee Family Quota (RFQ) policy which operated on a 'ballot' system. The current policy allows some former refugees without family members in New Zealand (subject to certain criteria) to apply to sponsor relatives to settle in New Zealand. Up to 200 places are available per year.

1 The convention is appended as schedule 1, Immigration Act 2009

2 section 3(2d), Immigration Act 2009

3 Since 1970, New Zealand has accepted more than 20,800 quota refugees.

4 Australia, Canada, Denmark, Finland, the Netherlands, New Zealand, Norway, Sweden, the United Kingdom and the United States currently accept 99 per cent of the refugees who are annually resettled.

In addition, former refugees have the same rights as other residents and citizens to access places under the general immigration residence policy, such as the 'Family Sponsored Stream'. These people are not technically refugees, but rather relatives of refugees who have already settled in New Zealand. The cost of their resettlement is met by their families and/or sponsors.

One group unable to claim refugee status under the convention, because they do not meet the definition of refugee, are those fleeing environmental disasters.⁵ Nevertheless, these people still need international protection. Such displacement is becoming more common with the impact of climate change. It is likely to have increasing significance for New Zealand, as a number of Pacific countries face the threat of losing land to rising sea levels as a result of climate changes.

International context

Kaupapa ā taiao

Rights in the international human rights treaties apply to everyone, without exception. The two main treaties are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR). The ICCPR requires ratifying states to protect the civil and political rights of people in their jurisdiction, without discrimination.⁶ It includes the right of aliens lawfully in a state that is party to the covenant not to be expelled, other than by a lawful process and only after their case has been heard by a competent authority.⁷ It also reinforces the right to life and not be subjected to cruel and unusual punishment.

The CAT requires that a ratifying state shall not refoule (expel, return or extradite) a person to another state where there are substantial grounds for believing that they would be in danger of being tortured. This includes not sending a person at risk of torture to a country where, although they may not be immediately at risk, they might be sent on to a country where they would be. The Convention on the Rights of the Child (UNCROC) stipulates that a child should not be separated from their parents, except when determined by competent authorities.⁸ New Zealand ratified the CAT in 1989 and UNCROC in 1993.

Although New Zealand has a credible record of ratifying human rights treaties, it has not ratified the Convention relating to the Status of Stateless Persons.⁹ A stateless person is one who is not considered a national by any state under the operation of its law.¹⁰

The Refugee Convention provides a mechanism for recognising the legal status of refugees.¹¹ It prohibits the return of refugees to countries where they will be in danger of persecution (the concept of non-refoulement) and requires that refugees are provided with social and economic rights on a non-discriminatory basis. Refugees should therefore be able to access rights such as work, housing and education on the same basis as other citizens.

Depending on the right involved, the Refugee Convention defines the non-discriminatory treatment of refugees as:

- being accorded the same treatment as nationals of a country in relation to rationing, elementary education, public relief and social security

5 UNHCR (2009), *Climate Change Natural Disasters and Human Displacement: A UNHCR Perspective*, Environment, 14 August. For further UNHCR comment on climate change, see www.unhcr.org/climate

6 New Zealand ratified the ICCPR and the ICESCR in 1976.

7 Also Article 32(2) of the Refugee Convention

8 Article 3 of UNCROC provides that the best interests of the child must be a primary consideration in administrative decisions affecting the rights of the child.

9 The New Zealand Government acceded to the Convention on the Reduction of Statelessness in 2006.

10 The Citizenship Act prevents people born in New Zealand to stateless persons from being stateless and provides for a grant of citizenship in special cases. New Zealand refugee jurisprudence specifically recognises an overlap between the grounds in the 1954 Convention and the Refugee Convention. If a stateless person is at risk of persecution because of one of the reasons in the Refugee Convention, they are recognised as a refugee.

11 A grant of refugee status is not the same as citizenship. It is recognition of a temporary status pending a durable solution. See Kinley D (editor), (1998), *Human Rights in Australian Law: Principles, Practice and Potential*, The Federation Press, Sydney

- being treated no less favourably than aliens generally in relation to employment, housing and education.

This limits the protection against discrimination to the basic minimum. This distinction is largely theoretical in the New Zealand context, since people who have been granted refugee status (and subsequently permanent residence) have the same rights as other citizens. The situation is less satisfactory for asylum seekers who are not formally recognised as refugees - including those in the process of appealing their status determination. These refugees often receive only the minimal support necessary to meet convention requirements (for example, access to emergency medical treatment, but not to specialist services).

In addition to the treaties, the United Nations High Commissioner for Refugees (UNHCR) was established in 1950.¹² The executive committee of the UNHCR issues authoritative interpretations of the Refugee Convention and the accompanying protocol ('Excom Conclusions'). The executive committee also produces guidelines on the standards of treatment that apply to refugees (for example, in relation to conditions of detention).

The UNHCR, in its guidelines, states that there should be a presumption against detention of asylum seekers.¹³ Decisions about detention must be made in a non-discriminatory way and be subject to judicial or administrative review. This is to ensure that detention continues only where necessary, with the possibility of release where no grounds for its continuation exist. Conditions of detention are dealt with in the UNHCR guidelines. These include the opportunity to receive appropriate medical treatment and psychological counselling, access to basic necessities (for example, beds, shower facilities and basic toiletries) and access to a complaints mechanism. The guidelines also contain specific provisions relating to children, women and vulnerable persons.

12 UNGA Res.428(V) (1950)

13 ExCom Conclusion 44 UNHCR (1999)

14 For more on the relationship between the Refugee Convention and the new complementary protection regime, see Haines R QC (2009), 'Sovereignty under challenge – the new protection regime in the Immigration Bill 2007', *NZ Law Review*, Part 2, p 149

15 The Immigration Act 2009 provides that this can occur only where there is an international agreement to this effect.

16 Haines (2009), p 170

New Zealand context Kaupapa o Aotearoa

The Immigration Act 2009 aims to manage immigration in a way that balances the national interest and the rights of individuals. It seeks to strengthen border control while ensuring compliance with immigration-related international obligations, particularly those under the Refugee Convention, CAT and the ICCPR.

Part 5 of the act ensures that New Zealand meets its obligations under the Refugee Convention.¹⁴ The changes include the creation of a new Immigration and Protection Tribunal. This replaces four other bodies: the Refugee Status Appeals Authority, the Removal Review Authority, the Residence Review Board and the Deportation Review Tribunal. The tribunal will have jurisdiction over claims under Article 3 of CAT and Articles 6 and 7 of ICCPR. Other features include the discretion to refuse a claim if the person has, or could have sought, protection elsewhere;¹⁵ a statutory requirement to apply the internal protection alternative; and exclusion of claims based on the absence of medical treatment facilities in the country of origin.¹⁶

The act also continues the formalisation from the 1987 act of an advance passenger-screening process. This reflects the global move towards increased national security measures. The screening process is used to identify persons who present a risk and those who do not meet immigration requirements, before they board a flight to New Zealand. This process has led to people being refused permission to board if their documentation is incorrect or incomplete. In 2010 the Government, in its reply to the list of issues to be taken up in connection with the consideration of New Zealand's fifth periodic report under the ICCPR, stated:

The systems are not designed to impede or circumvent the asylum and protection

process. Rather they facilitate efficient and effective processing of all passengers on entry to, and through, New Zealand.¹⁷

However, the advance passenger screening process has contributed to a dramatic drop in the number of people claiming asylum in New Zealand. It arguably contravenes the principle of non-refoulement if the country where they were trying to board the flight is not a party to the Refugee Convention, the ICCPR or CAT.

In 2007, the Convention on the Elimination of Racial Discrimination (CERD) committee recommended that New Zealand put an end to the practice of detaining asylum seekers in correctional facilities.¹⁸ In 2009, the CAT committee noted “with concern” that asylum seekers and undocumented migrants continued to be detained in low security and correctional facilities.¹⁹ In 2010, the UN Human Rights Committee criticised New Zealand for permitting the detention of asylum seekers or refugees in correctional facilities, together with convicted prisoners.²⁰

The 2009 act significantly restricts the situations in which refugees or protected persons can be detained.²¹ It removes the ability of foreign nationals to challenge their detention through the District Court, but allows habeas corpus writs to challenge the legality of their detention.

Asylum seekers and protected persons will be able to be held in correctional facilities only under very specific conditions, and they must be treated in accordance with Article 10 of the ICCPR.²² This is achieved by regulations made under section 200(1d) of the Corrections Act 2004, which apply to people detained in prisons under the Immigration Act. Under Regulation 184, Immigration Act

detainees are to be treated the same as accused persons (for example, they are to be allowed visits and phone calls, wear their own clothes, and be separated from other prisoners where practicable).

The most recent legislation intended to address the threat of terrorism – the Terrorism Suppression Amendment Act 2007 – has been criticised as incompatible with aspects of the ICCPR. In particular, there has been criticism of the introduction of provisions which will allow courts to receive or hear classified information against groups or individuals designated as terrorist entities in their absence.²³ The Immigration Act 2009 allows for the use of classified information in refugee determinations, and has widened the type of information which can be deemed to be classified. Even with the protection of a ‘special advocate’ mechanism, this is particularly problematic in the refugee context, given the potential source of the information. The CAT committee expressed concern that the use of classified information to detain asylum seekers and undocumented migrants could result in violation of their right to due process and expose them to removal to countries where they may be at risk of torture.²⁴ The UNHCR prohibits the use of classified information when considering refugee determinations.

The act also removes the right to appeal many decisions by the minister or an immigration officer. The removal of such checks and balances has the potential to result in a system where injustices can not be challenged and fundamental rights are breached. Section 187(2d) removes the right to appeal when the minister or officer determines that a person submitted false or misleading information or withheld relevant information that was

17 CCCPR/C/NZL/Q/5/Add.1, 27 January 2010, para 107

18 CERD/C/NZL/CO/66, 10 August 2007, para 24

19 CAT/C/NZL/CO/5, 14 May 2009, para 6

20 CCPR/C/NZL/CO/5, 25 March 2010, para 16

21 Detention is possible only if the person is liable for deportation under section 164(3) IA 2009, because Articles 32.1 or 33 of the Refugee Convention apply, or where a protected person can be sent to a country where they are not in danger of torture or death. Even this has led to criticism by the UN Human Rights Committee (CCPR/C/NZL/CO/5 25 March 2010).

22 See also the case of Chief Executive of the Department of Labour v Hossein Yadegary & Anor [2008] NZCA 295 for exceptional circumstances that would permit continued detention.

23 CCPR/C/NZL/CO/5, 25 March 2010, para 13

24 Haines (2009), para 6

potentially prejudicial. This section fails to take into account the realities of the refugee situation, where information is often scarce, and where claimants are often wary of authorities, remain fearful of persecution and fear for the safety of their family.

It remains unclear what the impact of this new legislation will be. The practical implications of the Immigration Act 2009 and its corresponding policies will need to be monitored over time.

The right to freedom from discrimination is protected by the BoRA and the Human Rights Act 1993 (HRA). Section 19 of the BoRA makes it unlawful for the public sector to discriminate on any of the prohibited grounds in the HRA (unless the restriction can be justified under section 5 BoRA). Part 2 of the HRA makes it unlawful to discriminate in certain areas of public life (including employment, provision of goods and services, accommodation, and access to public places and educational institutions).

Section 392 of the act continues to exempt the act and immigration regulations and instructions made pursuant to it from the Human Rights Act and the jurisdiction of the Human Rights Commission. Section 392(3) explains that “immigration matters inherently involve different treatment on the basis of personal characteristics”.

In 2010 the Human Rights Committee recommended, in its concluding observations relating to New Zealand’s fifth periodic review under the ICCPR, that the Government

should “consider extending the mandate of the New Zealand Human Rights Commission so that it can receive complaints of human rights violations related to immigration laws, policies and practices and report on them”.²⁵

New Zealand today Aotearoa i tēnei rā

New Zealand is one of only 21 countries that provide for an annual quota of refugees. New Zealand accepts 750 refugees a year under its quota programme. The number of refugees accepted annually has remained static since 1987. Of the countries which have quota programmes, the United States and Canada accept the most refugees. However, New Zealand has one of the highest rates of acceptance in the world proportionate to population.

New Zealand’s quota programme generally focusses on the needs and priorities identified by the UNHCR under the Women at Risk, Medical/Disabled, and UNHCR Priority Protection subcategories. A portion of the quota is allocated to family-linked cases. These cases may be better dealt with under other immigration policy focussed on family reunification, allowing the quota to be entirely focussed on those refugees identified as being at greatest need of protection.

From 1999 to 2008, 7843 people from 56 countries were approved for New Zealand residence through the Refugee

TOP FIVE COUNTRIES OF ORIGIN FOR QUOTA REFUGEES 2004–09

2004–05	2005–06	2006–07	2007–08	2008–09
Afghanistan	Burma/Myanmar	Burma/Myanmar	Burma/Myanmar	Burma/Myanmar
Sudan	Iran	Afghanistan	Bhutan	Bhutan
Burundi	Republic of Congo (Brazzaville)	Democratic Republic of Congo	Eritrea	Iraq
Ethiopia	Iraq	Sudan	Iraq	Democratic Republic of Congo
Somalia	Afghanistan	Rwanda	Afghanistan	Colombia

Human Rights Commission, Race Relations Report 2010

NATIONALITIES OF REFUGEES SETTLED IN NEW ZEALAND (1944–2009)

1944	Polish children and adults
1949–1952	Displaced persons from Europe
1956–1958	Hungarian
1962–1971	Chinese (from Hong Kong and Indonesia)
1965	Russian Christian ‘Old Believers’ (from China)
1968–1971	Czechoslovakian
1972–1973	Asian Ugandan
1974–1991	Bulgarian, Chilean, Czechoslovakian, Hungarian, Polish, Romanian, Russian Jewish, Yugoslav
1977–2000	Cambodian, Lao and Vietnamese
1979–1989	Iranian Baha’i
1991	El Salvadorian, Guatemalan
1985–2002	Iraqi
1992–2006	Afghan, Albanian, Algerian, Assyrian, Bosnian, Burundi, Cambodian, Chinese, Congolese, Djibouti, Eritrean, Ethiopian, Indonesian, Iranian, Iraqi, Kuwaiti, Libyan, Khmer Krom (Cambodian Vietnamese), Liberian, Burmese/Myanmarese, Nigerian, Pakistani, Palestinian, Rwandan, Saudi, Sierra Leone, Somali, Sri Lankan, Sudanese, Syrian, Tanzanian, Tunisian, Turkish, Ugandan, Vietnamese, Yemeni, Yugoslav
2006–2007	(main nationalities) Afghan, refugees from Republic of Congo (Congo-Brazzaville) and Democratic Republic of Congo, Burmese/Myanmar
2007–2009	Same as previous period plus Iraqi, Colombian, Eritrean, Ethiopian, Bhutan, Indonesian, Nepalese

Quota Programme. The largest number of quota refugees over this period came from Afghanistan, Myanmar and Iraq.²⁶

RESETTLEMENT

In line with international obligations, effective resettlement support is required to ensure that refugees enjoy every opportunity to lead a full life and contribute to New Zealand’s future prosperity. Successful resettlement also requires community understanding of cultural and belief systems, the backgrounds of refugees and the challenges

they face in settling into their new homeland.

Convention refugees

Settlement support is vital for all refugees. Convention refugees (asylum seekers) and family members of refugees resident in New Zealand do not receive the same level of settlement support as quota refugees. A minimal level of advice and assistance is provided through Settlement Support New Zealand. Immigration NZ has produced a settlement booklet, available in several languages, designed for convention refugees. This is in contrast to

26 Department of Labour (2009), *Quota Refugees in New Zealand Approvals and Movements [1999–2008]*, Wellington:DoL, p 3. Accessible online at <http://dol.govt.nz/publications/research/quota-refugees/quota-refugees.pdf>

quota refugees, who receive significant and ongoing settlement support.

Quota refugees

Quota refugees receive the following support:

- volunteers, trained by Refugee Services Aotearoa, assigned to families and available for the first year of settlement.
- access to a 'resettlement grant' (convention refugees are entitled to this only if refugee status has been granted within one year of their arrival in New Zealand)
- an orientation programme at the Mangere Refugee Resettlement Centre, which includes language and literacy tuition
- automatic eligibility for Housing New Zealand housing on leaving the Mangere Reception Centre.

On arrival in New Zealand, quota refugees undergo a six-week orientation programme at the Mangere Refugee Resettlement Centre in Auckland. Information is provided about living in New Zealand and the settlement services available outside the reception centre. The Government funds the provision of education, health and social support services at the centre. The Department of Labour manages the centre and the orientation programme to ensure that quota refugees are linked into the appropriate follow-up services after they leave. The AUT University's Centre for Refugee Education, located in the Mangere centre, provides an education programme. Students are given the opportunity to develop English-language, literacy and other skills. Health and counselling services are also provided.

Refugee Services Aotearoa New Zealand (Refugee Services) is the key NGO contracted by the Department of Labour to deliver services to quota refugees for the first year after they leave the centre. Refugee Services provides advice, information and advocacy, crisis intervention, home-based family support, community orientation and referrals services, through social workers, cross-cultural workers and trained volunteers. Refugee Services also works with Housing New Zealand to find housing for quota refugees.

The Ministry of Social Development provides a weekly allowance for resettled refugees. When refugees leave

Since 1997, the Wellington Community Law Centre has co-ordinated a Refugee and Immigration Legal Advice Service (RILAS), which provides information, advice and assistance to refugee and migrant communities seeking reunification with family members. Over the last decade, RILAS has undergone substantial growth, with hundreds of clients seen each year. In partnership with refugee communities and community organisations (such as the Refugee Family Reunification Trust, Refugee Services, Refugees as Survivors and Changemakers Refugee Forum), RILAS is run by Wellington-based lawyers and law students.

A large part of the work of RILAS is assisting former refugees with family reunification applications, via either UNHCR or Immigration New Zealand processes.

Volunteer advocates assist refugee families to untangle complex policy criteria to determine whether family members can join them in New Zealand. Applications can cost in excess of NZ\$2000 (fees, medical certificates, passports, courier costs, translations etc), so advocates also help to ensure that applications meet requisite deadlines and contain the evidence required to verify family relationships.

Volunteer solicitors provide support for refugee families by negotiating with Immigration NZ, support clients to find other avenues when applications are declined, and assist with appeals.

the Mangere centre, they are eligible to receive an emergency benefit at the same rate as benefits provided to unemployed New Zealanders. A re-establishment grant is provided for assistance with purchasing of household items.

REFUGEE VOICES

In recent years the Department of Labour has supported a number of initiatives to “strengthen refugee voices” in order to provide opportunities for refugees to offer their perspectives on government services. Each year the department funds four regional refugee-resettlement forums of government, non-government and community stakeholders to discuss successes and challenges for refugee resettlement in the region. These forums are jointly organised by Refugee Services Aotearoa and the Auckland Refugee Community Coalition, the Waikato Refugee Forum, the Wellington Changemakers Refugee Forum and the Canterbury Refugee Council. Issues that cannot be resolved regionally and that require a response from government agencies are raised at the annual National Refugee Resettlement Forum, hosted by the Department of Labour. The two-day forum involves international agencies (UNHCR, the International Organisation for Migration (IOM) and the Red Cross), government agencies, NGOs and a large number of refugee community members from the regions.

Apart from these regional groupings, a New Zealand National Refugee Network was established in 2009 by existing refugee groups to create a stronger national voice, with the policy of “nothing about us, without us”.

The second Refugee Health and Wellbeing Conference took place in November 2009 – 21 years after the first. It provided an opportunity to review developments and achievements since then, to identify the gaps and to determine what needs to happen next. Six key themes were identified at the conference:

- There needs to be a single vision and policy for refugee resettlement, with national goals and standards by which to measure success.
- Resettlement support should be the same for all types of refugees.
- Services must be delivered on a whole-of-government basis in a nationally consistent manner.
- Policies and services must be rights-based rather than needs-based.
- Refugees need to be at the centre of policy development and service delivery.
- Government and non-government agencies need to go through a process of transformational change to fully include refugees in their decision-making processes and service delivery, and to work in genuine partnership with refugee communities.

Ongoing settlement support

Since 2004, the Government has taken a number of steps to enhance support for migrant and refugee resettlement across agencies under the New Zealand Settlement Strategy. Regional settlement strategies²⁷ have been developed in the Auckland (2006) and Wellington (2008) regions as collaborations between the Government and local bodies, with contributions from non-government organisations and other stakeholders with settlement-related interests.

The Wellington Regional Settlement Strategy addresses the importance of migrants and refugees building a

relationship with Māori. It focusses on welcoming manuhiri (newcomers) to the Wellington region and providing information about the Treaty of Waitangi, regional history and the environment.

The Department of Labour’s recently established Catalyst Project aims to produce a cross-sector Refugee Resettlement Strategy for effective selection, orientation, placement and longer-term resettlement delivery. The scope of the strategy will include both asylum seekers and the potential requirement to house mass boat arrivals, and will guide improvements in refugee resettlement. An initial framework is to be agreed by November 2011.

The Ministry of Social Development's Settling In programme works with refugee and migrant communities to help find solutions to meet their needs. The programme was established in 2003 to build relationships between refugee, migrant and host communities, and ensure government policy affecting them is developed in a collaborative way. It aims to:

- identify social-service needs in refugee and migrant communities
- purchase services where available
- develop capacity, skills and knowledge in refugee and migrant communities
- work across government, NGO and community sectors.

The Wellington refugee health and wellbeing action plan has been developed in partnership with the Government and local bodies, non-government organisations and the community to address refugee needs.

For non-English speaking refugees, the most immediate educational need is English for Speakers of Other Languages (ESOL). The government provides funding for some ESOL programmes, and the Ministry of Education administers programmes to improve learning outcomes for refugees.²⁸

Refugee communities are increasingly providing settlement support in their own right, including, for example, social work and homework groups. In the knowledge that settlement is more successful and sustainable where refugee communities are involved in the resettlement process, there has recently been increased involvement of communities in government-mandated resettlement activities. For example, refugee community leaders are taken to the Mangere Refugee Resettlement Centre by Refugee Services as part of the orientation programme.

SETTLEMENT CHALLENGES

A number of challenges continue to face refugees settling in New Zealand. These include access to education, respect for different values (including dress codes); access to health; housing; barriers to employment; and family reunification.

28 For example, migrant and refugee education co-ordinators aim to assist schools in engaging migrant and refugee families in their children's learning; and the 'Computers in Homes' initiative also assists refugees.

29 This is in contrast to many countries – even less affluent EU countries – which guarantee full access to both asylum seekers and refugees. See Danish Refugee Council (2000), *Report on Legal and Social Conditions for Asylum seekers and Refugees in Western European Countries*. Accessible at <http://www.english.doc.dk/publications>

Health

Apart from difficulties that also apply to the wider population (such as the length of waiting lists), many refugees experience difficulties with gaining access to interpreters and health professionals trained to respect customary practices. Asylum-seekers not formally recognised as refugees face an extra difficulty in this regard. While they have access to public health doctors, they cannot access specialist services, such as dentists, mental health professionals or optometrists.²⁹

The Ministry of Health funds comprehensive health screening for quota refugees and asylum seekers. However, there is no established system for the screening of family members of refugees resident in New Zealand.

There is a need for more mental health services and trained professionals to deal with experiences unique to refugees, such as trauma resulting from torture or anxiety over family reunification. Although various organisations provide services to meet the health needs of refugees, their facilities are often underutilised, as many refugees lack adequate information about such services. Recently some community general practitioners have been closing their books, meaning that newly resettled refugees are unable to access primary health services within their community.

Education

In 2009, the Government announced significant funding cuts that will adversely impact on refugees being able to access educational services. For example, the 'refugee study grant', which has been a significant success as a bridge into tertiary education for refugees, has been abolished from 2010. Funding for adult community education classes, which provide a building block for people who would not otherwise be engaged in education, has been severely reduced.

Employment

Refugees continue to face serious problems finding a job, because their qualifications are not accepted in New Zealand. Other barriers to employment include language; adapting to different work cultures; and employers'

reluctance to either employ someone from a different cultural background or take a 'risk' with someone they know little about (little documentation of work history).³⁰

Housing

Affordable housing of a reasonable standard, in a safe and supportive neighbourhood and accessible to public transport, remains an issue. Refugees and recent migrants may be unaware of relevant laws such as the Residential Tenancies Act 1986 and avenues for complaint if they have concerns about the quality or adequacy of accommodation.

Refugees tend to stay in Housing New Zealand houses 2.5 times longer than non-refugees. Of particular concern is the lack of adequate housing options for refugees, resulting in overcrowding particularly where family reunification has been successful.

Legal aid

Legal aid is available for people claiming refugee status and for immigration matters relating to a refugee's claim or status. However, there is a shortage of legal aid lawyers experienced in refugee matters.³¹ As a result of the Immigration Act 2009, legal aid will also be available for foreign nationals in warrant hearings. This is a change from previous immigration legislation, where some legal aid could not be granted to foreign nationals unlawfully or temporarily in New Zealand unless they were refugee status claimants³²

Family reunification

Family reunification is a fundamental principle of refugee protection. It derives directly from the right of the family to protection by society and the State.³³ The family unit has a better chance than individual refugees of successfully integrating in a new country. In this respect, protection of the family is not only in the best interests of the refugees themselves but also of states. The Department of Labour noted in its publication *Refugee Voices*:³⁴

Family reunification is generally a high priority for all refugees. When in a new country of resettlement, refugees often feel a sense of responsibility for those family members still in the former country (or in refugee camps). From the perspective of refugees coming to New Zealand, having family already here can greatly assist the resettlement process. The facilitation of refugee family reunion has the potential to improve resettlement outcomes and reduce adjustment costs for refugees by reducing the emotional and financial strain that results from being apart from family members.

Family reunification continues to be a major concern for refugees in New Zealand. In the past 10 years there have been decreasing avenues available for refugee family reunification, with both the removal of the humanitarian category and stricter requirements under general immigration policy, such as job offer requirements.

The UNHCR refugee quota programme of 750 refugees annually includes a subcategory for 300 family reunion and emergency referrals. The 300 family reunification places are limited to declared spouses and dependent children of refugees who arrived in New Zealand under previous quota intakes and UNHCR referred family-linked cases. Other than between 2003–04 and 2004–05, when relatives of the 'Tampa' refugees arrived, the family reunification subcategory of the quota has not been fully utilised.³⁵

A large proportion of refugees settled in New Zealand during 1990–2003 were from East African countries. Since then additional refugees have arrived from Iraq, Cambodia and Afghanistan, and more recently from Myanmar and Bhutan. There is no specific allocation in the Government's latest proposed quota for refugees from East African countries, Cambodia or Afghanistan.

30 The recent economic downturn has resulted in some employers hiring New Zealand applicants over migrants or refugees.

31 Legal Aid Review (2009), Bazley, *Transforming the Legal Aid System, Final Report and Recommendations*, November 2009. Accessible at <http://www.justice.govt.nz/publications/global-publications/t/transforming-the-legal-aid-system/>

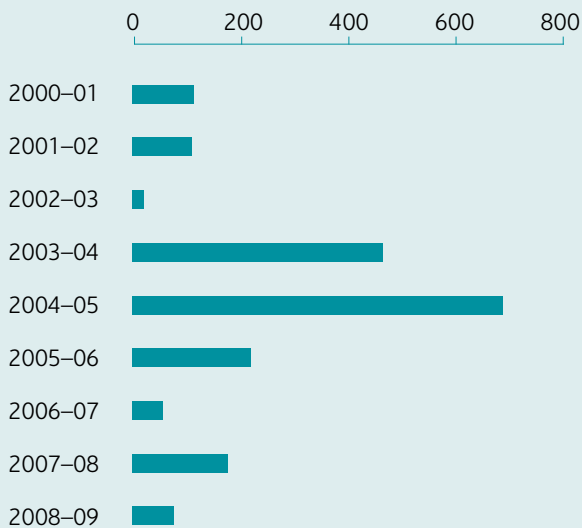
32 Government response to CAT questions (2009): CAT/C/NZL/Q5/Add.1, at paras 46 and 47

33 Article 23 of the ICCPR

34 Department of Labour (2004), *Refugee Voices, A Journey towards Resettlement* (Wellington:DoL), pp 145–146

35 Department of Labour (2009), Presentation at the National Refugee Resettlement Forum, Wellington. 27 May 2009

FAMILY UNION COMPONENT OF THE ANNUAL UNHCR REFUGEE QUOTA PROGRAMME



Groups of people selected under past quotas should be able to complete reunification of family members. This is especially important in light of the limited general immigration policy options for bringing family members to the country, and the reality that the cost of applying under normal immigration policy is often prohibitive for people in this situation.

Former refugees have the same rights as other residents and citizens to access places under the general immigration residence policy, such as the 'Family Sponsored' stream. The 'Sibling and Adult Child' category requires the principal applicant to have an acceptable offer of employment in New Zealand, with minimum income levels. For a person coming from a refugee situation, meeting this requirement is likely to be impossible.³⁶

The abolition in 2001 of the 'Humanitarian' category for permanent residence remains of concern. This category enabled former refugees with family members who did not meet normal immigration policy, but who were in circumstances of extreme humanitarian concern, to apply for residence. The eligibility criteria for other

categories are very narrow and do not reflect the family reunion realities for refugees, nor do they allow for any assessment of humanitarian need in the determination of residence.

While government immigration policy emphasises nuclear or immediate family relationships, the definitions and understandings of family in many cultures include a wider and more diverse group. The parameters around who could be included in a wider definition of family were examined by the Department of Labour in 1999–2000. The department decided not to expand the definition of family in immigration policy for the following reasons:

- There were limits on New Zealand's resource capacity to respond to the desire for family reunification, especially for extended kinship and clan networks.
- The ability to bring in potentially large family groups would place additional pressure on sponsors and publicly funded services.
- The policy would have to be so flexible to allow for individual family circumstances that it would be difficult to draw any boundaries to the definition.
- Verifying familial links, dependencies and periods spent living together would be extremely resource intensive, lengthy and expensive.
- There was potential for applicants to misuse increased flexibility to bring in as many family members as possible, rather than only close or dependent family.

However, the continued reliance on a narrow definition of 'family' is artificial and precludes a number of refugees from being reunited with their family. The reality of wider family interdependence needs to be acknowledged.³⁷

An increasing number of refugees have no options available to them to bring their family members to New Zealand. This is particularly the case for those who came to New Zealand either under the former humanitarian policy or under normal immigration policy (for example, as a spouse or sibling). Under the current system, these people have become effectively 'second-class' refugees, even though their circumstances may be exactly the

³⁶ Many refugees face difficulties in accessing employment, even after they have been living in New Zealand for some time. The most vulnerable family members are also often women who are caring for children on their own.

³⁷ It is common for three generations of family members to live together in very interdependent relationships.

same as refugees coming to New Zealand through other avenues.

The burdensome nature of the immigration process results in significant time delays for refugees between being resettled in New Zealand and being reunified with their families. This contributes to the social and health issues that resettled refugees face, requiring government and community support.

The Department of Labour is undertaking scoping work on improving operational aspects of the family reunification policy, such as procedures that would allow for onshore lodgement of Refugee Family Support category applications, as well as policy and procedures that would allow for requesting medical tests for refugee category applicants once all other criteria have been assessed favourably.

Conclusion

Whakamutunga

The number of quota refugees accepted annually has remained static since 1987. At the same time there has been a dramatic drop in the numbers of asylum seekers. This is due at least in part to the advance passenger-screening process.

Since 2004, two major developments have impacted on the rights of refugees and asylum seekers in New Zealand: development of the New Zealand Settlement Strategy, and the related national and regional action plans and enactment of the Immigration Act 2009.

Quota refugees receive significant and ongoing settlement support. Convention refugees (asylum seekers) and family members of refugees resident in New Zealand receive only a minimal level of advice. Non-government organisations and volunteers make a major contribution to the successful settlement of refugees and provide essential support to asylum seekers.

Refugee communities are asserting a stronger voice, through capacity-building programmes, regional and national forums, and networks. Refugee communities are increasingly providing settlement support in their own right. Recognising that settlement is more successful and sustainable where refugee communities are involved in

the resettlement process, involvement of communities in government-mandated resettlement activities has increased.

A number of challenges continue to face refugees settling in New Zealand. These include access to education; health and housing; respect for different values (including dress codes); barriers to employment; and family reunification. The economic recession has further intensified difficulties in some areas, with funding cuts to some programmes.

The Immigration Act 2009 incorporated specific references to obligations under the International Covenant on Civil and Political Rights, the Refugee Convention and the Convention against Torture. The act also significantly restricts the situations under which asylum seekers and protected persons may be detained. While these are positive aspects, the act also gives rise to a number of human rights concerns which will require close monitoring. These include:

- the advance passenger-screening process
- widening of the information that can be deemed classified and allowing its use in refugee determinations
- removal of some previously available appeal rights
- continuation of the exemption from the Human Rights Act of immigration law, policies and practices.

The Commission consulted with interested stakeholders and members of the public on a draft of this chapter and has identified the following areas for action to advance the rights of asylum seekers and refugees in New Zealand:

Comprehensive strategy

Completing a comprehensive whole-of-government resettlement strategy for convention refugees, quota refugees and family reunification members, with agreed standards by which to measure the effectiveness of refugee resettlement.

Equal support

Providing asylum seekers and family reunification refugees with similar support and conditions to those provided to quota refugees.

Partnership

Developing a partnership model with government in order to enable refugee communities to fully engage in the development of policy and service delivery.

Family reunification

Undertaking a comprehensive review of the Family Reunification Policy.

Immigration Act

Monitoring the implementation of the new Immigration Act 2009.