

**Submission by the United Nations High Commissioner for Refugees**  
**For the Office of the High Commissioner for Human Rights' Compilation Report**  
**Universal Periodic Review: *Fourth Cycle, 46th Session***

**NEW ZEALAND**

**I. BACKGROUND INFORMATION**

New Zealand acceded to the *1951 Convention relating to the Status of Refugees* on 30 June 1960 and the *1967 Protocol relating to the Status of Refugees* on 6 August 1973 (hereinafter, collectively referred to as the 1951 Refugee Convention). Additionally, New Zealand acceded to the *1961 Convention on the Reduction of Statelessness* (1961 Statelessness Convention) on 20 September 2006. New Zealand is not a State party to the *1954 Convention relating to the Status of Stateless Persons* (1954 Statelessness Convention). New Zealand became a member of UNHCR's Executive Committee of the High Commissioner's Programme (ExCom) in 2002.

New Zealand's *Immigration Act 2009* (the Act), which came into effect on 29 November 2010 constitutes the statutory basis for refugee status determination (RSD) and assessment of complementary protection needs in domestic law. Immigration New Zealand is a part of New Zealand's Ministry of Business, Innovation and Employment (MBIE) and is responsible for managing immigration to New Zealand, including the provision of asylum and resettlement.

New Zealand traditionally maintains a positive refugee protection environment. New Zealand undertakes full responsibility for processing of asylum-seekers under the Act. The Act codifies New Zealand's obligations under the *1951 Refugee Convention*, and under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and the *International Covenant on Civil and Political Rights*, allowing for alternative recognition as a protected person.

In the 2022-2023 fiscal year, New Zealand received 780 new refugee and subsidiary protection claims.<sup>1</sup> New Zealand has made positive developments in expanding opportunities for resettlement and complementary pathways in the past few years. The vast majority of refugees in New Zealand arrive under the resettlement program. In 2020, the program increased from 1,000 to 1,500 places. However, due to the delays caused by the COVID-19 pandemic, 2023 was the first year 1,500 refugees arrived under the resettlement program. The number of places available for family reunification for refugees also increased from 300 to 600 places in 2022. In addition, in 2020, New Zealand extended the Community Organisation Refugee Sponsorship (CORS) pilot program for a total of 150 refugees, or up to 50 refugees over three years.

**II. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS**

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<sup>1</sup> Immigration New Zealand, *Refugee and Protection Statistics Pack*, Current to 31 July 2023, available at: [Immigration New Zealand Refugee Statistics Pack for July 2023](#).

## **Challenges linked to outstanding 3rd cycle UPR recommendations**

### **Issue 1: Implementation of alternatives to detention**

#### **Linked to 3rd cycle UPR recommendation nos.122.190, 122.191, 122.193 and 122.194<sup>2</sup>**

New Zealand does not have a mandatory detention policy, but the Act enables asylum-seekers (both at arrival at the border and if liable to deportation) to be detained. While the majority of asylum-seekers do not end up in detention, of the approximately 2,500 people who claimed asylum between 2015 – 2020, 86 were detained in corrections facilities for periods ranging from 1 day to 1,177 days.<sup>3</sup> In addition to the general powers to detain asylum claimants contained in the Act, the *Immigration Amendment Act 2013* introduced additional detention powers for asylum-seekers who arrive in New Zealand by boat as part of a “mass arrival group” containing 30 or more persons. These persons may be detained for an initial period on a group warrant, which is then renewable every 28-days.

The UN Human Rights Committee and the Working Group on Arbitrary Detention have expressed concern that correctional and police facilities are used for immigration purposes in New Zealand, and that asylum-seekers are not separated from the rest of the criminal detainee population.<sup>4</sup> Further, the Committee against Torture previously recommended that New Zealand adopt the measures necessary to ensure that detention of asylum-seekers is applied only as a measure of last resort, when determined to be strictly necessary, in a manner proportionate to each individual case and for as short a period as possible.<sup>5</sup>

During their examination of New Zealand in the Third Cycle of the Universal Periodic Review in 2019, States also made recommendations relating to New Zealand’s system of immigration detention. For instance, New Zealand was urged to harmonize its legislative arrangements for detention with international standards.<sup>6</sup> New Zealand was called on to ensure that asylum-seekers are only detained in strict accordance with New Zealand’s international human rights obligations. It was also recommended that New Zealand “take the necessary measures, including the possible revision of the *Immigration Amendment Act 2013*, to ensure that detention of migrants and asylum-seekers is applied only as a measure of last resort in a manner proportionate to each individual case and for as short a period as possible”.<sup>7</sup> The Government supported all of these recommendations.<sup>8</sup>

New Zealand has also accepted all of the recommendations arising from the independent review it commissioned looking into the detention of asylum-seekers.<sup>9</sup> The review examined their operational practices, the structure of the detention regime under the Act, and the

<sup>2</sup> UN Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: New Zealand*, A/HRC/41/4, 1 April 2019, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/087/77/PDF/G1908777.pdf?OpenElement>.

<sup>3</sup> Victoria Casey KC, Report to Deputy Chief Executive (Immigration) of the Ministry of Business, Innovation and Employment: *Restriction of Movement of Asylum Claimants*, 23 March 2023, p. 27, available at: <https://www.mbie.govt.nz/dmsdocument/20130-report-to-deputy-chief-executive-immigration-of-the-ministry-of-business-innovation-and-employment-restriction-of-movement-of-asylum-claimants>.

<sup>4</sup> Report of the Working Group on Arbitrary Detention - Addendum - Mission to New Zealand, A/HRC/30/36/Add.2, 6 July 2015, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/148/80/PDF/G1514880.pdf>.

<sup>5</sup> UN Committee Against Torture (CAT), *UN Committee against Torture: Concluding observations on the sixth periodic report of New Zealand*, 2 June 2015, CAT/C/NZL/CO/6, para.18., available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/110/91/PDF/G1511091.pdf>.

<sup>6</sup> *Supra* note 2.

<sup>7</sup> *Supra* note 2.

<sup>8</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: New Zealand*, A/HRC/41/4/Add.1, 17 June 2019, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/174/38/PDF/G1917438.pdf>.

<sup>9</sup> Ministry of Business, Innovation and Employment, *INZ accepts review recommendations relating to the detention of asylum claimants*, media statement, 3 May 2022, available at: <https://www.mbie.govt.nz/about/news/inz-accepts-review-recommendations-relating-to-the-detention-of-asylum-seekers>.

appropriateness of the use of police and corrections facilities to detain asylum-seekers.<sup>10</sup> The reviewer recommended several legislative and policy changes to bring New Zealand's detention regime in line with international law and standards. This included amending Part 9 of the Act to recognize that the default position is liberty and that freedom should be restricted to the least degree and shortest duration possible.<sup>11</sup> Another recommendation was to recognize that detention of an asylum-seeker is only justified as an exceptional measure of last resort when it is determined on an assessment of the individual's circumstances to be necessary, reasonable and proportionate to a legitimate purpose, and observing the principles of minimum interference. A maximum term of detention prescribed by law was also recommended.<sup>12</sup> While it is acknowledged that concerted efforts have been undertaken to implement many of the policy and operational recommendations, and that these changes have resulted in significant improvements, New Zealand is yet to introduce the statutory reform that was recommended in the review and which is needed to comprehensively bring New Zealand's detention arrangements in line with international law and standards.

The Immigration (Mass Arrivals) Amendment Bill (the Bill) was introduced into Parliament on 28 March 2023. Of primary concern to UNHCR are the amendments which enable a member of a mass arrival group to be detained until an application for a mass arrival warrant has been determined. While an application for a mass arrival warrant needs to be determined 'as soon as is reasonably practicable' and within 7 days, the District Court Judge can adjourn the proceeding if satisfied that it is not reasonably practicable to determine the application within 7 days, provided the determination is made within 28 days. Currently, an application for a mass arrival warrant authorising detention must be decided within 96 hours (4 days). To date, officials advised in the context of the Bill that there have not been any instances of mass arrivals, as defined. Contingency planning for a large arrival need not automatically involve a regime of detention. In UNHCR's experience, less intrusive reception arrangements can serve as adequate to protect a State's interests but also allow for more humane and appropriate treatment of asylum-seekers and refugees.

### **Recommendations:**

UNHCR recommends that the Government of New Zealand:

- a) Secure the positive developments being adopted in its operational approach to alternatives to detention by fully implementing the recommendations for statutory reform arising from the 2022 Independent Review commissioned to look into the detention of asylum-seekers.
- b) Reconsider the measures contained in the Immigration (Mass Arrivals) Amendment Bill as they relate to the increased permissible period of detention without warrant for asylum-seekers arriving as part of a mass arrival group.
- c) Ratify the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* (ICESCR) to provide for an individual complaint procedure under ICESCR.

## **Issue 2: Prevention of Statelessness and Protection of Stateless Persons**

### **Linked to 3rd cycle UPR recommendation no.122.1<sup>13</sup>**

The *Citizenship Act 1977* establishes the legal framework regarding nationality, naturalization and statelessness in New Zealand. Section 9(1) of the Act provides that the

<sup>10</sup> Victoria Casey KC, Report to Deputy Chief Executive (Immigration) of the Ministry of Business, Innovation and Employment, *Restriction of Movement of Asylum Claimants*, 23 March 2022, available at: <https://www.mbie.govt.nz/dmsdocument/20130-report-to-deputy-chief-executive-immigration-of-the-ministry-of-business-innovation-and-employment-restriction-of-movement-of-asylum-claimants>.

<sup>11</sup> *Ibid.*, p. 30.

<sup>12</sup> *Ibid.*, p. 31.

<sup>13</sup> UN Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: New Zealand*, A/HRC/41/4, 1 April 2019, p. 11, para. 122.1, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/087/77/PDF/G1908777.pdf?OpenElement>.

Minister may grant citizenship in ‘special cases’, including to any person who would otherwise be stateless. Given that the Minister has a non-compellable and personal discretion to grant citizenship to stateless persons who may not meet the ordinary requirements for naturalization, UNHCR has observed that in the absence of statutory timeframes, the attainment of citizenship is often prolonged.

While recognizing that the *Citizenship Act 1977* generally helps to safeguard the right to a nationality and acknowledging New Zealand’s accession to the *1961 Statelessness Convention*, UNHCR continues to encourage the Government to accede to the *1954 Statelessness Convention*. The *1954 Statelessness Convention* establishes a framework to protect the human rights of stateless persons. It also ensures non-discrimination in the enjoyment of human rights by stateless persons, which enable stateless persons to overcome their marginalization, such as the right to an internationally recognized legal status, travel documents and identity papers. Accession to the *1954 Statelessness Convention* would help New Zealand bring its framework into alignment with international standards, including the need to identify stateless persons to provide them the relevant rights to which they are entitled.

Relatedly, in the context of New Zealand’s support for UNHCR’s Global ‘#IBelong Campaign to End Statelessness’ by 2024,<sup>14</sup> UNHCR continues to encourage the Government to implement a statelessness determination procedure. Stateless persons in New Zealand who satisfy the refugee definition contained in the *1951 Refugee Convention* already enjoy the necessary international protection associated with refugee status. However, the international refugee protection regime does not address and guarantee the rights and protection of non-refugee stateless persons.

For stateless persons, the absence of a statelessness determination procedure to verify identity or nationality can, amongst other things, lead to prolonged detention because statelessness, by its very nature, severely restricts access to basic identity and travel documents that nationals recognized by a State normally possess.<sup>15</sup>

### **Recommendations:**

UNHCR recommends that the Government of New Zealand:

- a) Accede to the *1954 Convention relating to the Status of Stateless Persons*.
- b) Establish a statelessness determination procedure in national legislation to better identify and protect stateless individuals.
- c) Consider strengthening existing statutory pathways for stateless persons to acquire New Zealand nationality to avoid unnecessary delays.

## **Additional protection challenges**

### **Issue 3: Fully protecting the principle of family unity**

The principle of family unity is enshrined in international law as the natural and fundamental unit of society and entitled to protection by society and the State.<sup>16</sup> UNHCR’s Executive Committee has underlined on several occasions the need for protection of refugees’ family

<sup>14</sup> UNHCR, Global Action Plan to End Statelessness, 4 November 2014, available at: <http://www.refworld.org/docid/545b47d64.html>.

<sup>15</sup> UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, p.45, available at: <https://www.refworld.org/docid/53b676aa4.html>.

<sup>16</sup> 1966 ICCPR, articles 17 and 23; 1989 CRC, articles 3, 9, 10, 16 and 22; and the Final Act of the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (28 July 1951), Recommendation B.

unity. In particular, family members/dependants of a recognized refugee who also meet the eligibility criteria themselves should be recognized in their own right and family members or dependants of a recognized refugee who are not eligible for recognition in their own right should be granted derivative refugee status if they meet the relevant criteria (derivative status). Family unity issues should be treated as a matter of priority,<sup>17</sup> and family reunification should be facilitated in the State where a refugee is a lawful resident provided that there is no other country where the family could live together.<sup>18</sup>

New Zealand law and policy does not recognize ‘derivative’ refugee status.<sup>19</sup> In New Zealand, every person in the family unit (including each child) is required to lodge a separate claim for asylum.<sup>20</sup> It is acknowledged that assessing all family members in this context is intended to be a protective measure for asylum-seekers in New Zealand. However, UNHCR considers that while family members/dependants of a recognized refugee who meet the eligibility criteria for refugee status should be recognized as refugees in their own right, even if they have applied for refugee status as part of a family rather than on an individual basis, family members and dependants of a recognized refugee, who are not eligible for refugee status in their own right should be granted ‘derivative’ refugee status if they meet the relevant criteria (derivative status).<sup>21</sup> UNHCR would recommend that New Zealand take the relevant steps to introduce a “derivative” refugee status in law and policy.

When considering which family members or dependants who are not eligible for recognition in their own right should be conferred derivative refugee status based on the principle of family unity, there should be an assessment of whether there is a relationship of social, emotional or economic dependency. In UNHCR’s view,<sup>22</sup> this relationship of dependence may be presumed for spouses, children below the age of 18, the parents or legal or customary caregivers of a refugee who is under the age of 18, or the minor siblings of a refugee who is under 18 years of age. Additionally, other family members or dependants may be eligible for derivative refugee status under the right to family unity if it is established, on balance, that a relationship of social, emotional or economic dependency exists between them and the refugee. These individuals might include, but are not limited to, the aged parents of refugees, should the relationship of social, emotional or economic dependency exist. The principle of family unity should operate in favour of dependants, and not against them.<sup>23</sup>

Providing for derivative refugee status helps ensure that the right to family unity is upheld in circumstances where not every family member is eligible for recognition in their own right.

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<sup>17</sup> ExCom Conclusion No. 88 (XLX), Protection of the Refugee’s Family, (1999), (b) (iii) and (iv); and ExCom Conclusion No. 24 (XXXII), Family Reunification, (1981), [2] and [5], UN High Commissioner for Refugees, Conclusions Adopted by the Executive Committee on the International Protection of Refugees, December 2009, 1975 – 2009 (Conclusion No. 1 – 109), available at: <http://www.unhcr.org/refworld/docid/4b28bf1f2.html>.

<sup>18</sup> UNHCR, Family Protection Issues, 4 June 1999, EC/49/SC/CRP.14, available at: <http://www.unhcr.org/refworld/docid/4ae9aca00.html>. See also: UN Human Rights Committee (HRC), *CCPR General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses*, 27 July 1990, available at: <https://www.refworld.org/docid/45139bd74.html>.

<sup>19</sup> While claimants who are recognized as having refugee or protection status may apply for residence on the basis of that recognition and claimants may include dependants in the residence application, the grant of residence does not automatically follow the recognition of refugee or protection status (the claimant must still meet character and security requirements amongst other things): *Immigration Act 2009* ss 15, 16, 137(2), & 139.

<sup>20</sup> Immigration New Zealand, ‘Claiming Refugee and Protection Status in New Zealand’, March 2021 (updated November 2022), p. 9, available at: <https://www.immigration.govt.nz/documents/forms-and-guides/claiming-refugee-and-protection-status-in-new-zealand-march-2021>.

<sup>21</sup> UNHCR, *Procedural Standards for Refugee Status Determination Under UNHCR’s Mandate*, 26 August 2020, available at: <https://www.refworld.org/docid/5e870b254.html>.

<sup>22</sup> UNHCR has always held that pragmatism and flexibility, in addition to cultural sensitivity, be brought to bear in the process of identifying the members of the refugee family. This approach is in line with that adopted in the Convention on the Rights of the Child, which uses differing concepts of family for different rights.

<sup>23</sup> UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <https://www.refworld.org/docid/4f33c8d92.html>.

Equally important, derivative refugee status does not preclude any family member from individually lodging his/her/their own claim for refugee status, thereby ensuring that all family members with a valid claim for refugee status may be heard.<sup>24</sup>

**Recommendations:**

UNHCR recommends that the Government of New Zealand:

- a) Establish derivative status in law and policy;
- b) Fully respect the principle of family unity and apply it consistently throughout the refugee procedure.
- c) Ensure family members/dependants of a recognized refugee who meet the eligibility criteria for refugee status are recognized as refugees in their own right, even if they have applied for refugee status as part of a family rather than on an individual basis.
- d) Ensure family members and dependants of a recognized refugee, who are not eligible for refugee status in their own right should be granted derivative refugee status if they meet the relevant criteria (derivative status).

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<sup>24</sup> Additional guidance is available at: UNHCR, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 26 August 2020, available at: <https://www.refworld.org/docid/5e870b254.html>.