



Human Rights Commission
Te Kāhui Tika Tangata

Discussion paper

Treating asylum claimants with dignity and respect

The economic, social and cultural rights of those
seeking protection in New Zealand

June 2017



He aha te mea nui o te ao?

He tangata, he tangata, he tangata

What is the most important thing in the world?

It is the people, it is the people, it is the people

Discussion paper

Treating asylum claimants with dignity and respect

**The economic, social and cultural rights of those
seeking protection in New Zealand**

Contents

1. Introduction	3
2. The New Zealand context	6
3. The refugee status determination process	10
4. The scope and content of New Zealand's human rights obligations to refugees and asylum claimants	13
5. Applying the rights framework to refugees and asylum claimants	26
6. Availability of support and services	29
7. Asylum claimants	33
8. Is New Zealand fulfilling their human rights obligations?	41
9. A way forward?	45
Appendix 1	48

ISBN: 978-0-478-35696-0 (Print)

ISBN: 978-0-478-35697-7 (Online)

Published June 2017

Auckland, Aotearoa New Zealand

1.

Introduction

New Zealand has a world leading asylum determination system and refugee resettlement programme. The Government, Non-Government Organisations and communities provide a wide range of support to asylum claimants and people from refugee backgrounds.

This discussion paper examines the relevant international and domestic human rights framework and the components of core economic, social and cultural rights. It then considers these requirements in the context of the stories and experiences that have been shared with us.

Asylum claimants and people from refugee backgrounds come to New Zealand in a variety of ways and have very different experiences depending on the context in which they find themselves in this country. While most have a good experience and settle well in New Zealand, there are small number who continue to fall through the cracks. In their 2013 report *Marking time: experiences of successful asylum seekers in Aotearoa New Zealand*¹ ChangeMakers Refugee Forum explored the extent to which successful asylum claimants were able to participate in Aotearoa New Zealand life. It revealed that successful asylum claimants, also known as Convention refugees, find it difficult to access interpreters and opportunities to learn English. They may also be forced to wait many years before gaining permanent residency. Changemakers note that not only does this mean prolonged periods of uncertainty it also presents major challenges for this group in accessing education, housing, healthcare, welfare benefits, employment and opportunities to be reunited with family members.

The realisation of economic social and cultural rights at an early stage can have an impact on long term settlement outcomes. It also has the potential to adversely affect the process for determining refugee status.

1 ChangeMakers Refugee Forum, *Marking Time: Experienced of successful asylum seekers in Aotearoa New Zealand*, December 2013, Wellington. <https://tinyurl.com/ybafa674>

This Paper presents the stories and voices of asylum claimants and other people from refugee backgrounds that the New Zealand Human Rights Commission (Commission) has spoken to.² It applies a human rights framework to their stories and aims to provide a platform for ongoing constructive dialogue with Government.

The Paper describes the New Zealand context, then records the stories the Commission has heard and assesses these against a human rights framework. The focus of the Paper is on economic, social and cultural rights – including rights to health, housing, education, and employment.

This Paper concludes by setting out a series of proposals to progressively improve outcomes for affected people. These proposals reflect suggestions made by those actively involved in working with asylum claimants and people from refugee backgrounds. The proposals are intended to be targeted, pragmatic and achievable. It is hoped that these proposals can be a starting point for civil society and Government to work together to find solutions.

Proposals for improvement that were identified through the Commission's interviews, surveys and discussions with the sector include:

- **establishing an automatic and systematic mental health screening process for all asylum claimants and those who come to New Zealand as part of the Refugee Family Support Category**
- **ensuring mental health services are available and accessible on an ongoing basis for all asylum claimants and those who come to New Zealand as part of the Refugee Family Support Category**
- **considering how to streamline the visa process to align with the confirmation of claim process to avoid potential duplication and delay**
- **reviewing the availability, affordability and adequacy of housing for asylum claimants and those who come to New Zealand as part of the Refugee Family Support Category**
- **recommencing funding for the Asylum Seeker Support Trust Hostel**

2 15 interviews were undertaken and 25 completed surveys were received. In addition, people from refugee backgrounds were engaged through community organisations and discussions were had with them. Before interviewing or surveying individuals their consent was obtained. They were advised that the information they provided was confidential and voluntary and that the purpose was to obtain their stories for the Human Rights Commission's Discussion Paper. This Paper could not have been written without the honest and open information provided to the Commission by these people.

- considering whether the Asylum Seeker Support Trust Hostel needs to be expanded to meet the needs of those small number of asylum claimants who remain in the community without adequate housing and support
- undertaking training to ensure all front-line staff in Government agencies providing health and other social services to refugees and asylum claimants are aware of entitlements
- working with civil society to consider the desirability of a cross cultural worker or social worker being funded by Government to assist the small number of asylum claimants and those who come to New Zealand as part of the Refugee Family Support Category to navigate the supports and services that are available to them
- undertaking more research into what is needed to assist asylum claimants and Convention refugees to break down the barriers and fully access the employment market
- working with the Commission to develop indicators to monitor the realisation of economic social and cultural rights for refugees and asylum claimants on an ongoing basis.

2.

The New Zealand context

The 1951 United Nations Convention Relating to the Status of Refugees (Refugee Convention) defines a refugee as:³

[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 refugees, Convention refugees or asylum claimants, and family members of refugees resident in New Zealand.

Each year the Government supports around 750 United Nations High Commissioner for Refugees (UNHCR) quota refugees to resettle in New Zealand. New Zealand's resettlement programme is world leading and there is a lot to be proud of. In a welcome development, the Government announced in 2016 that the annual quota would be increased for the first time in 30 years. From 2018 New Zealand will resettle 1000 refugees annually.⁴

New Zealand also receives approximately 300 claims for asylum annually and approves about 150. Most asylum claimants are living in the community. Around 85% of claims are made onshore, the rest are made at the border. Over half of all claims made are made after 180 days living in New Zealand.

3 Article 1A(2).

4 Note that in 2015 the Government also announced that it would also resettle 750 Syrian refugees over the next 2 and a half years. 600 is to be by way of a special emergency intake above New Zealand's quota and 150 places will be offered to Syrian refugees as part of the existing quota framework.

A small number of people are also accepted annually as New Zealand residents under the Refugee Family Support category (RFSC). This category came into effect in 2007, replacing the Refugee Family Quota 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 300 places are available per year. The RFSC is a two tier system based on the sponsor's need for family support in New Zealand. Those with no immediate family in New Zealand are able to apply under Tier 1. Tier 2 applies to those with immediate family in New Zealand. Tier 1 opened in 2007 and Tier 2 was open for a short time in 2012. Over the five-year period 2009/10 until 2013/14, 1,127 people were approved residence through the RFSC.⁵

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. However, many come from refugee like backgrounds. The cost of their resettlement is met by their families and/or sponsors.

When considering the extent to which economic, social and cultural rights are realised it is important to be conscious of the context in which asylum claimants and people from refugee backgrounds find themselves in New Zealand.

2.1 Detention of asylum claimants

Asylum claimants may be detained if they pose a risk to national security or if there are doubts as to their identities or risks of them absconding. Asylum claimants in these circumstances may be detained in a correctional facility or an open detention centre – the Mangere Accommodation Centre (MAC). Those detained at MAC may leave the centre with the permission of Immigration New Zealand staff.

Asylum claimants and protected persons can be held in correctional facilities only under very specific conditions. This is achieved by regulations made under s. 200(1)(d) of the Corrections Act 2004. Under Regulation 184, Immigration Act detainees are to be treated the same as accused persons (that is, they are to be allowed visits and phone calls, to wear their own clothes, and to be separated from other prisoners to the extent practicable).

5 <http://www.mbie.govt.nz/publications-research/research/migration/Family%20support%20and%20convention%20refugees.pdf>

2.1.2 Release on conditions

Once an asylum claimant's identity has been established they may be released on conditions while they await the outcome of their claim. In these cases they may move into the community if they have access to support or they may stay at the MAC.

In some cases they may be released to the Asylum Seekers Support Trust (ASST) Hostel, which has since 2006 hosted some of those awaiting a decision on their claims, as well as a small number whose claims have been denied but where the principle of non-refoulement⁶ applies. The Government ceased providing the hostel with any funding in 2013. The hostel is now funded entirely on donations.

The hostel employs a social worker who helps guide asylum claimants through the most basic necessities; "finding their way through our new country's sometimes confusing and complex Government systems to get their case heard, figuring out how to access work permits, lawyers, translators, transport, school, food and often just as essential, helping them adjust to the emotional turmoil of having to flee their homeland and those they love."⁷

2.2 Asylum claimants in the community

In situations where someone claims asylum at the border and poses no risk of criminal offending or absconding, they are given permission to reside in the community.⁸ In these cases they are directed towards possible places to stay and generally required to make their own way there.

In other cases, a person may claim asylum from within the community whilst in possession of a valid visa or at the expiration of that visa. In New Zealand, most claim refugee status from within the community – they have or are given valid visas.

2.3 Quota refugees

On arrival in New Zealand quota refugees undergo a six-week orientation at MAC. MAC is managed by Immigration New Zealand, which works in partnership with other Government agencies and NGOs to deliver the six-week programme.

6 Non refoulement is a fundamental principle of international law which forbids a country from returning people to another country were they would be in danger of persecution.

7 <http://aucklandrefugeecouncil.org/donate/>

8 <http://www.immigration.govt.nz/opsmanual/46726.htm>

The programme is designed to equip refugees with social and coping skills and provide information to them to prepare them for their new lives in New Zealand. Immigration New Zealand states that the “key focus areas for the reception programme are:

- Health and mental health assessments, initial treatment and health promotion, and
- Settlement planning, including orientation to working and living in New Zealand and an employment assessment for working age refugees, and
- Education, including English language. Refugee children are also prepared for their introduction into the New Zealand classroom and national curriculum.”⁹

After completing the programme refugees are settled in regions throughout New Zealand.¹⁰ Suitable housing is identified before an individual is resettled.

9 <https://www.immigration.govt.nz/about-us/what-we-do/our-strategies-and-projects/supporting-refugees-and-asylum-seekers/refugee-and-protection-unit/new-zealand-refugee-quota-programme>

10 Currently Auckland, Waikato, Manawatu, Wellington, Nelson and Dunedin.

3.

The refugee status determination process

Claims for asylum in New Zealand are regulated by the Immigration Act 2009. Two key authorities are involved in the processing of asylum claims; the Refugee Status Branch (RSB) and the Immigration and Protection Tribunal (Tribunal). The RSB makes decisions on claims at first instance. If the RSB declines a claim, it can be appealed to the Tribunal. Legal Aid is available to help claimants fund a lawyer to represent them through the process.

There are four stages to the first instance claim process:¹¹

1 Submit a written statement

- After having lodged a Confirmation of Claim, claimants must file a full, written statement setting out the circumstances that have led to their claiming refugee – or protected person – status. The written statement must be in English.¹²

2 Interview

- A Refugee and Protection Officer (RPO) conducts an interview with the claimant. Interpreters are provided. Interpreters must keep all information confidential.
- At the interview, the RPO may collect biometric information.
- Legal representatives and/or support people may attend the interview

3 Interview Report and final submissions

- The RPO will write a report summarising the claim and send it to claimant and legal representative (if any). Claimants can make submissions on the report highlighting whether they agree or not and answering any further questions put to them by the RPO.

11 www.immigration.govt.nz

12 If a translation is required, this must be an official translation.

4 Decision

- RPO sends decision to claimant and legal representative (if any). The decision is made assessing the information provided against the following two criteria:
 - whether the statements made are truthful/credible; and
 - whether the claim meets the criteria in Article 1A(2) of the Convention or associated protected person criteria.

The RSB aims to decide claims within 140 days / 20 weeks from the date that Confirmation of Claim was filed.

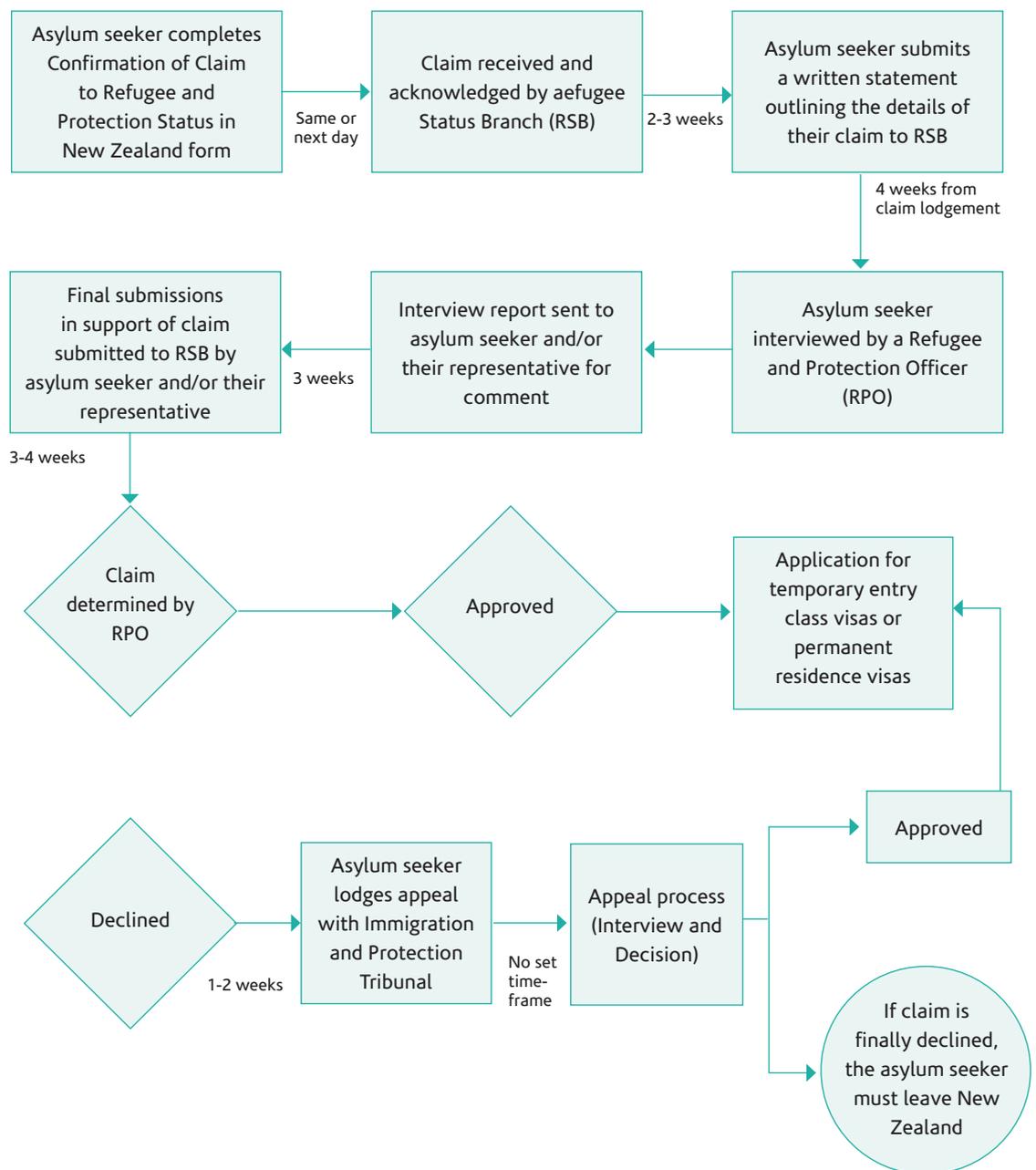


Fig 1: Refugee and Protection Claim Process Map

Source: Immigration New Zealand, Claiming Refugee and Protection Status in New Zealand

Once a claim is confirmed claimants may be granted a valid visa. Asylum claimants who show a need to work may be issued with a work visa, and in practice this is routinely granted.¹³ Recently the duration of such visas has been generally extended to 12 months.

Adults who are recognised as refugees or protected persons will first be granted work visas. School-aged children will generally be granted student visas, which allow study at any primary and/or secondary school. Dependent children who are not in school will be granted a visitor visa.

Following the grant of a visa, recognised refugees can apply for a permanent resident visa.

¹³ Immigration New Zealand, Ops Manual W16.1

4.

The scope and content of New Zealand's human rights obligations to refugees and asylum claimants

Everyone has the right to seek asylum and to enjoy in other countries asylum from persecution

– Article 14 of the Universal Declaration of Human Rights

The concept of asylum includes rights relating to entry into a State, a right to remain there, protection from expulsion or refoulement and certain rights while remaining. The Convention and its 1967 Protocol is the centrepiece of international refugee protection today.¹⁴

The Convention lays down basic minimum standards for the treatment of refugees. It sets out the rights of refugees such as:

- freedom of religion (Article 4);
- access to courts (Article 16);
- Primary (Elementary Education) (Article 22(1))

These rights are to be guaranteed to the same degree as accorded to citizens in the host state. Other rights, however, do not need to match those of citizens. Rights of association (Article 15) and freedom of movement (Article 26) are accorded to refugees to the same degree that they are accorded to nationals of other countries. Rights regarding employment (Article 17), property (Article 13), public education beyond primary school (Article 22(2)), and housing (Article 21) are also accorded to refugees in a manner no less favourable than those accorded to citizens of other countries.

Importantly, article 17(2)(a) provides that refugees are to be accorded the same rights to wage-earning employment after 3 years of residence in the host state.¹⁵

14 Introductory Note by the Office of the UNHCR: <http://www.unhcr.org/3b66c2aa10.html>

15 Certain legal matters are left completely to the host state. For example, States are encouraged to facilitate the naturalization of refugees, though they are not required to match any naturalization rights provided to other non-citizens (Article 34).

These rights cannot be claimed until all the requirements of the Convention refugee definition are satisfied. However, it should be recalled that “refugee rights are defined to inhere by virtue of refugee status alone, [and] must be respected by state parties until and unless a negative determination of the refugee’s claim to [protection] is rendered.”¹⁶ It is therefore incumbent on states parties to take steps to meet the essential security and economic subsistence needs of asylum claimants while the status determination is undertaken.¹⁷

4.1 Relationship with international human rights law

International human rights law complements international refugee law. Refugee law does not supersede human rights law if the human rights norm offers more protection.¹⁸ While the Convention is the primary instrument for the protection of refugees and asylum claimants, international human rights law can offer additional protection in different situations.

New Zealand has ratified 7 of the 9 core international human rights treaties:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Convention on the Rights of the Child (CRC)
- Convention on the Rights of Persons with Disabilities (CRPD)

By ratifying these treaties, New Zealand has committed to promoting, protecting and fulfilling the rights contained therein.

16 Hathaway, *The Rights of Refugees under International Law*, Cambridge University Press (2005), at page 278.

17 In addition, it should be noted that the Convention cannot be applied in a discriminatory way regarding race, religion, and country of origin (Article 3).

18 See Article 5 of the 1951 Convention that reads as follows: “Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.” In 2003, Conclusion No. 95 of the Executive Committee of the United Nations High Commissioner’s Programme explicitly acknowledged “the multifaceted linkages between refugee issues and human rights” and recalled “that the refugee experience, in all its stages, is affected by the degree of respect by States for human rights and fundamental freedoms”: (No. 95 (LIV) – 2003) para. (k). Furthermore, the Committee acknowledged “the complementary nature of international refugee and human rights law, as well as the possible role of the United Nations human rights mechanisms in this area”: (No. 95 (LIV) – 2003) para. (l).

While all treaties are relevant to the refugee and asylum system, when considering economic, social and cultural rights the ICESCR is the authoritative instrument. New Zealand ratified ICESCR in 1978.

Article 2(1) of the ICESCR provides:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.¹⁹

The United Nations Committee on Economic, Social and Cultural Rights (CESCR) considers that Article 2(1) imposes a ‘minimum core obligation’ on States to realise immediately ‘minimum essential levels of each of the rights’ contained in the Covenant.²⁰ Beyond the minimum core obligations, however, States are required to progressively realise the rights contained in the Covenant.

4.1.1 Non-discrimination

Articles 2(2) and 2(3) provide some guidance as to how the non-discrimination principle in ICESCR should apply to asylum claimants:

- (2) The State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, birth or other status.
- (3) Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognised in the present Covenant to non-nationals.

19 Article 2(1) cannot be read in isolation however. Article 4 permits certain derogations. Article 4 provides:

The States Parties to the present Covenant recognise that, in the enjoyment of those rights provided by the State in conformity with present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of those rights and solely for the purpose of promoting the general welfare in a democratic society.

In relation to the Article 4 limitation, commentators have suggested that “for the purpose of promoting the general welfare in a democratic society” can only be relied upon in the extraordinary circumstances involving, for example, a threat to national security.

20 Committee on Economic, Social and Cultural Rights, *General Comment No 3: The Nature of States Parties’ Obligations*, UN Doc E/1991/23 [9] – [10].

The immediate realisation of the obligation of non-discrimination is required.²¹ Furthermore when read together, articles 2(2) and 2(3) clearly suggest that a state may not discriminate against non-nationals in giving effect to ICESCR rights.²² The only exception, one which does not apply to New Zealand, relates to developing countries.

The balance between the duty of non-discrimination and progressive realisation is a delicate one:²³

It is on the one hand a necessary flexible device, reflecting the realities of the real work and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in light of the overall objective, indeed the *raison d'être*, of the Covenant which is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards the goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.

There is therefore a duty on States to give priority to the realisation of economic, social and cultural rights. The principle of non-discrimination does not require that all individuals be treated identically. A difference in treatment does not violate the principle of non-discrimination if there is an “objective and reasonable justification” for it. Importantly a justification will not exist if the aim sought is not legitimate, or if the effects of the different treatment are disproportionate to the aim. This same justification test is reflected in New Zealand’s domestic law through section 5 of the New Zealand Bill of Rights Act 1990. Guidance as to the application of the justification test can therefore be gleaned for Bill of Rights Act jurisprudence.²⁴

It is difficult to envisage a situation where differential treatment which involved denying to non-nationals the minimum essential levels of ICESCR rights would be justified.

21 Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on Its Development* (1995), 181

22 The national–non-national distinction is covered by the phrase ‘other status’ rather than the phrase ‘national or social origin’: see generally R B Lillich, *The Human Rights of Aliens in Contemporary International Law* (1984).

23 *Supra* note 20 at [15].

24 *R v Hansen* [2007] 3 NZLR 1

4.2 Content of specific rights

4.2.1 The right to an adequate standard of living

The right to an adequate standard of living is about “the human person’s rights to certain fundamental freedoms, including freedoms to avoid hunger, disease, and illiteracy”.²⁵ It includes specific rights to adequate food, clothing and housing, and to social security and work. This right is essential in order to achieve other economic, social and cultural rights, such as the rights to health and education.

The ICESCR was the first treaty to recognise the right to an adequate standard of living, which it defined in Article 11 as:

The right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and continuous improvement in living conditions.

It has been said that the right to an adequate standard of living is the central right in ICESCR, in the way that the rights to life, privacy and freedom of expression are central rights in the ICCPR. “Without some realisation of the right to an adequate standard of living, other economic and social, as well as civil and political, rights would have little meaning.”²⁶

There are 3 key elements to consider when looking at the scope of the right to an adequate standard of living:

- Housing;
- Work; and
- Social Security.

Housing

The human right to adequate housing is a binding legal obligation of New Zealand. This means the Government has agreed to ensure that the right to adequate housing is progressively realised in New Zealand. CESCR has described the right to housing as “the right to live somewhere in security, peace and dignity.”²⁷

25 United Nations Economic & Social Council (2003), *Economic, social and cultural rights: Implementation of existing human rights norms and standards in the context of the fight against extreme poverty* (Geneva: United Nations), p.7

26 Bailey, P (1997), “The Right to an Adequate Standard of Living: New Issues for Australian Law”, *Australian Journal of Human Rights*, Vol 22.

27 United Nations Committee on Economic Social and Cultural Rights, General comments No. 4 (1991) on the right to adequate housing and No. 7 (1997) on forced evictions http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

The right to adequate housing does not simply mean a roof over people's head. The Committee has defined seven standards that must be met in order for housing to be adequate.²⁸

Security of tenure: Residents should be protected against forced eviction, harassment and other threats including predatory redevelopment and displacement.

Habitability: Housing must provide residents with adequate space that protects them from cold, damp, heat, rain, wind, and other threats to health, structural hazards, and disease.

Accessibility: Housing must be accessible to all, and disadvantaged and vulnerable groups – including the disabled – must be accorded full access to housing resources.

Affordability: Housing costs should be at such a level so as not to compromise the attainment of other basic needs. For example, people should not have to choose between paying rent and buying food.

Availability of services, materials, facilities and infrastructure: Housing must provide access to services essential for health, security, comfort and nutrition. This includes water and sanitation, power and other essential utilities.

Location: Housing should not be built on polluted sites or in immediate proximity to pollution sources that threaten the right to health of residents. The physical safety of residents must likewise be guaranteed. Additionally, housing must be in a location which allows access to employment, health-care services, schools, child care centres, and other social facilities.

Cultural Adequacy: Housing and housing policies must guarantee the expression of cultural identity and diversity, including the preservation of cultural landmarks and institutions. Redevelopment or modernisation programs must ensure that the cultural significance of housing and communities is not sacrificed.

Work

The right to work is recognised in numerous international human rights instruments. Article 6 of ICESCR recognises the right to work and applies “to everyone including non-nationals, such as refugees, asylum [claimants], stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.”²⁹

28 Ibid.

29 United Nations Committee on Economic Social and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic Social and Cultural Rights, UN Doc. E/C.12/GC/20 (2009) para 30.

Social security

Closely linked to the right to work is the universal entitlement to social assistance set out in Article 9 of ICESCR. The *Michigan Guidelines on the Right to Work* elaborate on this right:³⁰

[I]t may be difficult for asylum-seekers to obtain work and states must, in any event, provide adequate levels of social assistance in accordance with Articles 9 and 11 of the ICESCR, as well as other interdependent rights such as the right to the highest standard of mental and physical health, the right to life, and the prohibition on inhuman or degrading treatment. State policy or conduct that leads to destitution through denial of access to social security and assistance and/or the employment market in the absence of other means of support may violate the prohibition on inhuman or degrading treatment.

The German Federal Constitutional Court confirmed the state's duty to provide adequate levels of social assistance to asylum claimants and refugees in 2012. The Court said:³¹

Migration-policy considerations of keeping benefits paid to asylum claimants and refugees low to avoid incentives for migration...may generally not justify reduction of benefits below the physical and socio-cultural existential minimum. Human dignity may not be relativised by migration-policy considerations.

4.2.2 Right to health

Directly linked to the right to an adequate standard of living is the right to *the highest attainable standard of mental and physical health* set out in Article 12 of ICESCR.

The right to health encompasses not just the absence of disease but "complete physical, mental and social wellbeing."³² It includes access to both timely and appropriate health care as well as the underlying social and economic determinants of health, such as conditions of work and adequate food and shelter.³³

30 University of Michigan Law School, *The Michigan Guidelines on the Right to Work*, March 16, 2010, <http://www.unhcr.org/refworld/docid/4bbaf1242.html> (accessed March 29, 2013).

31 *Judgment of the Federal Constitutional Court in the proceeding 1 BvL 10/10*, July 18, 2012.

32 Preamble to the Constitution of the World Health Organisation. Accessible online at <http://www.who.int/about/definition/en/print.html>

33 UN Commission on Human Rights (2003), Economic, social and cultural rights: The right of everyone to the enjoyment of the highest attainable standards of physical and mental health: Report of the Special Rapporteur, Paul Hunt, (E/CN.4/2003/58, 13 February). Accessible online at [http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/9854302995c2c86fc1256cec005a18d7/\\$FILE/G0310979.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/9854302995c2c86fc1256cec005a18d7/$FILE/G0310979.pdf)

As with other rights, the right to health imposes three types of obligations on a State.³⁴ These include the obligation to:

- respect the right which requires States to refrain from interfering with it directly or indirectly – for example, denying access to health care services or discriminating in how the services are provided
- protect the right which requires States to prevent third parties from interfering with the right to health, which may require States to enact legislation to ensure that individuals comply with the appropriate standards or prohibit doing acts harmful to the health of others – for example, prohibiting female genital mutilation
- fulfilling the right which requires States to adopt progressive legislative, administrative, budgetary and other measures to fully realise the right to health – for example, adopting national immunisation policies.

As a party to the ICESCR, New Zealand must ensure the provision of:

- equal and timely access to basic preventive, curative, rehabilitative health services and health education;
- regular screening programmes;
- appropriate treatment of prevalent diseases, illnesses, injuries and disabilities, preferably at community level;
- essential drugs; and
- appropriate mental health treatment and care.

Other international treaties also refer to the right to health. Some apply generally, while others address the rights of particular groups such as women or children. There is also a body of international standards and declarations relating directly or indirectly to the right to health. These are not binding in the same way as the treaties, but have a significant impact, particularly if they achieve the status of customary international law.

34 United Nations Committee on Economic Social and Cultural Rights, General Comment No.14: The right to the highest attainable standard of health (Article 12) (2000) E/C.12/2000/4; p.27.

International human rights treaties recognising the right to health

- Convention on the Elimination of all Forms of Racial Discrimination (CERD): Article 5(e)(iv),(1965)
- International Covenant on Economic, Social and Cultural Rights (ICESCR): Article 12 (1966)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): Articles 11(1)(f), 12 and 14 (2)(b) (1979)
- Convention on the Rights of the Child (UNCROC): Article 24 (1989)
- Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (Migrant Workers Convention): Articles. 28, 43(e) and 45(c)(1990)
- Convention on the Rights of Persons with Disabilities (CRPD): Article 25(2006)

By ratifying the ICESCR, a State agrees to protect the health of its citizens and provide the services, policies and budgetary means to promote good health and ensure the elimination of health based discrimination.³⁵ This is qualified by recognition of finite resources and the concept of progressive realisation: given the cost of health services, compliance is contemplated as happening incrementally, or progressively, depending on available resources and the competing claims and priorities on those resources.³⁶

The CESCR also stresses the need for inter-sectoral action – that is, working across Government (not just in the health sector) to address the social, political, economic and environmental factors that influence health and inequities in health.

The Committee has described a State's obligations in terms of availability, accessibility, acceptability and quality. With respect to availability, States must ensure that functioning health-care facilities and services and the underlying determinants of health are available in sufficient quantity. Accessibility requires States to ensure that facilities and services are physically accessible and affordable, without discrimination. In addition, health information must be obtainable (subject to confidentiality of personal data). With respect of acceptability, health facilities, goods and services should be respectful of medical ethics and culturally appropriate. Finally, they should be of good quality.

35 Glazebrook, S., Baird, N. and Holden, S. (2009), *New Zealand: Country Report on Human Rights*, Victoria University of Wellington Law Review 40, pp.57-102, p.89.

36 Alston, P. and Quinn, G. (1987), *The Nature and Scope of States' Parties Obligations under the International Covenant on Economic, Social and Cultural Rights*, Human Rights Quarterly 9(2), pp.156-184.

THE RIGHT TO HEALTH: Underlying health care determinants

Availability: functioning public health and healthcare facilities, goods, services and programmes in sufficient quantity

Accessibility: non-discrimination, physical accessibility, economic accessibility (affordability), information accessibility

Acceptability: respectful of medical ethics and culturally appropriate, sensitive to age and gender

Quality: scientifically and medically appropriate

Figure 2: A human rights-based approach to health

Source: OHCHR/WHO (2009), *A Human Rights-Based Approach to Health*, www.who.int/hhr/en

4.2.3 Right to education

- 1 Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- 2 Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- 3 Parents have a prior right to choose the kind of education that shall be given to their children.

– Universal Declaration on Human Rights, Article 26

Education is both a human right in itself and an indispensable means of realising other human rights. Education is essential for the development of human potential, enjoyment of the full range of human rights and respect for the rights of others. It is the primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.

The right to education involves learning about rights and responsibilities. It is also about creating high-quality teaching and learning environments where

there is freedom from violence, bullying and harassment, where individuality and diversity are respected, and where all those involved are able to participate fully. The right to education encompasses civil and political rights, and economic, social and cultural rights.

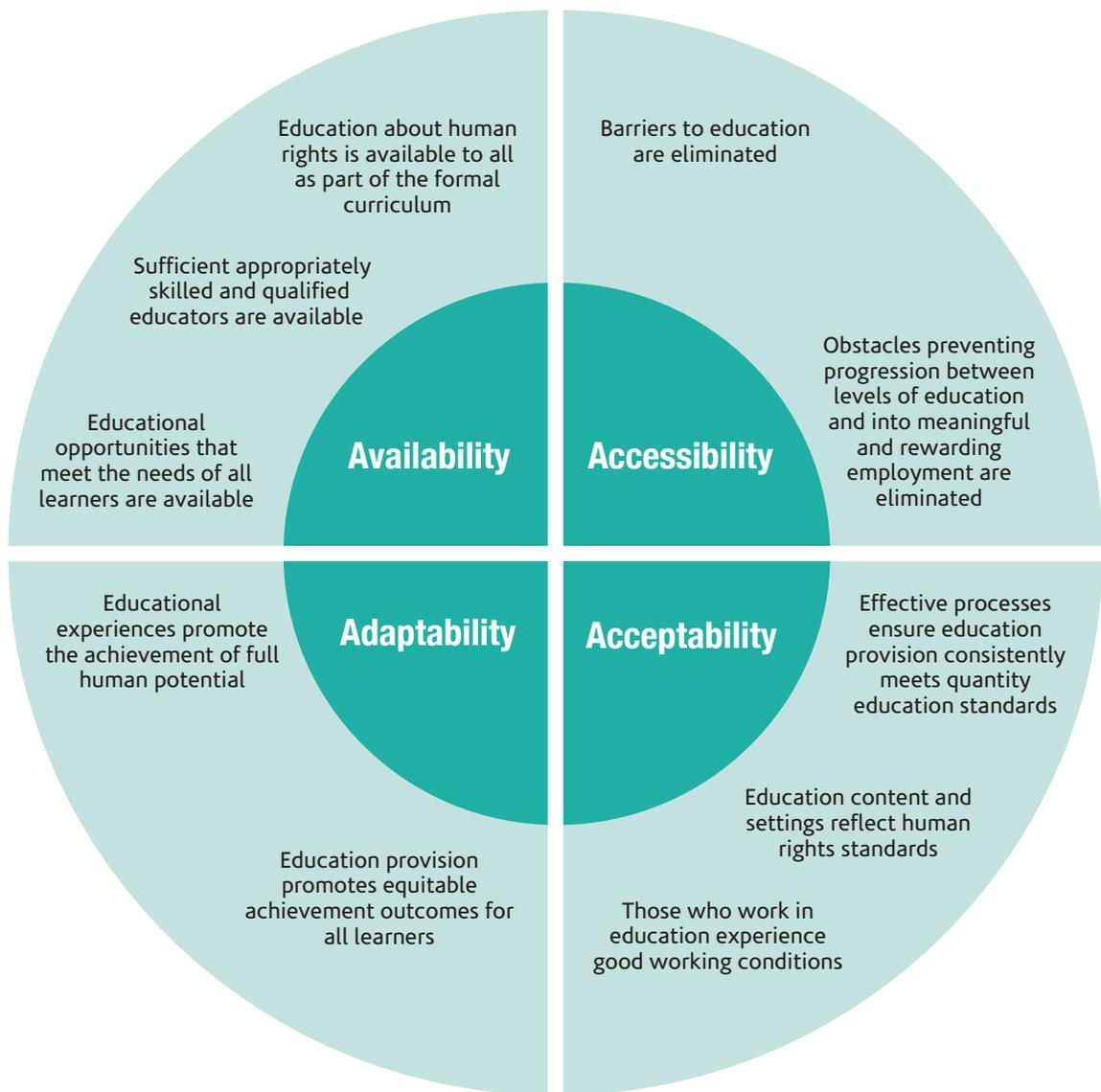
Core elements of the right to education include:

- entitlement to free and compulsory primary education
- availability of different forms of secondary education
- access to higher education on non-discriminatory terms
- education directed to develop individuals to their fullest potential and to prepare them for responsible life in a free society, including development of respect for others and for human rights
- availability of accessible educational and vocational information
- measures developed by the State to ensure full participation in education
- availability of some form of basic education for those who may not have received or completed primary education
- protection and improvement of conditions for teachers
- respect for the right of parents/legal guardians to choose schools other than those established and funded by the State, and to ensure that the religious and moral education of their children conforms to their own convictions
- respect for academic freedom and institutional autonomy. This includes the freedom to express opinions about a workplace institution or system, to fulfil functions without discrimination or fear of sanction, and to participate in professional or representative academic bodies.

Katarina Tomasevski, UN Special Rapporteur on the right to education from 1998 to 2004, proposed a set of four broad standards (the 4-A standards) as a basis from which the realisation of the right to education could be assessed. These are:

- Availability: ensuring free and compulsory education for all children and respect for parental choice of their child's education
- Accessibility: eliminating discrimination in access to education as mandated by international law
- Acceptability: focusing on the quality of education and its conformity to minimum human rights standards
- Adaptability: ensuring education responds and adapts to the best interest and benefit of the learner in their current and future contexts.

Right to education framework: He whare tāpapa matauranga



The right to education is set out in a number of international treaties, the most significant of which are the ICESCR (Articles 13 & 14), the CRC (Articles 28 & 29) and the CRPD (Article 24).

In meeting the right to education, it is not sufficient to provide the same education for all. In order to ensure that everyone has the opportunity to fully engage in education, it is necessary to provide different and additional support.

This may mean, for example, providing specialist teachers for children with particular education needs. It may also mean subsidised transport or other special measures to ensure that particular groups are not disadvantaged.

4.3 Right to family

While not an ICESCR right, the right to family is integral to refugee protection.³⁷ 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*:³⁸

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.

37 The right to family is protected by Article 23 of the ICCPR.

38 Department of Labour (2004) *Refugee Voices, A journey towards resettlement*, 145-146

5.

Applying the rights framework to refugees and asylum claimants

When discussing economic, social and cultural rights in relation to asylum claimants and refugees Hathaway classifies them as the “necessities of life”. He notes:³⁹

Most refugees are not able immediately to meet their own needs for food, water, shelter and healthcare. Because the flight to safety cannot always be planned, and, because the logistics of travel often make it impossible for refugees to bring significant resources or provisions with them, even refugees who were self-sufficient in their homeland typically depend for survival on the generosity of the asylum country.

For this reason, when the Convention was drafted, particular attention was paid to meeting the basic needs of refugees. However, the Convention is a creature of its time and it should not be overlooked that it predates the modern Western social welfare state. In other words, the focus was on refugees being able to earn their own living and benefit from basic property rights. In this respect they were considered able to enjoy as much protection as nationals.

Where refugees are allowed to work, they are generally able to meet their basic needs from their own income. However, as Hathaway notes this is less likely to be the case “in states which impose real bureaucratic obstacles to receipt of a work permit, or where the nature of the authorisation issued arouses the suspicion of potential employers.”⁴⁰

When considering a state’s obligations to protect access to the necessities of life for refugees and asylum claimants the CESCR provides useful guidance. The Committee has made clear that states have an explicit duty to take steps to fulfil

³⁹ Supra note 16, at page 460.

⁴⁰ Ibid at 480.

these rights with a particular focus on marginalised groups and individuals. To this end the Committee has recognised that vulnerable groups cannot always meet their basic needs on their own:⁴¹

States parties are obliged to fulfil (provide) a specific right contained in the Covenant when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by means at their disposal.

In regards to the right to health, the Committee has noted:⁴²

[v]iolations of the obligation to fulfil occur through the failure of States parties to take all necessary steps to ensure the realization of the right to health. Examples include...insufficient expenditure or misallocation of public resources which results in the non-enjoyment of the right to health by individuals or groups, particularly the vulnerable or marginalized.

The Committee has also made clear that the right to housing imposes a duty on states to prioritise those social groups living in unfavourable conditions. Asylum claimants and refugees are a clear example of such a group:⁴³

Asylum [claimants], refugees and displaced persons do not have the same opportunity as others to achieve an adequate standard of living on the basis of their own efforts. They therefore require, to a larger extent than the ordinary public, direct provisions, until conditions are established in which they can obtain their own entitlements.

In considering what this means in practice the commentary from the English Court of Appeal in interpreting a similar positive duty under the European Convention on Human Rights is illuminating. In that case, the Court stated that:⁴⁴

The obligation “to take measures” [under the European Convention on Human Rights] seems to me to imply more than simply acting as a long-stop in individual cases as they arise. That may be sufficient if the alternative system of charitable support is able to cope with the generality of cases, so that...sufferingis truly the exception. However, if on the available information, the scale of the problem is such that the system is unable to cope, then it is the responsibility of

41 Supra note 34

42 Ibid.

43 Eide, A, “The Right to an Adequate Standard of Living, Including the Right to Food”, in A.Eide et al. eds., *Economic, Social and Cultural Rights* (1995), at 105.

44 R (Limbuela) v Secretary of State for the Home Department [2004] EWCA Civ 540.

the State to take reasonable measures to ensure it can cope. How that is done, for example whether by direct support or financial assistance to charities working in the field, is a policy matter for the State.

New Zealand's obligations *vis a vis* asylum claimants and people from refugee backgrounds to provide for the necessities of life can usefully be summarised, therefore, as follows:

- Employment, health (both mental and physical and both primary and emergency), housing and education must be available on the same basis as nationals;
- Where employment is not available (for whatever reason) adequate social assistance must be provided;
- Priority access to adequate housing should be provided; and
- Where required additional steps need to be taken to ensure access to appropriate and adequate services and supports.

6.

Availability of support and services

The New Zealand Red Cross has produced a summary of support available to asylum claimants and people from refugee backgrounds. The information from this summary is set out in Appendix 1.

As can be seen from this information, while there is a raft of support and assistance available, when considering the extent to which New Zealand fulfils its international human rights obligations the different categories of refugees and asylum claimants is a critical factor.

In relation to asylum claimants, the extent to which they can avail themselves of services and supports, and their adequacy is directly linked to where they are residing and what conditions have been placed around their ability to stay in New Zealand (if any).

It is useful to consider Health, Social Security and Housing in more detail to highlight some of the differences in the services and supports that are provided to asylum claimants and people from refugee backgrounds.

6.1 Health

The Health and Disability Services Eligibility Direction 2011 clearly provides that:⁴⁵

A person is eligible to receive services funded under the Act if the person is –

- a recognised as a refugee under the Immigration Act 2009; or
- b in the process of having a claim for recognition as a refugee determined by a refugee and protection officer; or
- c in the process of having an appeal for recognition as a refugee determined by the Immigration and Protection Tribunal.

⁴⁵ Health and Disability Services Eligibility Direction 2011, at 6: <http://www.health.govt.nz/system/files/documents/pages/eligibility-direction-2011.pdf>

6.1.1 Primary health care

People from refugee backgrounds are entitled to the full range of standard primary care services available in New Zealand. The Refugee Health Services programme provides funding for general practices to deliver primary health care services to their enrolled refugee populations. The key objectives of these services are to:

- Deliver a range of primary health care services which are appropriate to the needs of refugees
- Improve the health status of individual refugees and support their settlement into the community

Such services can include screening/prevention, assessment, diagnosis and treatment, advice and advocacy or support services such as addressing language barriers, liaison with other agencies such as WINZ and Housing New Zealand.

The Commission is aware that the Waitemata and Auckland District Health Boards are undertaking some work to improve refugee primary health care and GP services. This is a good initiative and has the potential to significantly improve outcomes for refugees.

6.1.2 Mental health

UNHCR resettled refugees are entitled to Mental Health Services from RASNZ at the MAC. In addition, the Refugees as Survivors New Zealand (RASNZ) Mobile Community Clinical Team has provided community mental health services to former refugee communities in the greater Auckland region since 2007. The Mobile Team also consults, trains and collaborates with mainstream mental health services, to assist them in working more effectively with refugees.

Refugee Trauma Recovery provides screening, assessment, treatment and onward referral to people from refugee backgrounds in the community in Wellington.

However, the situation is more nuanced for asylum claimants. RASNZ works with asylum claimants who have been released on conditions to MAC. They may also work with asylum claimants in the community or in detention in certain circumstances. They are not funded by Government to work with asylum claimants in the community. They receive funding from United Nations Voluntary Fund for Victims of Torture. This fund applies a very specific definition of torture, which limits their ability to reach all those who need support.

At the time of writing RASNZ was working with 19 asylum seeker clients in the community, one of whom was in prison. They had received 270 sessions. Twelve had seen a psychologist, 17 had seen a psychiatrist and 8 a body therapist, a couple had some brief sessions on coping skills.

RASNZ provides a unique service as the lead mental health service for all incoming quota refugees and those seeking asylum in New Zealand. RASNZ psychiatrists also provide case notes to lawyers who require evidence as to why their client may not be fit to attend an RSB interview.

6.2 Social security

Quota refugees are entitled to social security benefits on the same basis as other New Zealand residents and citizens. For asylum claimants, Convention refugees and those who come to New Zealand through the RFSC the situation is different.

6.2.1 Asylum claimants

Where a person has made a claim for refugee or protection status and is lawfully in New Zealand they can apply for the Emergency Benefit and Temporary Additional Support.

The Emergency Benefit is at the same rate as job seeker support. The duration of the Emergency Benefit will vary depending on the person's circumstances. Temporary Additional Support is a renewable 13-week benefit which is designed to assist with costs associated with:

- essential household items;
- accommodation costs; and
- health and disability costs

Asylum claimants are not entitled to additional support such as; the Accommodation supplement, childcare subsidy and disability allowance.

Asylum claimants who are in New Zealand without a valid visa – either residing at MAC or in the community – are not entitled to mainstream social security benefits. They are however, provided with \$120 per week to assist with their costs of living.

6.2.2 Convention refugees

To be eligible for a benefit an individual must generally be a permanent resident or citizen. Unlike quota refugees, Convention refugees are not automatically granted permanent residence. They are given a valid visa (usually a work visa) and are entitled to apply for a permanent resident visa. Refugee status does not guarantee permanent residency and it can take time to process. Until residency is granted Convention refugees remain in the same situation as asylum claimants.

6.2.3 Those who come to New Zealand under RFSC

Those who come to New Zealand through the RFSC are granted a resident visa (Refugee Family Support Resident Visa). This visa entitles them to live, work and study in New Zealand. After two years, they may apply for permanent residency. Until this time, like Convention refugees and asylum claimants they can only apply for the Emergency Benefit and Temporary Additional Support.

6.3 Housing

On arrival UNHCR quota refugees are provided with accommodation at the MAC. After the 6-week orientation they are provided with social housing in their region of resettlement. By contrast asylum claimants and Convention refugees are responsible for their own housing.

Those who come to New Zealand as part of the RFSC rely entirely on their sponsor for their housing needs.

6.4 Education

Child asylum claimants and children who arrive as part of the RFSC will not have had access to initial settlement support offered to quota refugees. RFSC children are able to enrol in school and once enrolled have the same entitlements as children who arrive as part of the UNHCR quota. Child asylum claimants are also allowed to enrol and attend school but requirements for additional support including English as a second language are considered on a case by case basis.⁴⁶

46 Elliot Sue, *Age, Gender and Diversity in Refugee Policies and Processes in New Zealand*, December 2013

7.

What we have been told

This section sets out what the Commission has been told by interviewees, survey participants and discussions with Refugee Sector NGOs. The quotations in this section remain anonymised at the request of participants.

“I lived in a shared room with 3 other people – I can’t listen to the radio or make a phone call. I did not have even enough sleep to function.”

Affordable housing of a reasonable standard, in a safe and supportive neighborhood and accessible to public transport, remains an issue. Of significant concern to those we spoke to is the lack of adequate housing options for people from refugee backgrounds, resulting in overcrowding, particularly where family reunification has been successful. We were told that some asylum claimants are being forced to live on the streets or in cars as there are no suitable alternatives readily made available to them.

Refugees and asylum claimants may also 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.

“I just want to work. Am I not good enough to contribute to my new home?”

The overwhelming message we heard was that they wanted to contribute to New Zealand. Interviewees and survey participants made it clear that they did not want to be a burden. However, many barriers to employment were identified including language, little documentation about work history and conviction records, reluctance to employ someone from a different cultural background, reluctance to employ someone whose status remains uncertain, and failure to recognise overseas qualifications.

Another barrier is the short-term visas that some asylum claimants hold. Employers can be reluctant to offer employment to those on this type of visa.

“It wasn’t until my family arrived in New Zealand that I felt settled and could begin to move forward with my life. Before that my only focus was the safety of my family and this caused me a lot of stress and depression.”

Family reunification continues to be a major concern for people from refugee backgrounds in New Zealand. NGOs working with people from refugee backgrounds noted that 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).

It can take a number of years between someone settling in New Zealand and being reunified with their family. We were advised that these delays contribute to the social and health issues that resettled refugees face, requiring Government and community support. Most participants who were experiencing emotional distress consider economic and social supports, such as family reunification, as most beneficial for alleviating their distress. These sentiments are reinforced by a 2012 report by RASNZ entitled *Refugee Family Reunification, Mental Health, and Resettlement Outcomes in New Zealand*.⁴⁷

The process of family reunification can be burdensome. We were told that families are required to pay for their own airfares even though they have often been stripped of their assets through the asylum process and cannot reasonably afford to do so. In many cases they must rely on the good will of charitable organisations such as the Auckland Refugee Family Trust and the Refugee Family Reunification Trust to support them with these costs.

“I didn’t understand that I was able to get free health care. The information I got from doctors and the hospital was confusing.”

Some participants had not been able to see a doctor when they wanted to. A variety of reasons were noted including communication difficulties, transportation difficulties, being turned away by doctor and the financial cost of doctors’ visits. These responses were not surprising and mirror findings from a Department of Immigration 2002 study which found that 10% of refugees had not been able to see a doctor.

47 <https://nzrefugeeresearch.wikispaces.com/file/view/Refugee+Family+Reunification,+Mental+Health+and+Resettlement+outcomes+in+Aotearoa+New+Zealand.pdf>

A lack of awareness about health services was seen as a major barrier to accessing services. It was also felt that there were few healthcare providers who offer culturally targeted service for refugee groups.

Mental Health specialists working with people from refugee backgrounds voiced concern that beyond the main centres, mental health services are often ill equipped and lack trained professionals to deal with experiences unique to refugees, such as trauma resulting from torture, or anxiety over family reunification. Participants noted they would prefer to use RASNZ services – or a similar body – because they offer a culturally appropriate service which is provided by highly qualified and experienced clinicians supported by Community Health Workers and Interpreters who all are from a refugee background.

Most asylum claimants are granted work or student visas during the processing of their claims. However, the Commission was told that some who are perceived *non bona fide* claims receive only limited visas. The Commission was advised of cases where the fact that an asylum claimant had a limited visa caused confusion for public health providers and eligibility was questioned. This in some cases has resulted in significant delays in receiving crucial care and treatment.

“Education is the most important thing”

While refugees and asylum claimants have access to early childhood, primary or secondary education, the Commission was advised that a number of practical barriers remain, including:

- English language competency and lack of interpreters at schools
- Lack of understanding of the refugee experience and cultural differences
- Transport costs
- Limited number of hours that funding is available for study

Participants considered there needed to be more ongoing pastoral support to transition refugee children into education and to provide them with the tools they need to succeed. The Commission heard many stories of how once these barriers have been broken down students from refugee backgrounds have excelled academically and culturally.

Adult refugees and asylum claimants also face issues in relation to education. It is important for them to learn English and to learn about their new communities. We heard that there were limited opportunities to access such programmes where they do exist. Older family members who came to New Zealand as part of the RFSC faced particular difficulties in this regard.

Participants also felt that more could be done to help transition adult refugees into tertiary education.

7.1 Asylum claimants

In New Zealand the small numbers of asylum claimants often makes the challenges they face less visible to the general public. However, the Commission heard many stories that show that these issues are very real for those seeking protection in New Zealand. There are some cracks emerging in the framework and if these are not addressed they can have a real impact on the integrity and credibility of the status determination process and ultimately the long term health and well-being of Convention refugees.

“After I was released from the refugee camp, I was sent out to the community. I was fortunate to have my aunt here in NZ. I lived in her house otherwise the amount was definitely not sufficient to survive.”

The lack of adequate affordable housing for asylum claimants has a profound impact on their mental and physical health.

Case study 1

The inability to work stretched for months. During this time, A was also unable to receive public assistance – beyond the minimum entitlement of \$85 per week. He was, unable to provide for himself and relied on the good will of the refugee community to survive. A resorted to working illegally – he was underpaid, worked long hours and was subject to workplace abuse and harassment. There were no mechanisms available for him to address these issues.

“I came to New Zealand to find safety for me and my family. I never expected to be treated like this. I am qualified and wanted to work. I don’t understand why I was unable to do this?”

Case study 2

C was living in a car. He was tired, stressed and afraid for his safety. He was unaware of any services that were available to assist him. He attended his first interview without sleep, medical attention or legal advice. He was confused and depressed. When a friend directed him to the Hostel things changed – he was given support to navigate the system and to access the necessities of life. He has engaged a lawyer, has a work visa and a job, and is transitioning into private accommodation.

“My life was terrible. I could not think and could not look after myself. I wanted to work and to provide for myself but I couldn’t. Then I went to the Hostel. My life changed. I thought New Zealand didn’t care about me but Jenny showed me that this was not the case. She showed me that there was support. Jenny saved my life.”

Case study 3

B filed a confirmation of claim form – the first stage in the asylum claims process. An application was made for a visa to enable B to work and to access services whilst the claim was being determined. B waited for almost 3 months for the Visa to be approved. During this time B struggled to get an IRD number, to open a bank account and to access core Government services without valid documentation. B could also not work. B lived on the floor of an acquaintance’s Garage for these 3 months, he was cold hungry and depressed. B could not concentrate on preparing his claim and was unaware that he could have a legally aided lawyer to assist.

“It wasn’t until I had my visa that Government agencies started to assist me. Once I could eat and sleep I was able to concentrate on my claim and only at that point did I seek legal assistance.”

Case study 3

D was held at MAC. She could not eat the food that was provided and did not have enough money to go out and access primary and mental health services. She suffered from Post-Traumatic Stress Disorder and was depressed. She was subsequently released to a family member's house in the community. Her family did what they could but were unable to provide additional financial support to address her underlying mental health conditions. \$85 a week was not sufficient.

At her interview with RSB she was scared and confused. She responded to questions but did not volunteer extra information as she did not understand that this was needed and didn't think to do so. She was consumed by her depression and could not think clearly. Her claim was declined.

She then engaged a lawyer who facilitated mental health support and treatment. On appeal she was able to engage with the Tribunal and to think about what information should be provided. Her appeal was approved.

It was almost 3 years before she was able to get a visa and work.

"I don't know why they didn't ask me for that information at the start. I wanted to work and to contribute. I was stuck I couldn't go anywhere or do anything. I had lost any freedom that I once had. This made my depression worse. I didn't know what they needed to know. I was not in a fit state of mind to make those judgements. Why did it take so long for somebody to help me?"

There is a significant need for support for asylum claimants who are going through the immigration application process. These people are some of the most vulnerable people in our community. Their mental health is significantly compromised by the fact that they have minimal income, no family support, no certainty about their future and have to wait in limbo for months on end. These circumstances seriously limit their ability to adequately and appropriately participate in the application process.

Lawyers working in the refugee sector told the Commission that:

psychiatric reports are essential in the refugee determination process (for adjournments and credibility issues) yet there are still no set procedures to ensure that claimants have access to psychiatric reports for either the Refugee Status Branch or the Tribunal. Given that claimants are detained or released on conditions with virtually no access to funds, it should be incumbent on the public health system to provide such reports.

RASNZ psychiatrists are often asked to provide evidence about whether clients are fit to be interviewed. They are expected to complete a medical certificate which has been designed for physical health problems. The difficulty for psychiatrists is that it is not possible to give a definitive answer to the expected duration of an illness or when the client will be able to attend. This is particularly the case with mental illness as there are so many variables which can affect recovery. In addition, it is not so much of whether they are able to attend but whether they will be able to participate in an adequate way.

7.1.1 Impact on the determination process

Hunger, fatigue, and mental health issues can seriously affect the ability of asylum claimants to engage with Counsel, to engage with the refugee status determination process more generally, and the perceived quality/credibility of their statements and evidence. The stressors caused by any failure to protect, respect and fulfil the basic necessities of life for asylum claimants can have a profound impact on the integrity of the status determination system, and ultimately the outcome of refugee claims. In the most extreme of cases this may lead to a breach of the duty of non-refoulement under the 1951 Convention.

“A warm and healthy claimant makes a better witness”

The Commission was told that claims are sometimes declined on credibility grounds for reasons such as mistakes with dates, vagueness and inconsistencies. Such “mistakes” are more common where a claimant is tired, hungry and stressed. Furthermore, they are almost unavoidable in situations where a claimant is suffering from mental health issues including undiagnosed Post Traumatic Stress disorder, untreated depression and anxiety.

The UNHCR’s guidelines on the assessment of asylum claims (UNHCR Handbook) emphasises that decision makers “should assess applicants’ demeanour, the amount of detail they provide and the consistency of their claims with due regard to the circumstances from which they have emerged”⁴⁸:

48 UN High Commissioner for Refugees (UNHCR)’s guidelines on the assessment of asylum claimants’ claims (the Handbook), at 190.

It should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his case to the authorities of a foreign country, often in a language not his own. His application should therefore be examined within the framework of specially established procedures by qualified personnel having the necessary knowledge and experience, and an understanding of an applicant's particular difficulties and needs.⁴⁹

The Australian Refugee Review Tribunal has also aptly summarised the issue:⁵⁰

[a] person may have had traumatic experiences or be suffering from a disorder or illness which may affect his or her ability to give evidence, his or her memory or ability to observe and recall specific details or events, [which may also contribute to] "mistrust in speaking freely to persons in positions of authority.

Inconsistencies in account can be due to a number of factors particular to the refugee experience, including trauma and fear of authorities. Undiagnosed and untreated mental health issues further exacerbate these problems. It is incumbent on the decision maker to ensure that any "mistakes" are taken in the context of the refugee paradigm and the potential stressors that may be contributing to these inconsistencies be identified and addressed. As Gummow and Hayne, JJ. of the High Court of Australia have acknowledged:⁵¹

the fact that [an asylum seeker] does not complain of rape to the first immigration officer who speaks to her on arrival in this country...is anything but compelling evidence that no such assault occurred.

The Commission was told that the process of seeking asylum in New Zealand can be extremely difficult; claimants are frequently exhausted, disoriented, and apprehensive. Many are unable to access adequate food, housing and health care (both mental and physical). This experience is not unique to New Zealand. International research shows similar experiences around the world. Such experiences invariably raise issues in relation to credibility assessments and the ability to fully understand and engage in a productive way in the process, ultimately impacting on the timeliness, cost and potentially quality of decision making.

49 Ibid

50 Australian Refugee Review Tribunal, Guidance on the Assessment of Credibility, at 1.20:https://www.ecoi.net/file_upload/1930_1414503372_544a008a4.pdf

51 Abebe v Commonwealth [2999] 197 CLR 510 at 190.

8.

Is New Zealand fulfilling their human rights obligations?

For the most part New Zealand is complying with their International human rights obligations. However, from what the Commission was told there appear to be some enduring gaps – particularly for asylum claimants and Convention refugees.

In terms of providing for the necessities of life, New Zealand does a lot. Public health care is available, social security benefits are provided for most asylum claimants and Convention refugees and housing is generally available on the same terms as nationals (through both the social and private housing markets). For most asylum claimants in the community things work well. However, for some it does not and this may have a significant impact on their ability to fully participate in the determination process and their long-term mental and physical wellbeing. Some participants described how in some cases people felt like they were being re-victimised for having claimed asylum in the first place.

8.1 Housing

The right to housing does not require the Government to provide a home for every New Zealander. However, it does need to make sure that housing is available, affordable and adequate. Across the board New Zealand is failing to meet these indices for a number of sectors of society. Given the inherent vulnerability of asylum claimants and people from refugee backgrounds this failure has a particularly strong impact on their mental health and wellbeing.

Asylum claimants and Convention refugees do not have a tenancy record, and are often in receipt of benefits. The Commission heard consistently that if it had not been for the work of community groups and the opportunities provided by the ASST Hostel, accessing adequate housing would be near impossible

8.2 Health

Granting health rights does not necessarily imply a full enjoyment of such rights. Obstacles of different natures can hinder access to health services: communication and language barriers can prevent individuals from accessing services as well as economic and administrative obstacles.

The major problems identified by participants with regard to accessing health care services in New Zealand were:

- 1 communication problems
- 2 language and cross-cultural barriers
- 3 lack of information on how the Health system works
- 4 lack of training/awareness by health professionals about refugee issues and their specific needs and care expectations

There also appears to be a significant gap in the availability of mental health services for refugees and asylum claimants. Claimants and lawyers continue to have difficulty in accessing appropriate mental health screening. While this is theoretically available, we were told that there are long waiting lists and asylum claimants are not prioritised. It was considered by those the Commission spoke to that RASNZ needs to be appropriately funded to work with asylum claimants on a one-to-one basis for those who have psychological and psychiatric problems. Mental Health experts also suggested that a group programme for asylum claimants is needed to support those going through the legal process. A group setting helps to normalise the anxiety and depression many asylum claimants experience, enables group members to support one another and provides training in distress tolerance by teaching coping skills.

8.3 Education

Assessing the right to education for refugees and asylum claimants against the four A's framework reveals that there appear to be gaps in terms of:

- availability – limited availability of adult English and English training particularly for Convention refugees and asylum claimants. UNHCR resettled refugees have access to some education through the 6-week orientation programme at MAC
- accessibility – barriers to access exist including lack of interpreters, lack of appropriate trained cross cultural workers and educators
- adaptability – limited measures to promote equitable achievement for people from refugee backgrounds acknowledging their unique circumstances.

8.4 Employment

Almost without exception asylum claimants and Convention refugees who we spoke to want to work. They want to be self-sufficient and to start their new lives. While this is possible for the vast majority of asylum claimants – who will generally be granted a work visa for 12 months – there remain a number of barriers for some:

- those held in MAC or released on conditions into the community are not eligible for a work visa;
- some lawyers apply for visas as a matter of course, others do not; and
- in some cases, there are delays in the granting of visas.

Even where visas are granted barriers exist to accessing employment including recognition of qualifications and language. There are some schemes being run to try and address some of the barriers to employment. One very effective scheme is being run by Victoria University in conjunction with the Rotary Club of Wellington. The scheme is a combination of tuition and internships in selected employment locations with a view to permanent employment. This is a model that could potentially be replicated nationally.

The Government's Refugee Resettlement Strategy acknowledges the importance of work and aims to provide people from refugee backgrounds with pathways to employment. Red Cross's Pathways to Employment programme has proved successful and is now available to Convention refugees as well as quota refugees.

8.5 Family reunification

While the right to family reunification is provided to people of refugee backgrounds through immigration policy settings, this right is not being fully realised due to barriers in the operational aspects of those policies including:

- cost
- delay
- definition of family.

Former refugees have the same rights as other residents and citizens to access places available 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. The Commission was told that for a person coming from a refugee situation, meeting this requirement is likely to be impossible.⁵²

52 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.

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 that applicants would 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" for immigration purposes was considered by many working in the sector to be artificial and it was noted that it precludes a number of refugees from being reunited with those who they regard as their family.

9.

Conclusion and recommendations

New Zealand complies for the most part with its international human rights obligations. Employment, health, housing and education are now generally available to asylum claimants and people from refugee backgrounds on the same basis as nationals. The issue is around accessing associated services and entitlements promptly and easily. Perhaps the biggest issue that came through during our discussions was the fact that despite there being services available, and information on these being provided by Immigration New Zealand on its website and in hard copy to claimants, this information remains largely unknown. Even where it is known, we heard stories of Government agencies not understanding their obligations to asylum claimants resulting in delays and/or inability to access services. Community groups such as the ASST and the Refugee Council of New Zealand have a significant impact facilitating access to the system and navigating the sometimes confusing processes.

It should also be remembered that some asylum claimants and Convention refugees remain afraid of Government authorities and are uncertain about engaging with them. Personal support makes this engagement possible. While Government agencies and community groups are doing a great job for some, a more systematic system to facilitate engagement could be considered. Such an approach was adopted in Christchurch following the earthquakes where hubs have been established to facilitate Christchurch residents' engagement with and between multiple agencies. Given the small numbers of claimants such an approach might be a cost effective solution here and would align the settlement support provided to asylum claimants, convention refugees and those who come to New Zealand as part of the RFSC with that of UNHCR resettled refugees.

Social assistance is available for most and when access issues are resolved is generally adequate. However, those asylum claimants in MAC or released on conditions are not so fortunate. The \$120 per week they receive remains inadequate to meet the necessities of life.

The adequacy and availability of mental health services and housing remains a concern. While available in theory, in practice there is no systemic framework to ensure that this is achieved. Systematic screening and treatment of asylum claimants by RASNZ or a similar qualified organisation as well as prioritised social housing would go a significant way to improving the situation.

The determination and settlement processes are inherently stressful. This will always be the case to some degree. However, where economic, social and cultural rights are not respected throughout the process, it can become unbearable and sometimes impossible to engage with. Quality of decision making, cost and time can be impacted.

9.1 A way forward?

These proposals reflect suggestions made by those actively involved in working with asylum claimants and people from refugee backgrounds. They are intended to be targeted, pragmatic and achievable. It is hoped that these proposals can be a starting point for civil society and Government to work together to find solutions and make necessary improvements .

Proposals identified through the Commission's interviews, surveys and discussions with the sector include:

- establishing an automatic and systematic mental health screening process for all asylum claimants and those who come to New Zealand as part of the Refugee Family Support Category
- ensuring mental health services are available and accessible on an ongoing basis for all asylum claimants and those who come to New Zealand as part of the Refugee Family Support Category
- how to streamline the visa process to align with the confirmation of claim process to avoid potential duplication and delay
- reviewing the availability, affordability and adequacy of housing for asylum claimants and those who come to New Zealand as part of the Refugee Family Support Category
- recommencing funding for the Asylum Seeker Support Trust Hostel
- considering whether the Asylum Seeker Support Trust Hostel needs to be expanded to meet the needs of those small number of asylum claimants who remain in the community without adequate housing and support

- undertaking training to ensure all front line staff in Government agencies providing health and other social services to refugees and asylum claimants are aware of entitlements
- working with civil society to consider the desirability of a cross cultural worker or social worker being funded by Government to assist the small number of asylum claimants and those who come to New Zealand as part of the Refugee Family Support Category to navigate the supports and services that are available to them
- undertaking more research into what is needed to assist asylum claimants and Convention refugees to break down the barriers and fully access the employment market
- working with the Commission to develop indicators to monitor the realisation of economic social and cultural rights for refugees and asylum claimants on an ongoing basis

Appendix 1

Rights of asylum claimants, refugees and their families in New Zealand

As at 31 July 2015

The content of this section is attributable to the New Zealand Red Cross and has not been changed from their 31 July 2015 document. The format has, however, been adapted for the purposes of this publication.

Claim procedure

Quota refugees

Have been determined to be refugees in accordance with the criteria set out in the 1951 Refugee Convention by the UNHCR according to the UNHCR Statute (or acting partners) in refugee camps or other refugee-populated areas, prior to arrival in NZ. Referred by UNHCR and selected by the NZ Government for resettlement.

Refugee family support category

Former refugees (those given Permanent Residence based on their status as a refugee or protected person) are eligible to sponsor family members to join them (up to 300 people every year). Two tier system, Tier One sponsors (those alone in NZ or only with dependent children here) are given priority.

Asylum claimants

Claim asylum upon arrival in New Zealand (either on shore or at borders) or after arrival on another visa – no fee for making a claim for refugee or protection status.

Provided with legal aid to apply for refugee status if required. Have to make an application (through their lawyer) to the Legal Services Agency.

Initial refugee status claim generally takes 3 months to process, but appeals take longer.

RSB provides a guide to asylum process.

Convention refugees (successful asylum claimants)

Have been determined to be refugees through the asylum process, with the criteria set out in the 1951 Refugee Convention. Initial review is completed by the Refugee Status Branch of the NZ Immigration Service, appeals are processed through the Immigration and Protection Tribunal.

Bringing family from overseas

Quota refugees

May be eligible to sponsor family members under the Refugee Family Support Category of immigration.

The immediate family (spouse and dependent children) of a quota refugee may be considered under the Refugee Quota Family Reunification Policy (without a referral from UNHCR), provided they were declared to Immigration New Zealand (INZ) during the refugee's offshore resettlement interview with the Refugee Quota Branch. If the refugee in New Zealand is a dependent child, their parents and dependant siblings may be able to be considered under RQFR.

May be eligible to apply for family members under other immigration categories.

Community Law Centres can provide initial information.

Refugee family support category

May be eligible to apply for family members under other immigration categories.

Community Law Centres can provide initial information.

Note that RFSC arrivals do not meet the criteria to apply to bring other family under the RFSC, as they are not granted residence based on refugee status.

Asylum claimants

Not eligible to apply to bring family until they receive convention status.

If asylum claimants enter as part of a 'mass arrival' (30 or more people), they must wait three years after their claim is successful before they can apply for permanent residency. Once permanent residency is granted, they are eligible to sponsor family members under family reunification.

Convention refugees (successful asylum claimants)

Need to include all immediate family members on application for permanent residency.

After receiving permanent residence, eligible to apply for other family members under the Refugee Family Support Category.

May be eligible to apply for other family members under other immigration categories. Community Law Centres can provide initial information.

If asylum claimants enter as part of a 'mass arrival' (30 or more people), they must wait three years after their claim is successful before they can apply for permanent residency. Once permanent residency is granted, they are eligible to sponsor family members under family reunification.

Visas and residency

Quota refugees

Residence Visas are granted by NZ Government off-shore. On arrival, quota refugees are issued with Permanent Residence Visas (at no cost to applicant).

Refugee family support category

Permanent Residency is granted through the original application.

The visa they are granted depends on the travel document they arrive with:

- Certificate of Identity
- Passport
- ICRC Travel Document

In most cases, a permanent resident visa is given prior to arrival in NZ or at the border.

Where this is not the case, families will need to secure correct documentation after arrival through Immigration NZ (often the situation with an ICRC document. This may take some weeks.)

The applicant must pay for medical tests, application fees and cost of the airfare.

Exempt from migrant levy.

Asylum claimants

Need to continue to apply for temporary (work, visitor or student) visas and keep visas valid until claim determined. There is no cost for this.

If asylum claimants enter as part of a 'mass arrival' (30 or more people), they may be put on a temporary protection visa for up to three years.

Convention refugees (successful asylum claimants)

Once recognised as a refugee or protected person, can apply for a temporary entry class visa or a permanent resident visa.

Adults will first be granted work visas, school aged children generally granted student visas, and dependent children not in school granted a visitor visa.

Need to make separate application for permanent resident visa – takes an unfixed time to process, commonly 18 months. The permanent residence application fee is generally waived, but the applicant must pay for the costs associated with required medical checks.

Exempt from migrant levy.

Need to include all immediate family members on application for permanent residency.

Settlement support

Quota refugees

Provided with free food and accommodation and fully supported for their first six weeks in NZ at the Mangere Refugee Resettlement Centre.

Receive assessments, health checks, and orientation to NZ programme upon arrival while at Mangere Refugee Resettlement Centre.

Red Cross provide orientation and settlement support for a minimum of 6 months in the community.

Information for quota refugees is also available via fact sheets and an online video from MBIE. Versions in other languages will soon be available. Topics include:

- Laws in New Zealand
- Support services
- Jobs and money
- Health services
- Learning English and education
- Daily living
- Immigration and citizenship.

Refugee family support category

Immigration NZ offers a free information service for all new migrants available throughout the country, via phone or email, or in person through CAB.

Also able to ask Red Cross for general information and advice, not case management.

Information for RFSC arrivals is also available via fact sheets and an online video from MBIE.¹⁴ Versions in other languages will soon be available. Topics include:

- Laws in New Zealand
- Support services
- Jobs and money
- Health services

- Learning English and education
- Daily living
- Immigration and citizenship.

Asylum claimants

Not for profit groups, including Auckland Refugee Council Inc, provide assistance as funding allows.

Immigration NZ offers a free information service for all new migrants available throughout the country, via phone or email, or in person through CAB. Information sheets specific to the application process and services available for asylum claimants are online.

Also able to ask Red Cross for general information and advice, not case management.

Convention refugees (successful asylum claimants)

Immigration NZ offers a free information service for all new migrants available throughout the country, via phone or email, or in person through CAB.

Information for convention refugees is also available via fact sheets and an online video from MBIE.

Versions in other languages will soon be available.

Topics include:

- Laws in New Zealand
- Support services
- Jobs and money
- Health services
- Learning English and education
- Daily living
- Immigration and citizenship.

Also able to ask Red Cross for general information and advice, not case management.

Eligibility to work

Quota refugees

Permanent residence means they are entitled to work immediately upon arrival.

Application for IRD number and Community Services Card is organised by support staff at Mangere Refugee Resettlement Centre.

Free access to employment services through:

- Red Cross Pathways to Employment programme
- Work and Income
- Careers NZ (via email, phone and web chat services)

Refugee family support category

Permanent residence means they are entitled to work immediately upon arrival.

Eligible to apply for an IRD number and Community Services Card.

Free access to employment services through:

- Red Cross Pathways to Employment programme
- Work and Income
- Careers NZ (via email, phone and web chat services)

Asylum claimants

Work visas are given at Immigration NZ discretion. On first application, the standard visa length is 12 months. Claimants must demonstrate the need to work in order to be granted a visa.

Must regularly apply for – and renew – work visas until such time as Permanent Residency has been achieved or they are finally declined.

Community Services Card: Refugees or people with protection status, or who have applied for refugee protection status may also be eligible to apply for the CSC. This is usually received as part of Work and Income application.

IRD card: Complete IR595 form, need passport or Certificate of Identity and proof of address.

With a valid work visa, free access to employment services through:

- Red Cross Pathways to Employment programme
- Work and Income
- Careers NZ (via email, phone and web chat services)

Convention refugees (successful asylum claimants)

Must regularly apply for – and renew – work visas until such time as Permanent Residency has been achieved. After receiving residency status they have an automatic right to work.

Eligible to apply for an IRD number and Community Services Card.

With a valid work visa or residency, free access to employment services through:

- Red Cross Pathways to Employment programme
- Work and Income
- Careers NZ (via email, phone and web chat services)

Healthcare

Quota refugees

Offshore: Quota refugees undergo a medical review prior to arrival for a list of possible health conditions that may preclude acceptance to NZ or (in the case of active TB) travel.

Onshore: At Mangere Refugee Resettlement Centre quota refugees receive free health screening and primary healthcare through Auckland Regional Public Health Service – Refugee Health Screening Service. Health screening is mandatory.

Eligible for publically funded health and disability services in the community.

Refugee family support category

Offshore: Must have the equivalent of an IOM medical offshore before they are accepted under the RFSC.

Onshore: Eligible for publically funded health and disability services in the community.

New arrivals are sometimes unaware of the importance of health screening, and Public Health departments are not automatically informed of their arrival. New RFSC arrivals are strongly encouraged to contact their local Regional Public Health team to arrange for a health screening. Fees will depend on the local services available.

Asylum claimants

Eligible for publically funded health and disability services in the community upon application for refugee or protection status, or upon application of appeal against refusal of refugee or protection status. Must provide evidence of application.

If receipt of claim letter from the Refugee Status Branch more than 6 months old then should provide a more recent letter (not more than 3 months old) confirming the application is still in process.

If requiring hospitalisation, access to public subsidies depends on status at the time the patient enters the hospital.

Asylum claimants who are detained in prison have primary healthcare provided through the NZ Corrections system. Those detained at Mangere receive primary healthcare through Refugee Health Screening Service.

Community Asylum claimants (not detained) and asylum claimants 'released on condition' (residing either at Mangere or in the community) are encouraged to enrol with a GP/PHO to receive primary healthcare.

Public health screening is available to all asylum claimants through Refugee Health Screening Service (Auckland Regional Public Health) at Mangere or through Regional Public Health in the community. In most cases this is free for asylum claimants. Health Screening is Voluntary. Health screening does not constitute an immigration medical.

Those appealing against deportation are not eligible for publicly funded healthcare.

Convention refugees (successful asylum claimants)

Eligible for publically funded health and disability services in the community.

An immigration medical must be obtained (and paid for) as part of the application process to gain residency.

Mental health support

Quota refugees

Able to access Refugees As Survivors in Auckland and Refugee Trauma Recovery in Wellington if their mental health concerns are related to refugee experience – both have waitlists.

Able to access mainstream mental health support services.

Refugee family support category

Able to access Refugees As Survivors in Auckland and Refugee Trauma Recovery in Wellington if their mental health concerns are related to refugee experience – both have waitlists.

Able to access mainstream mental health support services.

Asylum claimants

Able to access Refugees As Survivors in Auckland and Refugee Trauma Recovery in Wellington if their mental health concerns are related to refugee experience – both have waitlists.

Eligible for referral to Community Mental health teams.

Convention refugees (successful asylum claimants)

Able to access Refugees As Survivors in Auckland and Refugee Trauma Recovery in Wellington if their mental health concerns are related to refugee experience – both have waitlists.

Individuals with refugee or protection status in New Zealand are eligible for mainstream mental proof of status: an approval letter from the Refugee Status Branch, the Immigration and Protection Tribunal, or a residence visa or an open-ended work visa.

Furniture

Quota refugees

A basic furniture package is provided by Government and donated household items are provided by Red Cross.

Refugee family support category

No furniture provided

Asylum claimants

No furniture provided

Convention refugees (successful asylum claimants)

Via re-establishment grant (if eligible – see Ministry of Social Development)

Education (primary and secondary)

Quota refugees

Primary and secondary education is free.

Refugee family support category

Primary and secondary education is free.

Asylum claimants

Children of asylum claimants will generally be issued a student visa.³¹ Primary and secondary education is free.

Children can generally stay in education regardless of status, until deportation. For information or assistance contact the refugee education coordinators at the Ministry of Education.

Convention refugees (successful asylum claimants)

Primary and secondary education is free.

Education (ECE)

Quota refugees

Eligible for 20 hours free ECE for 3-5 year olds.

Refugee family support category

Eligible for 20 hours free ECE for 3-5 year olds.

Asylum claimants

Eligible for 20 hours free ECE for 3-5 year olds.

Convention refugees (successful asylum claimants)

Eligible for 20 hours free ECE for 3-5 year olds.

Education (tertiary)

Quota refugees

Eligible to study at tertiary level.

Eligible for student loan and student allowance.

Eligible for free ESOL courses funded by Tertiary Education Commission if they have low English language and/or literacy skills.

Refugee family support category

Eligible to study at tertiary level.

Eligible for student loan and student allowance.

Eligible for free ESOL courses funded by Tertiary Education Commission if they have low English language and/or literacy skills.³⁷

Asylum claimants

If you are issued a work visa while your refugee and protection claim is being processed, you may be able to obtain permission to attend ESOL classes.

Must fund own English language learning until granted refugee or protected person status.

Not eligible for student loans or student allowance.

Convention refugees (successful asylum claimants)

Eligible to study at tertiary level once permanent residency is granted.

Eligible for student loan and student allowance from the approval date of the residence class visa. The stand down period is not applicable.

Eligible for free ESOL courses funded by Tertiary Education Commission if they have low English language and/or literacy skills.

Contact

Human Rights Commission InfoLine

0800 496 877 (toll free)

Fax 09 377 3593 (attn: InfoLine)

Email info@hrc.co.nz

TXT 0210 236 4253

www.hrc.co.nz

Language Line and NZ Sign Language interpreters available

If you have a hearing or speech impairment, you can contact the HRC using the New Zealand Relay Service.

NZ Relay is a telecommunications service and all calls are confidential.

www.nzrelay.co.nz

Tāmaki Makaurau – Auckland

Level 7, AIG Building,

41 Shortland Street, Auckland

PO Box 6751, Wellesley Street

Tāmaki Makaurau Auckland 1141

Waea Telephone 09 309 0874

Te Whanganui ā Tara – Wellington

Level 8, Vector Building

44-52 The Terrace

PO Box 12411, Thorndon

Te Whanganui ā Tara Wellington 6144

Waea Telephone 04 473 9981

Otautahi – Christchurch

Level 1, BNZ Centre

120 Hereford Street

Christchurch 8011

Waea Telephone 03 379 2015

