SPOTLIGHT ON THE VULNERABLE

Key issues impacting on the human rights of asylum seekers and refugees in New Zealand
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EXECUTIVE SUMMARY

Context

According to the United Nations High Commissioner for Refugees (UNHCR) there are currently approximately 15.4 million refugees and 937,000 asylum seekers worldwide. **However, instead of simply talking about numbers, each figure must be thought of as an individual case, each with their own story and struggles; and each facing a long and difficult journey finding security and protection.** With the ongoing conflict and unrest in the Middle East and Africa regions, refugee and asylum seeker issues have now, more than ever, demanded attention globally as a platform for grave concern. Amnesty International urges New Zealand to ensure it meets its responsibilities as a global player and reaffirm its long standing international reputation as a protector of human rights by continuing to ensure the promotion, protection and recognition of these most vulnerable groups.

Our work

Amnesty International campaigns for the rights of refugees and asylum seekers to be protected as well as working to prevent human rights violations that cause people to flee their homes in the first place. At the same time, we oppose the forcible return of any individual to a country where he or she faces serious human rights violations. We aim to ensure that New Zealand observes its human rights obligations as set out in the 1951 UN Convention on the Status of Refugees and its 1967 Optional Protocol (Refugee Convention) as well as other internationally recognised standards that New Zealand is a party to, including the Universal Declaration of Human Rights (UDHR).

Purpose

In preparing this document, Amnesty International consulted with a number of organisations and individuals working with/or on behalf of refugees and asylum seekers to provide an overview – or ‘snapshot’ – of the key issues that impact on the human rights of refugees and asylum seekers in New Zealand and across the region. This paper focuses on regional, domestic, legal and policy issues ranging from extra-territorial processing and the Immigration Amendment Act, to immigration detention and New Zealand’s annual resettlement programme. It concludes each section with recommendations to ensure New Zealand meets its human rights obligations. The paper is not intended to address all the issues facing refugees and asylum seekers in New Zealand and across the region, but rather serves as a reference document for wider discussions on election policies and those established following the 2014 General Election.
1. REGIONAL

1.1. Extra-territorial processing

The Asia-Pacific region hosts an estimated one third of the world’s refugees - about 3.5 million.\(^1\) Across the region refugee laws are non-existent - few countries have signed the Refugee Convention recognising the obligation to provide protection and offer a framework for domestic laws to recognise refugee status. Refugees and asylum seekers face violent abuse, exploitation, detention in horrific conditions and destitution.

Australia’s inhumane and punitive polices to deter asylum seekers by turning back boats and indefinite mandatory detentions in extra-territorial centres are illegal under international law. The offshore processing on Manus Island in Papua New Guinea (PNG) and in Nauru has led to a host of human rights violations, including arbitrary detention, a serious risk of refoulement,\(^2\) the denial of the right to seek asylum, the denial of required procedural protections, and violations of the prohibition on ill-treatment.

As a historically strong proponent for human rights and its goals for a principled approach to issues of peace and security, New Zealand has a key role to play in ensuring those at risk in the region are protected from persecution.

Under the 1951 Refugee Convention and its 1967 Protocol, governments have a responsibility to ensure that when they transfer people to other countries there are adequate safeguards in place to protect the rights of people in those countries. In addition, asylum seekers may not be punished on the basis of their manner of arrival.\(^3\) Both Australia and New Zealand are obliged to respect the principle of non-refoulement through obligations under the Refugee Convention,\(^4\) the Convention against Torture,\(^5\) the International Covenant on Civil and Political Rights (ICCPR),\(^6\) and customary international law.\(^7\) For more information on issues with offshore processing see Amnesty International’s report on conditions following a visit to Manus Island in November 2013 (http://bit.ly/1cESlhg) and on a visit to Nauru in November 2012 (http://bit.ly/1mIXvz3).

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2 A cornerstone principle of international refugee law that no state can return an individual to territories where their life or freedom would be threatened <http://www.refworld.org/docid/438c6d972.html>.

3 Article 31 (1), Refugee Convention: “Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened...enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”

4 Article 33, Refugee Convention: "No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

5 Article 3, Convention against Torture: “1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

6 ICCPR: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation;” Human Rights Committee, General Comment No. 20, U.N. Doc. HRI/ GEN/1/Rev.7 (1992).

**Recommendations**

New Zealand takes concrete steps towards a genuine regional solution to the issue of protection for asylum seekers and refugees in the Asia-Pacific region. Such a solution is crucial to ensuring effective refugee protection throughout the region that provides asylum seekers with alternatives to getting on boats. These steps would include:

- Open and ongoing dialogue with countries in the region, including our neighbours in Asia and Australia;
- Providing increased options for asylum seekers and refugees in the region by increasing:
  - legal recognition for refugees across the region;
  - access to basic services such as health and education;
  - access to the UNHCR; and
  - the possibility of resettlement.⁸
- Encouraging nations to ratify the Refugee Convention to provide the international framework to ensure the above.

The key to a regional approach is to provide genuine alternative options for refugees and asylum seekers by ensuring legal recognition for refugees across the region; increasing access to basic services such as health and education; increasing access to the United Nations High Commissioner for Refugees (UNHCR) and increasing the possibility of resettlement. Amnesty International, alongside many other organisations, remains firmly opposed to any policies of extra-territorial processing throughout the region. These policies currently breach the Refugee Convention and further erode refugee protection in the Asia-Pacific. For more information on a genuine regional solution please see: [http://bit.ly/Pkt1Wh](http://bit.ly/Pkt1Wh).

### 2. DOMESTIC

#### 2.1. Immigration Amendment (Mass Arrivals) Act 2013

In April 2012, the New Zealand Government introduced the Immigration Amendment Bill (Mass Arrivals Act) to deter asylum seekers from arriving by boat.⁹ The purpose of detention should not be to deter asylum seekers from arriving into the country and policies guiding such decisions must ensure they fulfill New Zealand’s international and domestic obligations. Many organisations and individuals across the refugee sector have expressed their concern that the measures set out in the Act will not fulfill these purposes and if implemented, would risk breaching these human rights obligations. Organisations who have expressed their concerns include the Office of the UNHCR, Auckland Refugee Council, the Refugee Council of New Zealand, the New Zealand Law Society, the New Zealand’s Human Rights Commission, the Ombudsman and the International Detention Coalition. For a full list of submissions please see: [http://bit.ly/1hC6oa1](http://bit.ly/1hC6oa1).

**Arbitrary detention**

The Mass Arrivals Act provides for the detention of a mass arrival of asylum seekers under a group warrant, for an initial period of up to six months.⁹ This may put New Zealand Government at risk of breaching its legal obligations in relation to an individual’s right to life, liberty and security;⁹⁰ right to freedom from arbitrary detention;⁹¹ right to due process;⁹² and right not to be

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⁹⁰ Article 3 (ss 8 and 22), Universal Declaration of Human Rights and New Zealand Bill of Rights Act 1990.
⁹¹ Article 9 (s 23), Universal Declaration of Human Rights and New Zealand Bill Of Rights Act 1990.
⁹² Section 27, New Zealand Bill of Rights Act 1990.
penalised on account of illegal entry or presence. The Refugee Convention sets out specifications that detention should only be used if ‘necessary’ as a matter of last resort; and after all possible alternatives to detention have been exhausted.

**Recommendations**

- Claims should be processed individually, to avoid delay, discrimination, and ultimately unnecessary detention, which will likely arise if the claims process is determined by the size or mode of transport of the arrival.
- Detention must only be used if necessary as a matter of last resort and after all possible alternatives to detention have been exhausted.
- Where detention is deemed to be a necessity, a maximum 30 day time limit should be adhered to, so that all asylum seekers are moved into the community once health, character and identity checks are complete.

**Effective processing**

The effective processing of asylum seekers was identified as the parallel purpose of the Mass Arrivals Act. This has been interpreted to mean efficiency of processing as well as the cost. In terms of assessing the cost of detention on a per capita basis there is a significant research base showing that the cost of detention is significantly more expensive than housing people in the community while their claims are processed. The Joint Select Committee on Australia’s Immigration Detention Network found the cost of administering and operating detention facilities across the network in the 2010-2011 financial year was $772.17 million and the cost of community detention during the same period was $15.734 million. In addition, the holding of people on mass does not automatically mean a quicker processing of claims and incurs costs required to rehabilitate individuals whose mental health deteriorates as a result of the detention.

**Recommendation**

- For immigration policy to ensure community based processing is prioritised and restrictions on asylum seekers’ freedom of movement should be no more than “those which are necessary,” as a matter of last resort; as is reflected in the “layered” system of detention provided for in sections 128 and 128AA of the Immigration Act 1987 and in Immigration New Zealand’s Operations Instruction policy.

**2.2. Detention of asylum seekers with remand prisoners**

While the Mangere Refugee Resettlement Centre in Auckland is the customary place for detained asylum seekers; in some circumstances, asylum seekers are also detained in prisons alongside remand prisoners, including Mount Eden and Rimutaka prisons.

There are well known negative, and at times serious physical and psychological, consequences for asylum seekers in prison detention; there is a risk of violence with refugees and over-stayers being beaten and brutalised by other prisoners and prison guards not assisting.

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13 Article 31, Refugee Convention.
14 Article 31, Refugee Convention.
15 International Detention Coalition, Submission to the New Zealand Parliamentary Select Committee Immigration (Mass Arrivals) Act, 8 June 2012
17 Ibid.
Alongside other organisations, the Refugee Council of New Zealand has expressed the strong view that there is never any justification for holding any person seeking refugee asylum under the UN Convention in a prison or correctional facility if they have committed no crime.

**Recommendations**

- The UNHCR state that the use of prisons and jails should be avoided and if asylum seekers are held in such facilities, they should be separated from the general prison population.
- For criminal standards (such as wearing prisoner uniforms or shackling) not to be used for asylum seekers detained in prison detention.\(^{19}\)

### 3. LEGAL

#### 3.1. Judicial review

The Mass Arrivals Act also provided for the restriction of judicial review proceedings through the enactment of a new section 249.\(^ {20}\) This section removes the right of all claims to be heard before the Immigration and Protection Tribunal for subsequent claims along with the removal of certain rights of judicial review. Such an amendment risks breaching the New Zealand Government’s legal obligations in relation to an individual’s right to justice; and right to due process.\(^ {21}\) There is a concern that the proposed process is not subject to normal administrative and judicial review processes, and therefore could be considered discriminatory.

**Recommendation**

- That any amendments must safeguard the individual’s rights to justice and due process, in order for the New Zealand Government to comply with its international and domestic legal obligations.

#### 3.2. Legal aid

**Access**

Concerns have been raised by immigration practitioners that over-stayers are being denied access to lawyers and face barriers to accessing interpreters when they're arrested in advance of deportation.\(^ {22}\) The denial of access to legal aid and no offer of interpreters are both a breach of the New Zealand Bill of Rights Act\(^ {23}\) and the Universal Declaration of Human Rights.\(^ {24}\)

**Limitations on the right to an oral hearing**

The Act limits the right for an asylum seeker to have an oral hearing by being granted powers to tighten considerably the provisions for subsequent refugee claims. The first provides the Immigration and Protection Tribunal absolute discretion to decide whether they will provide an oral hearing to an appeal relating to a subsequent refugee or protected person claim and the second makes no requirement for refugee and protection officers to consider a third or more claims. This raises concerns as there is no indication in the explanatory notes that situations are arisen to require the tightening of provisions which have already been tightened. Furthermore,

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\(^{20}\) Clause 10, Immigration Amendment (Mass Arrivals) Bill, new section 249(1), Immigration Amendment Act 2013.

\(^{21}\) Section 27, New Zealand Bill of Rights Act 1990.


\(^{23}\) Section 20, Section 23 and Section 24, the New Zealand Bill of Rights Act 1990.

\(^{24}\) Article 21 of the Universal Declaration of Human Rights.
the issue with absolute discretion is that although they do legally have to record the reasons for rejecting a claim, the reasons cannot actually be accessed by the refugee claimant’s legal representative under the Privacy Act, Section 5.11. This means the refugee claimant will have no way of knowing why their claim was subsequently rejected.

**Recommendation**
- Any amendments must safeguard the individual’s rights to justice and due process, in order for the New Zealand Government to comply with its international and domestic legal obligations.

**Insufficiency**

Only three hours of legal aid are available to lawyers for preparing a Warrant(s) of Commitment appeal in addition to the actually hours for attending the hearing itself. The reality of asylum seekers’ situations often means additional challenges to ensuring their case is well prepared. Accessing and using interpreters, dealing with people whom have experienced great trauma and mistrust in authorities in order to get the facts of a case can in some circumstances take a longer period of time. The limited availability of legal aid can mean that cases are not able to be well prepared which runs the risk of asylum seekers being detained arbitrarily.

Concerns have also been raised over challenges in the ability for asylum seekers to prepare their claim because in prison they have no access to the internet in order to communicate with persons who may be able to provide evidence in support of their claim, or to gather country information in their own language to support their claim. These tasks therefore fall to the lawyer, increasing the amount of hours required to process the claim.

### 3.3 Immigration Protection Tribunal

**Length of time to process claims**

The Immigration Act 2009 saw the removal of the four different appeal bodies under the former legislation being replaced by one single Tribunal namely the Immigration and Protection Tribunal (IPT). Previously there were long delays when dealing with appeals, with some taking 12-15 months to issue a decision. However, the IPT has recently announced at the annual asylum forum that a new decision making process for asylum appeals that has significantly reduced delays in appeal decisions. Progress in reducing the timeframe for decisions will continue to be monitored by civil society organisations.

**Recommendation**
- That the Immigration Protection Tribunal considers an external review of its decision making processes to ensure appeals are being processed effectively in an expeditious manner.

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25 An order issued by the Court to arrest or detain someone.


27 Further changes to the Act are available at [http://www.immigration.govt.nz/migrant/general/generalinformation/media/immigactfactsheet.htm](http://www.immigration.govt.nz/migrant/general/generalinformation/media/immigactfactsheet.htm)

4. POLICY

4.1. Permanent residency

The proposal by Government around the discussions of the Immigration (Mass Arrivals) Act that permanent residency not be granted for refugees as part of a mass arrival group until after the reassessment of refugee status occurs (three years after the original assessment) is contrary to the requirement for the New Zealand Government to 'expedite naturalisation'.29 The reassessment requirement itself is also cause for concern.

In addition, the indefinite nature of an individual’s status carries a high risk of stress and uncertainty that is like to have a negative impact on the wellbeing of the concerned individual.30 Concerns have also been raised by those working in the refugee sector of the time taken for the processing of residence claims.

**Recommendations**
- There should be no requirement to reassess the status of refugees who then seek to acquire permanent residency.
- That additional efforts need to be made to shorten the time taken to process residency claims.

4.2. Quota

New Zealand is one of 26 countries with an annual resettlement programme.31 Since the quota commenced in 198732 there has been no move to increase it, and in fact, the quota was instead decreased from 800 to 750 in 1997.33 New Zealand’s refugee intake is one-fifth, per capita, of Australia’s; with Australia having 20,000 places within its refugee quota for 2014, while New Zealand’s remains at 750.34

Most other countries also exceed New Zealand, but accept their refugees as asylum seekers rather than through the UNHCR resettlement programme. Claims by asylum seekers to New Zealand have also decreased considerably from 948 asylum claims in 2002/0335 to 320 asylum claims in 2012/2013.36 Given New Zealand is so geographically isolated from the rest of the world, increasing our refugee quota would give us an opportunity to stay connected and relevant in the international arena while assisting in protection, peace and security. This would in turn reaffirm New Zealand’s long standing international reputation as a protector of human rights by continuing to offer and increase direct protection to those refugees who are most at risk.

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29 Article 34, Refugee Convention.
30 AIANZ, Submission on the Immigration (Mass Arrivals) Amendment Bill, 8 June 2012.
31 UNHCR, September 2013 p 6 <http://www.refworld.org/pdfid/4ac0d7e52.pdf>.
In addition, the requirement in the current quota programme policy that refugees selected from Africa and the Middle East regions require family links in New Zealand raises concern as it risks that those deserving of protection will not be considered without this link. With as many as 55%\(^{37}\) of the world’s refugees coming from Middle East and Africa in countries like Afghanistan, Iraq, Syria and Sudan and the ongoing conflict in Syria, Sudan and Central African Republic, it is crucial for New Zealand to evolve its refugee policy needs in response to changing global circumstances and needs.

**Recommendations**

- For New Zealand to increase its quota. Civil society representatives including ChangeMakers Refugee Forum and the Refugee Sector Strategic Alliance have made recommendations that in 2014-2015, New Zealand’s quota programme is increased by 10% from 750 to 825 people and thereafter increased annually by 3%. Similarly UNHCR made recommendations for it to be increased to at least a 1000, while Doing Our Bit advocates doubling the quota of refugees.
- To make protection the central policy for selecting refugees to settle within New Zealand and repeal a race-based refugee policy.

**Crisis quota**

With ongoing crises in countries like Syria, South Sudan and the Central African Republic, there is a significant opportunity for third states like New Zealand to offer effective protection for individuals in desperate need of protection. Currently New Zealand has a sub category of 35 places reserved within the 750 annual quota for emergency individual cases. Amnesty International encourages New Zealand to create a ‘Crisis Quota’ separate from the annual 750 for a set number of additional refugees every year. The ‘crisis quota’ may not always be filled depending on global circumstances but spaces should still be reserved so as to provide protection in unplanned circumstances at reduced notice.

**4.3. Family reunification**

The policy changes to family reunification that were introduced alongside the Mass Arrivals Act suspend the right of family reunification to refugees who have arrived in a mass arrival group until permanent residence is granted. In addition, this policy would limit reunification to immediate family only. Many organisations, including the UNHCR, have expressed strong concern that these policy changes will breach New Zealand’s international obligations.\(^ {38}\) The Mass Arrivals Act empowers the suspending of the processing of all refugee and protection claims by regulation.

**Recommendation**

- For New Zealand to adopt guidelines and procedures that focus on the need of the refugee to be reunited with his or her family.

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\(^{37}\) UNHCR 2013 available at [http://www.euronews.com/2013/06/19/world-refugee-day/](http://www.euronews.com/2013/06/19/world-refugee-day/)

\(^{38}\) These obligations include to respect and protect family life which can be found in Article 16, Universal Declaration of Human Rights (UDHR), the right to be free from discrimination which can be found in Article 7, UDHR and section 19, New Zealand Bill of Rights Act 1990 (BORA) and the right not to be penalised on account of illegal entry or presence which can be found in Article 31, Convention relating to the Status of Refugees.
4.4. Suspension of claims

The new regulatory power under the Mass Arrivals Act to suspend the processing of asylum claims also provides grounds for concern. The Regulatory Impact Statement for the Bill provided two grounds for suspension: if reliable country information was not available to adequately determine their claim and if a country situation is fluid.\(^{39}\) Given the nature of refugee claims, it is often extremely difficult to obtain information out of a country in conflict and by their very nature such conflicts can be fluid. These provide vague justifications for suspension of claims and the powers also fail to specify how long can the claim processing be suspended for and how would such a person be treated during the period of suspension.\(^{40}\)

**Recommendation**
- The power to suspend processing should be excluded in order to ensure that individual asylum claims are assessed on a case by case basis and in an expeditious manner.

4.5. Resettlement disparities

**Inconsistency in support between Quota and Convention refugees**
Research by ChangeMakers Refugee Form and the Refugee Sector Strategic Alliance found that there are significant disparities between the support given to quota refugees and services available to Convention refugees.\(^{41}\)

Convention refugees face systemic challenges including difficulties accessing interpreters, housing, healthcare, English language, Work and Income support, and employment, and prolonged periods of waiting and uncertainty. Funding cuts to the Auckland Refugee Council, which provides Auckland’s only asylum-seeker accommodation, resulted in an $80,000 deficit and was at risk of being shut down.\(^{42}\)

**Recommendations**
- That the Government reinstates funding support for agencies working with asylum seekers and Convention refugees.
- That the National Refugee Resettlement Strategy be expanded to include Convention refugees.

**More support necessary for asylum seekers**
Asylum seekers receive less support than quota refugees and face significant barriers in accessing education, employment and health (especially mental health); therefore, more support is necessary for asylum seekers. Immigration New Zealand will commission research into outcomes for asylum seekers; including work, benefits, education and housing for a cohort of asylum seekers. The outcome of the research aims to give a better picture as to final status outcomes for asylum seekers and how they would settle in New Zealand if recognised as refugees.

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4.6. Access to trauma and mental health support

Specialist mental health services in the community are provided for Quota refugees and Convention refugees in Auckland and Wellington but not in other resettlement locations. Specialist mental health services specifically for asylum seekers housed at the national Mangere Refugee Resettlement Centre are provided by Refugees as Survivors New Zealand (RASNZ). There is no government funding for specialist mental health services for asylum seekers who are released into the community. The only specialist mental health service for asylum claimants exclusively who have been confirmed as victims of torture is operated by the RASNZ Refugee Mobile Team in Auckland and is funded by only by a small $30,000 per annum grant directly from the United Nations Fund for Victims of Torture (UNFVT). This specialist service is often over-subscribed with need its core business of providing services for Quota Refugees and only victims of torture receive highest priority for treatment and rehabilitation. The decline of UNFVT funding available to the Refugee Mobile Team has limited the treatment services only to the most severe cases of torture for asylum claimants.

In 2011 specialist training in working with refugees was provided for 100 mainstream health professionals around New Zealand through the Cultural and Linguistic Diversity (CALD) course initiated and developed by RASNZ and the Waitemata District Health Board (WDHB). The training has only continued in Auckland and the CALD course is not being delivered to other resettlement locations due to lack of funding.

**Recommendation**

- That funding and resource allocation is sufficient to provide for the training of mental health professionals to deal with experiences unique to refugees. This is also needed to utilise better access to mental health facilities for refugees and asylum seekers and be able to inform them of services, locations and costs.

**CONCLUSION**

This paper seeks to provide a brief summary of key asylum seeker and refugee issues for decision makers and candidates alike in the lead up to the New Zealand General Election in September 2014 and beyond. It is not intended as an exhaustive summary, but serves as a snapshot of issues that provides a platform for further discussion on how laws and policies in New Zealand are created in order to recognise the human rights of asylum seekers and refugees.

For more information please contact Advocacy and Government Relations Manager, Amanda Brydon at amanda.brydon@amnesty.org.nz Amnesty International is able link up readers with the best placed organisation/individual to discuss specific issues & recommendations in further detail.

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43 For more information on RASNZ please visit [http://www.rasnz.co.nz/](http://www.rasnz.co.nz/)