



## **Aspirational yet precarious: compliance of New Zealand refugee settlement policy with international human rights obligations**

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# ***Aspirational yet precarious: Compliance of New Zealand refugee settlement policy with international human rights obligations***

Chris Mahony, Jay Marlowe, Natalie Baird, and Louise Humpage

## **Abstract**

Despite New Zealand's ratification of similar international obligations to the other 'Group of 5' states, the prevalence of broad strategies with little specificity in relation to policy or supporting funds suggests governmental reticence to concretely recognise refugee rights. This article does not attempt to examine settlement policy compliance with every right enjoyed by refugees under international law. Instead, as our title suggests, it demonstrates that New Zealand refugee policy is aspirational yet extremely precarious. The first section indicates how a refugee's pathway to protection via the UN quota system or as Convention refugees, significantly affects both family reunification and refugee resettlement support. The second section provides evidence that economic, social and cultural rights (ESCR) are insufficiently embedded in New Zealand's legal framework to ensure coherent implementation leading to inconsistent and discriminatory policy compliance and dependence on NGOs and volunteers. This circumstance makes it difficult to contend that New Zealand actually meets its international obligations in a consistent and sufficient manner, despite the aspirations articulated by the recently developed Refugee Resettlement Strategy and other policies .

## **Introduction**

New Zealand has maintained a commitment of settling 750 refugees as part of its quota programme since 1987 and has a history of accepting refugees since World War II. Beaglehole (2013) notes that in the last decade, New Zealand governments have increasingly acknowledged refugee issues.<sup>1</sup> New Zealand's lead agency for the operational coordination of refugee-specific services, Immigration New Zealand (INZ), has undertaken longitudinal research on the settlement outcomes of Quota refugees<sup>2</sup> with the intention of improving policy. This and other developments in the 2000s culminated in the New Zealand Refugee Resettlement Strategy which, since July 2013, has guided a whole-of-government framework to achieve agreed settlement outcomes for refugees and their families. This paper examines this strategy and policies that relate to the settlement of refugees to examine New Zealand's compliance with international obligations. By differentiating refugees who resettle via

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<sup>1</sup> Beaglehole, Ann *Refugee New Zealand: A Nation's response to Refugees and Asylum Seekers* (Otago University Press, Dunedin, 2013).

<sup>2</sup> Department of Labour (2004) *Refugee Voices: A Journey Towards Resettlement*, Wellington: DOL and Ministry of Business, Innovation and Employment (2012) *New Land, New Life: Long-Term of Refugees in New Zealand*, Wellington: MBIE.

‘quota’ and ‘convention’ pathways along with those who arrive by family reunification, this paper examines the aspirational, and yet precarious, approach to settling refugees in Aotearoa New Zealand.

### **Different pathways to protection, different resettlement experiences**

Crock (earlier article) highlighted how refugees can gain protection through multiple channels in New Zealand. ‘*Quota refugees*’ are selected overseas in UNHCR camps using Convention criteria. Within the quota, New Zealand reserves a place for women at risk, medical/disabled, and emergency protection cases and a focus on family links underlies these categories. In addition, New Zealand may accept asylum seekers, whose claim upon arrival in New Zealand is approved by the Refugee Status Branch of INZ or by the Immigration and Protection Tribunal. Once their status is confirmed, asylum seekers are generally known as ‘*Convention refugees*.’ There are also four different channels whereby refugees or those from a refugee background may be accepted as part of a policy supporting family reunification (see later discussion). Finally, refugees have also entered New Zealand in exceptional circumstances (for example, in the case of Kosovo in 1999 and the MS Tampa in 2001) when requested by United Nations High Commissioner for Refugees (UNHCR).<sup>3</sup>

The pathway by which a refugee gains protection matters significantly in terms of their subsequent settlement experience. Tellingly, the Refugee Resettlement Strategy (2012) explicitly states that its policies apply only to refugees arriving under New Zealand’s quota programme with intent to expand the programme to all refugees at an unspecified future date. The Strategy has five goals:

- Self-sufficiency – all working-age refugees are in paid work or are supported by a family member in paid work.
- Participation – refugees actively participate in New Zealand life and have a strong sense of belonging.
- Health and wellbeing – refugees and their families enjoy healthy, safe and independent lives.
- Education – English language skills help refugees participate in education and daily life.
- Housing – refugees live in safe, secure, healthy and affordable homes, without needing government housing assistance.

As a result, policy application discriminating against Convention refugees permeates throughout family reunification and refugee resettlement support.<sup>4</sup>

### *Family reunification*

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<sup>3</sup> Immigration New Zealand ‘*Refugee Family Support Category*’  
<http://www.immigration.govt.nz/migrant/stream/live/refugeefamilysupport/>  
Department of Labour ‘*New Zealand’s Refugee Sector: Perspectives and Developments, 1987–2010*’  
[http://www.dol.govt.nz/publications/research/refugee-sector-perspectives-developments/perspectives-and-developments\\_04](http://www.dol.govt.nz/publications/research/refugee-sector-perspectives-developments/perspectives-and-developments_04).

<sup>4</sup> Immigration New Zealand, *Refugee Resettlement: New Zealand Refugee Resettlement Strategy*, at 10.

The most compelling case of differential treatment concerns the right to family unity. In their introductory article, Mahony and Fozdar indicate that there is no explicit international obligation relating to refugee family reunification in the Refugee Convention. However, the International Covenant on Civil and Political Rights (ICCPR) states that everyone has the right to protection from arbitrary or unlawful interference with their family (Art 17 (1) and (2)), which is “the natural and fundamental group unit of society and is entitled to protection by society and the State” (Art 23(1)). Moreover, men and women of marriageable age have a right to marry and found a family (Art 23 (2)),<sup>5</sup> inferring a state obligation to ensure the family unity or family reunification.<sup>6</sup> However, the question of whether family reunification policy is sufficient “will likely be measured in relation to the usual (and fungible) ‘reasonableness’ standard.”<sup>7</sup>

As noted, New Zealand immigration policy offers several pathways for reunification of family members:

- Spouses, dependent unmarried children, and parents of a young Quota refugee may be included under the UNHCR quota programme if they were declared to INZ during the refugee’s initial Refugee Quota Branch interview. INZ begins the process of attempting to reunify the family after the Quota refugee has arrived at the Mangere Refugee Resettlement Centre (MRRC) where s/he spends the first six weeks. Unlike other INZ processes, this does not incur an application or airfare fee for the refugee or require the presentation of standard immigration documentation. The New Zealand government may approach UNHCR for emergency resettlement of a family member facing very serious danger. However, the New Zealand government retains discretion in such circumstances – discretion it exercises only in relation to Quota refugees.<sup>8</sup> The UNHCR’s Resettlement Handbook provides that Convention refugees “may not sponsor family through the Refugee Quota Programme, but their family members may be considered for inclusion in that Quota if their cases are referred to New Zealand by UNHCR.”<sup>9</sup>
- The Refugee Family Support Category (RFSC - ‘Reunification refugees’) allows for up to 300 individuals a year to enter New Zealand on indefinite residence visas. Refugees can sponsor a family member, and that family member’s partner and children, for New Zealand residence. There is a two-tier registration system with tier-one open to refugees who are “alone” in New Zealand or a “sole carer of a dependent relative(s).” Applications can be made at any time but will be placed in a queue. Tier-two registration is for all other refugees in New Zealand provided they have been New Zealand residents

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<sup>5</sup> ICCPR, , arts 17(1)-(2), 23(1)-(2).

<sup>6</sup> Human Rights Committee, General Comment No 19 on protection of the family, the right to marriage and equality of the spouses (1990) at [5]; Hathaway (2005), at p 557; HRC, “General Comment No 19: The family” (1990), para 5.

<sup>7</sup> Hathaway (2005) at p 557.

<sup>8</sup> INZ Operational Manual, S4.20.1; 20.5

<sup>9</sup> UNHCR Resettlement Handbook “Country Chapter: New Zealand” (July 2011), p 18.

for at least three years.<sup>10</sup> INZ is not currently accepting applications from tier-two sponsors, suggesting opportunities to use this stream are limited. Both Quota refugees and Convention refugees can apply to sponsor family members as Reunification Refugees but the partner/spouse of a Convention refugee is not eligible to be a tier one sponsor if the couple separate (as is the case for Quota refugees), because that partner was granted residence on the basis of partnership with the person granted refugee status, not as a refugee.<sup>11</sup>

- Refugees can also effect family reunification by obtaining temporary or permanent residence visas through normal immigration channels. Strictly speaking, people obtaining residence under these categories are classed as ‘migrants’ rather than ‘refugees’. That status excludes access to refugee programme support, imposing onerous requirements that other migrants face in order to obtain residency.
- Finally, reunification may (in theory at least) be sought via a ‘Special Directions’ request to the Associate Minister of Immigration, granted only in rare circumstances where strong humanitarian grounds exist. Until 2001, under the “humanitarian category”, refugees could seek family reunification residency for family members that fell outside reunification requirements under other categories. After this category’s abolition refugee support organisations suggest exceptional humanitarian concern cases brought to the Associate Minister of Immigration’s attention are almost always unsuccessful.

New Zealand’s refugee family reunification policy meets or exceeds its international obligations for quota refugees: reunification of immediate declared family begins for quota refugees on arrival at the MRRC; the immediate family of a refugee as defined by INZ policy can be included under the (Refugee Quota Family Reunion Category) RQFRC without independent UNHCR referral; the additional Reunification Refugee category does not impinge upon the annual 750-person quota; and attempt are made to reduce bureaucratic barriers to reunification such as fees, administrative requirements, and waiting times.<sup>12</sup>

However, only Quota refugees are practicably able to secure family unity using the quota programme. Convention refugees need to use more costly and time consuming immigration processes. This is particularly troubling when current RQFRC and Reunification Refugee places are, for a range of reasons, not consistently filled. Although 300 Reunification Refugee places are set aside each year, only 276 visas were granted in 2013 (as of 31 October), 203 in 2012, 154 in 2011 and 200 in 2010. Data on the actual *arrivals* of those granted visas is not collected. Given the significant costs of travelling to New Zealand, it is highly likely that persons holding these visas do not actually arrive in New Zealand, despite

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<sup>10</sup> INZ Operational Manual, S4.10.1; S4.10.20; Immigration New Zealand “Refugee Family Support Category sponsorship requirements” (3 May 2013) <<http://www.immigration.govt.nz/migrant/stream/live/refugeefamilysupport/sponsorshiprequirements/default.htm>>.

<sup>11</sup> WCLC, at p 45; ChangeMakers, at p.6 & p 21.

<sup>12</sup> INZ Operational Manual, S4.20.1; S3.15(c); rule S4.10.70.

three trusts in Auckland, Wellington and Christchurch that help refugees with family reunification costs. A survey of established refugees who had attempted to bring family members to New Zealand revealed approximately half were successful: a common cause of failure was immigration criteria and the complicated and lengthy nature of the sponsorship process.<sup>13</sup>

Moreover, the available pathways to family reunification do not fully acknowledge that refugees' conceptions of close and immediate family differ from Anglo-European New Zealand norms. New Zealand adopts a comparatively liberal definition of immediate family including spouses, partners, children up to the age of 24 and children adopted by custom. However, New Zealand policy does not recognise additional spouses in a polygamous marriage.<sup>14</sup> Reunification Refugee tier one applicants may seek reunification with what New Zealand authorities deem the closest of relatives. Refugees seeking "extended" family reunification must use INZ procedures due to RFSC tier two's current closure and the inapplicability of the quota programme to "extended" family. The theoretical accommodation of extended family reunification of Quota refugees as "family linked cases," is not implemented in practice because "family reunification cases" (declared spouses, dependent unmarried children and parents of young refugees) are prioritised. "Family-linked cases" are only considered where an intake does not fill "family reunification" places.<sup>15</sup> Relatives outside INZ's family definition cannot gain entry as Reunification Refugees or via normal immigration policy. INZ's policy falls short of UNHCR's broader recommended approach, based on "dependency," including emotionally, physically or economically dependent relatives. INZ takes only limited account of different cultural understandings of family or the obligations and emotional bonds established under circumstances of war and displacement.<sup>16</sup>

While New Zealand policy accords some priority to family reunification, especially for Quota refugees, it falls short of its international obligations and international best practice. Refugees' high family reunification expectations, and "the time and energy committed to seeking reunification can be a substantial barrier to progress occurring in other areas of resettlement,"<sup>17</sup> including education, employment, financial security and acculturation.<sup>18</sup> The impact is evident in Wellington Refugees as Survivors Trust's discharge of 93% of assisted families upon realization of family reunification goals.<sup>19</sup>

### *Targeted settlement support*

A refugee's protection pathway is also significantly affected by the level of resettlement support they receive in New Zealand. Quota refugees, once again, are favoured largely (but

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<sup>13</sup> At 145; RAS, at p 16.

<sup>14</sup> INZ Operational Manual, R2.1.30 and R2.1.40; R2.1.25

<sup>15</sup> WCLC, at p 38.

<sup>16</sup> ChangeMakers, at p 5.

<sup>17</sup> ChangeMakers Refugee Forum Inc *Refugee Family Reunification in Wellington* (2009) at p 17.

<sup>18</sup> Refugees as Survivors Trust *Refugee Family Reunification, Mental Health, and Resettlement Outcomes in Aotearoa New Zealand* (2012) at p 16.

<sup>19</sup> ChangeMakers, at pp 1, 13.

not exclusively) because of their orientation programme. Quota refugees are initially housed free of charge for six weeks at the MRRC in Auckland. In addition to important information about New Zealand society and culture, they receive a free medical screening (and referrals if necessary), along with free General Practitioner (GP) and primary health care<sup>20</sup> (including counselling services) and basic dental care, including fillings and extractions. The Auckland University of Technology conducts English language programmes and offers special needs support for Quota refugees at all educational levels within MRRC.<sup>21</sup> Non-Quota Refugees receive no formal orientation, excluding them from the various housing, health and educational opportunities afforded Quota refugees.

Upon leaving the MRRC, Quota refugees are currently resettled in Auckland, Hamilton, Napier, Palmerston North, Wellington and Nelson. Regional policies are also an important part of New Zealand's approach to refugee resettlement. For instance, New Zealand's two largest cities, Auckland and Wellington, have strategies seeking improved settlement outcomes for newcomers through action plans pursuing key goals. However, the strategies are more closely focused on migrant rather than refugee communities.<sup>22</sup>

Having automatic permanent residence status, refugees are eligible (and are prioritised as high need) for a Housing New Zealand (HNZ) home, whose rental payments cannot exceed 25 per cent of a family's weekly income. Quota refugees are also eligible for a one-time re-establishment grant of \$1200 if they apply within a year of arrival in New Zealand.<sup>23</sup> Refugee Services, the non-government agency contracted to lead refugee resettlement in the country, believes Convention refugees are "normally" granted permanent residence, allowing them to access HNZ rental properties with income-related rent.<sup>24</sup> However, Convention refugees, like other migrants (including Reunification Refugees), face a two-year wait before they can obtain residency, unlike quota refugees who are granted residency upon arrival. An earlier grant of state housing to Convention appears to be discretionary.<sup>25</sup> Convention refugees who are not yet permanent residents are able to access the Auckland Refugee Council's emergency accommodation but are not encouraged to stay longer than three months. Reunification Refugees generally rely on the persons sponsoring them and may live with family they already have in New Zealand. Eligibility to apply for housing assistance depends on eligibility to receive a Work and Income benefit.<sup>26</sup> Assuming that government policy will continue to link access to government assistance to a person's immigration status, refugees

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<sup>20</sup> <http://www.refugeehealth.govt.nz/aboutus/aboutus.asp>.

<sup>21</sup> AUT Centre for Refugee Education "The On-Arrival Programme" (30 May 2012) Auckland University of Technology <[www.aut.ac.nz/community/aut-in-the-community/centre-for-refugee-education/the-on-arrival-programme](http://www.aut.ac.nz/community/aut-in-the-community/centre-for-refugee-education/the-on-arrival-programme)>.

<sup>22</sup> Department of Labour, *Auckland Regional Settlement Strategy 2009 – 2014: Our Future Together* (November 2010) at 4; Department of Labour, *An Action Plan To Implement The Auckland Regional Settlement Strategy Developed In Partnership By Local And Central Government And Non-Government Organisations* at 2.

<sup>23</sup> Department of Labour "Refugee Resettlement: A literature review" Available <http://www.dol.govt.nz/publications/research/resettlement/resettlement.pdf>.

<sup>24</sup> Refugee Services "FAQ" (2009) <[www.refugeeservices.org.nz/faqs](http://www.refugeeservices.org.nz/faqs)>.

<sup>25</sup> Manning and James "Refugees and those in need of protection" at 235.

<sup>26</sup> *Refugee Voices*, at 115.

who arrive in New Zealand as part of a “mass arrival” will not receive permanent residence status for at least *three* years, extending further the period of time before they can access full housing and other entitlements.

Discrimination is also evident in the provision of healthcare. Convention refugees are eligible for a free full health screening at MRRC and some regional public health services but information about this is not well-disseminated and sparsely utilized.<sup>27</sup> The Auckland Refugees as Survivors Centre (an NGO that maintains a presence at MRRC) also offers mental health assessment, initial treatment and referral to newly-arrived Quota and Convention refugees. New Zealand has a publicly-funded health system used by the majority of New Zealanders, covering free emergency care and secondary care, subsidised primary health care and subsidised prescription medicines. Many of the subsidies, such as Community Services Cards, which allow access to certain healthcare services at reduced cost, are targeted towards low income earners, meaning refugees with permanent residence are generally eligible. However, Convention refugees are excluded until they gain permanent residence.<sup>28</sup>

After leaving MRRC, Quota refugees are also eligible for English language training provided through schemes and organisations such as Training Opportunities (for quota refugees) and MCLaSS. Quota and Reunification Refugee children of school age are eligible for funding for English for Speakers of Other Languages (ESOL) training in schools.<sup>29</sup> Convention refugees do not have automatic access to education, and their children are entitled to 28 days at school (without targeted ESOL funding) with further attendance at the discretion of the National Refugee Coordinator.<sup>30</sup> Reunification and Convention refugees are also excluded from screening for vision and hearing impairments afforded Quota refugees accommodated at the MRRC. If registered with Work and Income New Zealand (WINZ), Convention refugees may attend WINZ-funded ESOL courses in some regions if they have been in New Zealand for fewer than two years.<sup>31</sup> The requirement of WINZ registration means a higher proportion of Quota refugees participated in education and training programmes than Convention and Reunification Refugees.<sup>32</sup> Most established refugees who had completed educational and training programmes felt they were very useful or useful.<sup>33</sup> Convention and Reunification

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<sup>27</sup> Ministry of Health *Refugee Health Care: A handbook for health professionals* (2012) at 41-42.

<sup>28</sup> Perumal, L. (2010). Health needs assessment of Middle Eastern, Latin American and African people living in the Auckland region. Auckland, Auckland District Health Board.

<sup>29</sup> Ministry of Education “ESOL funding for refugees” (21 August 2013) <[www.minedu.govt.nz/NZEducation/EducationPolicies/Schools/EnglishForSpeakersOfOtherLanguages/FundingSupportInitiatives/ESOLResourcingInformation/AboutRefugeeStudents/FundingForRefugeeStudents.aspx](http://www.minedu.govt.nz/NZEducation/EducationPolicies/Schools/EnglishForSpeakersOfOtherLanguages/FundingSupportInitiatives/ESOLResourcingInformation/AboutRefugeeStudents/FundingForRefugeeStudents.aspx)>.

<sup>30</sup> Department of Labour, *Overview paper: refugee resettlement in New Zealand*, (2004) at 8; Ministry of Education “Integrating refugee background students into New Zealand schools” (21 August 2013) <[www.minedu.govt.nz/NZEducation/EducationPolicies/Schools/EnglishForSpeakersOfOtherLanguages/FundingSupportInitiatives/ESOLResourcingInformation/AboutRefugeeStudents/IntegratingRefugeeStudents.aspx](http://www.minedu.govt.nz/NZEducation/EducationPolicies/Schools/EnglishForSpeakersOfOtherLanguages/FundingSupportInitiatives/ESOLResourcingInformation/AboutRefugeeStudents/IntegratingRefugeeStudents.aspx)>.

<sup>31</sup> Department of Labour, *Overview paper: refugee resettlement in New Zealand*, (2004) at 8.

<sup>32</sup> At 217.

<sup>33</sup> At 220.



Refugee' greater difficulty in finding or completing study or training is likely a result of the diminished settlement support and sensitization as to available support.

### *Summary*

Refugee communities have advocated for both family reunification and settlement support to apply equally to Quota refugees, Convention refugees and Reunification Refugees. However, distinctions continue to be maintained. The Resettlement Strategy facilitates ongoing differential treatment, with no stated timeframe for moving to a more equitable system. In the context of New Zealand's international obligations, we regard the privileging of Quota refugees over those settling in New Zealand via other pathways as discriminatory.

It is important to acknowledge that the differential treatment of refugees depending on their settlement pathway is not explicitly prohibited under the Refugee Convention, the New Zealand Bill of Rights Act (1990) (NZBORA) or the Human Rights Act 1993 (HRA).<sup>34</sup> However, art 2(1) of ICCPR and art 2(2) of ICESCR both prohibit discrimination on the grounds of "other status" which could include immigration/refugee status. This "other status" category is not found in the NZBORA or HRA's list of prohibited grounds of discrimination. In addition, art 7(1) of the Refugee Convention compensates for the absence of a general prohibition on discrimination against refugees by providing that refugees are entitled to treatment that is at least as favourable as that afforded to aliens. Refugees are therefore discriminated against if they receive a standard of treatment less than that of aliens. The provision of a lesser standard of treatment to Convention refugees when compared to Quota refugees (other "aliens") therefore potentially raises issues in terms of compliance with art 7. As such, we believe there is a real issue as to whether New Zealand is engaging in unlawful discriminatory conduct as a result of its differential treatment of refugees depending on their settlement pathway.

### **The precariousness of economic, social and cultural rights**

Access to high quality healthcare, education and housing, along with adequate income, are central to the settlement process of all refugees. Yet, as Mahony and Fozdar note, States Parties have considerable discretion to decide the means employed to give full recognition to ICESCR provisions. The NZBORA 1990 protects civil and political rights but, despite repeated recommendations from the Committee on Economic, Social and Cultural Rights,<sup>35</sup> New Zealand continues to maintain its position that ESCR protection in the NZBORA is not needed and that ESCR are sufficiently protected by various combinations of law and policy. ESCR, therefore, are not generally justiciable in New Zealand.<sup>36</sup> General protection from discrimination, and the rights of ethnic, linguistic and cultural minorities are provided for to a

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<sup>34</sup> Refugee Convention, art 3; New Zealand Bill of Rights Act 1990, s 19; Human Rights Act 1993, s 21.

<sup>35</sup> For the most recent call, see CESCR "Concluding observations on New Zealand's third periodic report" E/C.12/NZL/CO/3, at para 9.

<sup>36</sup> Joss Opie "A Case for Including Economic, Social and Cultural Rights in the New Zealand Bill of Rights Act 1990" (2012) 43 VUWLR 471 at 481.

certain extent in the NZBORA and the Human Rights Act 1993 (HRA). Apart from these, and despite the requirement of “progressive realisation” of ICESCR rights, in practice states are not domestically bound to progressively implement ESCR or refrain from retrogressive measures with respect to ESCR.<sup>37</sup>

Although ESCR are accorded some legislative protection, the following discussion offers examples from health, housing, education, employment and social security to illustrate three key concerns: access to ECSR are highly variable due to significant regional variability in the availability and quality of mainstream and refugee resettlement services; a funding regime preferring routine short-term, inadequate funding of refugee-specific services; and discrimination facilitated by New Zealand’s failure to embed ESCR in its human rights framework.

### *Variability in refugee-specific services*

The ability to realise ECSR depends partly on where a refugee lives, due to regional variance in the availability of refugee-specific services. This problem is heavily associated with the Government policy of nominating a limited number of resettlement centres, upon which refugee-specific programmes become targeted. New Zealand is a relatively small country and most social policy is made at the central government level. However, regional variability reflects the decentralisation of mainstream policy institutions, as discussion of health and education demonstrates.

As noted earlier, all refugees with permanent residence can access New Zealand’s high quality public healthcare system. However, healthcare funding and provision is decentralised, with 20 District Health Boards (DHBs) charged with providing services in specific geographical areas. The New Zealand Public Health and Disability Act 2000 sets out objectives surrounding care, support, inclusion, participation and disparity among population groups for DHBs to improve, promote and protect community health. However, each DHB interprets the objectives differently. Health service providers that recognise resettlement’s mental and physical impact are predominantly located in main population centres designated for Quota refugee resettlement. Refugees outside these areas may be significantly disadvantaged. The Ministry of Health’s *Refugee Health Handbook*<sup>38</sup> describes refugees’ demographically-specific common medical issues and includes information on providing culturally-sensitive services. However, the Handbook’s interpretation and implementation, as well as cost and wait-time varies across DHBs, particularly in relation to specialist services like mental health where capacity is limited.<sup>39</sup>

Refugees also have varied experience accessing appropriate education. Once they gain permanent residence, children and young people from refugee backgrounds are eligible for free primary and secondary schooling. Refugee students also receive Ministry of Education

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<sup>37</sup> At 481.

<sup>38</sup> *Refugee Health Care*.

<sup>39</sup> At 345.

(MoE) funding for five years of English language support (two years of intensive support followed by three years of standard ESOL funding). The MoE also funds 80-100 families annually for: homework and academic support programmes for refugee background students; refugee family-linked bi-lingual liaison school support; bi-lingual tutor in-class support; careers guidance programmes; and computers for refugee families, with centre-based parental training and 12-month long in-home computer support.

Regional Refugee Education Coordinators assist student enrolment and adjustment, including liaising with families and community groups to sensitize refugees as to the education system, its expectations and how it will satisfy children's needs. This work may coincide with Special Education support for students who have high and complex needs.<sup>40</sup> MoE also has a 'Refugee Flexible Funding Pool' that provides specific schools with additional resources to address broader issues preventing refugee background students from participating and achieving in mainstream school programmes. However, the predominantly metropolitan location of Regional Refugee Education Coordinators disproportionately locates the extra funds and services in these areas.

The MoE's *Refugee Handbook for Schools* provides refugee support information for schools.<sup>41</sup> However the handbook predominantly focuses on learning differences and making students feel welcome, rather than suggesting targeted support services. Schools' self-governing nature, with their own Boards of Trustees, impedes consistent policy implementation across the country. Some schools avoid targeted support services even when a sufficient refugee population in a main centre will likely attract funding. Respect for parental choice of a child's education has been a central tenet of educational policy since the 1980s. However, the right to educational choice is uncertain, particularly given New Zealand's scarcity of Muslim-based schools.

#### *Contractual funding and user-pays*

Variant access to and awareness of services is also linked to the role of NGOs as service providers funded by the State, rather than government-run service provision. This system contributes to variant service provision because few NGOs exist in more than one main centre. The system of NGO competition for refugee-services funding, discourages (although does not necessarily preclude) collaboration and consistency.<sup>42</sup> Improved NGO-to-government communication can be observed since the mid-2000s. However, funding remains

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<sup>40</sup>MoE website -- Refugee background students in New Zealand schools, Ministry of Education publication *The Refugee Handbook for Schools*, <http://www.minedu.govt.nz/NZEducation/EducationPolicies/Schools/EnglishForSpeakersOfOtherLanguages/FundingSupportInitiatives/ESOLResourcingInformation/AboutRefugeeStudents/IntegratingRefugeeStudents.aspx>.

<sup>41</sup> Ibid.

<sup>42</sup> See generally "The Anti-Politics Machine" (Fergusson).

frequently insufficient to provide high quality professional services rendering many services dependent on volunteers and limiting service quality and consistency.<sup>43</sup>

For example, Refugee Services provides two targeted career and employment programmes for refugees: Pathways to Employment (Wellington) and Refugee Works (Hamilton).<sup>44</sup> Both pilot programmes are available only to newly-arrived and established Quota refugees. The New Zealand Red Cross-run Refugee Services has made a commitment to work with other refugee groups by 2020.<sup>45</sup> The government plans a roll-out of the employment programmes to other resettlement centres only if funding permits. The NGO, Multicultural Learning and Support Services, provides refugees with free ESOL classes and assessment in Wellington, Porirua and Lower Hutt, with priority given to employment-seeking refugees. Health issues also negatively affect employment outcomes. Refugee children receive no specific government funded mental health services, despite the psychological trauma of displacement, discrimination and bullying in settlement contexts. NGO-offered short-term projects, like many in the refugee sector, are often financially unsustainable. To achieve compliance with international obligations, these programmes must be implemented nationally and made available to all refugees (not just Quota refugees).

Perhaps the most significant barrier to successful settlement emerging from New Zealand's NGO-implemented approach is the cost of accessing social services. Since the 1980s, New Zealand has adopted a user-pays regime in key aspects of social policy. However, there are a range of extra subsidies or free services that refugees with permanent residence may access. For example, primary healthcare and pharmaceutical prescriptions subsidies exist, while emergency health and dental care (as well as basic dental care for children aged 18) are free. Most adults pay for private dental services, but refugees may be eligible for limited publicly funded dental care (for urgent conditions) and/or a WINZ Special Needs grant for dental care.<sup>46</sup> Despite these basic provisions, refugees' healthcare costs commonly remain prohibitive.<sup>47</sup> Reports show that refugee groups living in Auckland (which has New Zealand's largest proportion of refugees) suffer high rates of heart disease, diabetes, poor nutrition and limited physical activity relative to the general population.<sup>48</sup> There is also evidence that many refugees have not taken up extra subsidies for certain health services through Community Services Card, most likely due to a lack of awareness.<sup>49</sup>

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<sup>43</sup> Beaglehole 2013; Grey, Sandra and Charles Sedgwick (2013) The contract state and constrained democracy: The community and voluntary sector under threat. *Policy Quarterly* 9 (3): 3-10.

<sup>44</sup> Human Rights Commission "Refugee Services Aotearoa New Zealand" (2012) <[www.hrc.co.nz/race-relations/te-ngira-the-nz-diversity-action-programme/participants-2012/refugee-services-aotearoa-new-zealand](http://www.hrc.co.nz/race-relations/te-ngira-the-nz-diversity-action-programme/participants-2012/refugee-services-aotearoa-new-zealand)>.

<sup>45</sup> New Zealand Red Cross 'Resettlement programme' <[www.redcross.org.nz/what-we-do/in-new-zealand/refugee-services/resettlement-programme/](http://www.redcross.org.nz/what-we-do/in-new-zealand/refugee-services/resettlement-programme/)>.

<sup>46</sup> Ministry of Health. 2012. *Refugee Health Care: A handbook for health professionals*. Wellington: Ministry of Health.

<sup>47</sup> Health Rights of NZ report by Getahun Hailu Gema; Ministry of Health. 2012. *Refugee Health Care: A handbook for health professionals*. Wellington: Ministry of Health.

<sup>48</sup> MELAA report (2010); Health Rights of NZ report by Getahun Hailu Gema.

<sup>49</sup> Perumal, L. (2010). Health needs assessment of Middle Eastern, Latin American and African people living in the Auckland region. Auckland, Auckland District Health Board.

Similarly, the New Zealand Action Plan for Human Rights raises concerns about ‘voluntary payments’ requested (but often expected) by state schools, in addition to uniform, stationery and course-related expenses. These costs impede access to New Zealand’s generally high quality education for low household incomes, particularly when internet and computer access already exaggerate disparities. However, cost is a far greater barrier to education for adults. Refugees over 18 years of age can access educational services, just like other permanent residents. Many students from low-income backgrounds are eligible for the Student Allowance, a ‘needs-based’ weekly stipend. Domestic tertiary education students pay (government subsidised) tuition fees that may be borrowed through the government’s student loan scheme. Research suggests that six months after arrival, only 28 per cent of refugees obtained a student loan, rising to 89 per cent after two years. Obstacles included a lack of information about student loans and not having lived in New Zealand long enough to qualify for assistance.<sup>50</sup>

English language competency is critical for the New Zealand education system. Refugee adults may qualify for free English or English for Employees tuition from English Language Partners (ELP). ELP’s use of volunteer instructors causes variable availability and quality. Refugees cite contact with English language speakers and courses as the two greatest sources of assistance in improving their written and spoken English.<sup>51</sup> Those learning English post-arrival found polytechnic and university courses most beneficial.<sup>52</sup> The cost of these courses may, however, be prohibitive. Research indicates refugees are more likely to delay tertiary education because of its cost.<sup>53</sup> This is troubling given the relationship between refugees’ English language competency and their employment prospects two years after arrival in New Zealand.<sup>54</sup>

For refugees unable to access HNZ homes, additional costs are attached to the private rental market, including: a rental bond payment; letting fees; and the absence of any rent control system. The Resettlement Strategy identifies housing as a key goal. However, the desired integration housing outcome is described as “reduced housing subsidy for refugees (after two years and five years in New Zealand).”<sup>55</sup> New Zealand’s predominantly private sector rental market makes refugees, particularly those with English language difficulties, vulnerable to predatory leasing arrangements.<sup>56</sup> Measurement of refugee housing adequacy, which the HRC notes as a major concern, is not available.<sup>57</sup>

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<sup>50</sup> At 223.

<sup>51</sup> At 199.

<sup>52</sup> At 201.

<sup>53</sup> ChangeMakers Refugee Forum, et al. (2011). *An equitable education: Achieving equity status and measures to ensure equality for refugee-background tertiary students in Aotearoa New Zealand*.

<sup>54</sup> *Refugee Voices: A Journey Towards Resettlement*, at 135.

<sup>55</sup> INZ “New Zealand Refugee Resettlement Strategy” (December 2012), at p 7.

<sup>56</sup> Eighteen per cent of rental housing is publicly owned. Approximately one third of households do not own the dwellings they occupy. Human Rights Commission *Human Rights in New Zealand 2010* (HRC, 2010), at p 208-212; Refugee homelessness data is unavailable.

<sup>57</sup> ChangeMakers Refugee Forum Inc “Submission for the UPR of New Zealand” (June 2013), at p 4; Human Rights Commission *Human Rights in New Zealand 2010* (HRC, 2010), at pp 206-207.

## *Discrimination*

We argue that inadequate domestic legal obligations enable varied and insufficient settlement policy measures and space for discrimination against refugees. A clear example is housing. The right to housing constitutes part of the right to an adequate standard of living,<sup>58</sup> and is “of central importance” for the enjoyment of all ESCR.<sup>59</sup> The Committee on Economic, Social and Cultural Rights also notes that the right to housing should not be narrowly interpreted so as to equate with simply a roof over one’s head but rather “the right to live somewhere in security, peace and dignity.”<sup>60</sup> The Refugee Convention (arts 21 and 26) also requires that refugees be subject to the same laws or regulations regarding housing “accorded to aliens generally in the same circumstances,” including the right to choose their place of residence.<sup>61</sup> New Zealand has not domesticated these obligations. The NZBORA 1990, HRA 1993 and Residential Tenancies Act 1986 do, however, provide protection from discrimination in the provision of housing.

As argued earlier, we consider it problematic that only Quota refugees are offered free housing for six weeks at the MRRC and are assisted by Refugee Services into government subsidised accommodation and in finding furnishing for their new homes,<sup>62</sup> while access to state housing for Convention refugees depends on the discretionary operational policy of HNZ. However, one trade-off for such assistance is that Quota refugees have limited choice in where they live. They are sent to one of six main resettlement population centres after assessment by Refugee Services.<sup>63</sup> Settlement location decisions consider the location of support services, where refugees have family/friends, refugees’ rural or urban backgrounds, and the ethnic and religious demography of locations. At times constrained availability of suitable state housing in the right place at the right time (particularly in Auckland and in earthquake-stricken Christchurch) requires Refugee Services to source accommodation from the private sector.<sup>64</sup>

Quota refugees’ inability to choose where they live arguably breaches Art 26 of the Refugee Convention. The Refugee Convention’s non-discrimination standard for housing is treatment “no less favourably than aliens”. HNZ’s services cannot be accessed by aliens, meaning there is no standard of treatment against which potentially discriminatory treatment can be judged. However, aliens within New Zealand are not forced to live within population centres not of their choosing. Limiting refugees’ right to select housing location may, therefore, constitute discrimination. In practical terms, New Zealand houses’ commonly insufficient capacity to

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<sup>58</sup> ICESCR, art 11(1).

<sup>59</sup> Committee on Economic, Social and Cultural Rights, General Comment No 4 on the right to adequate housing (1991) at [1].

<sup>60</sup> Committee on Economic, Social and Cultural Rights “The right to adequate housing: General Comment 4”, at para 7.

<sup>61</sup> Refugee Convention, arts 21 and 26.

<sup>62</sup> UNHCR Resettlement Handbook “Country Chapter: New Zealand” (July 2011), p 14.

<sup>63</sup> Department of Labour *Refugee Voices: A Journey Towards Resettlement* (2004) at p 115.

<sup>64</sup> For Christchurch, see Tenants Protection Association “TPA (Chch) Rental Survey 2013: A Study of Increasing Rents and Housing Conditions in the Greater Christchurch Area” (June 2013) at 113.

house large or extended families exaggerates refugees' lack of choice. Further, almost a third of homes fall below the WHO recommended indoor temperature of 18C due to poor insulation and heating.<sup>65</sup>

Poor housing contributes to poor health outcomes. However, the right to health is also not embedded in New Zealand's human rights framework. Under the Code of Health and Disability Services Consumers' Rights (Health Consumers Code), all health and disability services consumers are entitled to services of an appropriate standard. Services must be provided: with adequate care and skill; in compliance with legal, professional, ethical and other relevant standards; in a manner consistent with the consumer's needs; in a manner that minimises potential harm to, and optimises the quality of life of, the consumer; and with provider cooperation that ensures quality and continuity of services.<sup>66</sup> The Code recognises consumers' right to freedom from discrimination.<sup>67</sup> Further, New Zealand's Resettlement Strategy also includes 'health and wellbeing' among its five key goals.

As noted earlier, all types of refugees with permanent residence are able to access mainstream healthcare services and some specific attention has been paid to refugee health issues. However, a scarcity of professional interpreters and healthcare professionals trained to respect customary practices limits refugee access to health services.<sup>68</sup> The Health Consumers Code includes the right to effective communication. It states that "Every consumer has the right to effective communication in a form, language, and manner that enables the consumer to understand the information provided. Where necessary and reasonably practicable, this includes the right to a competent interpreter."<sup>69</sup>

Interpreting services are offered through Language Line's 44 languages funded by the Citizens Advice Bureau. However, non-government agencies and some government agencies (such as Child, Youth and Family) are often ineligible to use this service. Ineligible agencies, therefore, have to employ bilingual workers, use community interpreters or have access to specific funding for this service. The Office of Ethnic Affairs, the Office for Disability Issues and the Office of the Health and Disability Commissioner also note that there is: "no national training or qualification requirement for interpreters, and no national policy, quality standards or code of practice for the provision of interpreting and translation services."<sup>70</sup>

This has led to varying levels of access (particularly outside main centres) and appropriateness for particular groups. Patients frequently use family members (even children)

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<sup>65</sup> Human Rights Commission *Human Rights in New Zealand 2010* (HRC, 2010), at pp 207, 213, 215, 346; V Ravenscroft "A survey on the living conditions including housing, neighbourhood and social support of the Christchurch Refugee Community" (Master of Health Sciences thesis, University of Canterbury, 2008).

<sup>66</sup> Code of Health and Disability Services Consumers' Rights 1996, right 4.

<sup>67</sup> Right 2.

<sup>68</sup> Human Rights Commission *Human Rights in New Zealand* (2010) at 345.

<sup>69</sup> The HDC Code of Health and Disability Services Consumers' Rights Regulation 1996.

<sup>70</sup> A National Approach to Interpreting & Translation Services in Aotearoa/New Zealand: Discussion Paper (2007), p.21.

as interpreters to discuss health related information.<sup>71</sup> Inadequate interpretative capacity may contribute to underutilisation of many facilities and services established to meet refugees' health needs.<sup>72</sup>

The right to education is similarly unfulfilled in New Zealand. The right to education is one of ICESCR's most extensive provisions (Art 12),<sup>73</sup> applying non-discrimination to all persons of school age within a State party's territory regardless of their citizenship or residency.<sup>74</sup> Temporary special measures may be adopted to achieve *de facto* equality for disadvantaged groups without violating the right to non-discrimination.<sup>75</sup> As Mahony and Fozdar note, international obligations regarding the right to education reside among a multitude of international legal instruments. New Zealand enjoys a high quality education system and laws and policies that ensure children aged 6 to 16 attend compulsory education. The Resettlement Strategy places a focus on education. However, the Strategy focuses narrowly on English language rather than education more broadly.

Education must be accessible to all persons, especially the most vulnerable groups in society.<sup>76</sup> Although refugees with permanent residence can access educational services of a better standard than they would receive as aliens (cf eligibility for student loans), there exists a lack of temporary measures to achieve *de facto* equality for refugees by addressing discrepancies in awareness of English language courses and eligibility for course funding or the student loan system. While *prima facie* compliance with international obligations regarding refugees' right to education exists, limited temporary affirmative action measures enable discrimination against the refugee community. For example, some studies suggest children from refugee backgrounds often change schools affecting a child's acculturation.<sup>77</sup> The reasons for this are unclear. However, the Action Plan for Human Rights notes evidence of discrimination, bullying and harassment that suggests education is not always appropriate and acceptable to users. It also states there is "no mechanism to monitor the number of young people aged 5 to 14 who are not engaged in education," which raises additional questions about education's accessibility for those with refugee backgrounds.<sup>78</sup> This is particularly the case where limited data exists that identifies a student's refugee background. Year-cohort type difficulties also exist where children of refugee backgrounds are unable to complete Western school-based tasks at the same level as their New Zealand peers. Finally, identification of children with disabilities can further prevent access to 'mainstream'

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<sup>71</sup> Human Rights Commission *Human Rights in New Zealand* (2010) at 345.

<sup>72</sup> At 345.

<sup>73</sup> ICESCR, arts 13-14.

<sup>74</sup> At [34].

<sup>75</sup> At [32].

<sup>76</sup> Committee on Economic, Social and Cultural Rights, General Comment No 13 on the right to education (1999) at [6].

<sup>77</sup> Ibrahim, H. H. (2012). *From Warzone to Godzone: Towards a new Model of Communication and collaboration Between schools and Refugee families*. Education. Christchurch New Zealand University of Canterbury. Doctor of Philosophy in Education.

<sup>78</sup> Human Rights in New Zealand Today, Ngā Tika Tangata O Te Motu, New Zealand Action Plan for Human Rights — Mana ki te Tangata.



education services limiting their education and opportunities to acculturate to New Zealand society.<sup>79</sup>

Employment rights are also precarious in the New Zealand context. Of particular relevance is the emphasis on the right to access and maintain employment without discrimination. In 2011, the UNHCR confirmed that “the right to work should be defined as decent work”<sup>80</sup> and that “even where refugees have the legal right to work, advocacy is necessary.”<sup>81</sup> While New Zealand has not entirely incorporated the ICESCR into its domestic legislation, many of the elements of the right to work and to just and favourable conditions of work reside in its employment relations legislation.<sup>82</sup> These include the Employment Relations Act 2000, Equal Pay Act 1972, the Holidays Act 2003, the Minimum Wage Act 1983, and the Health and Safety in Employment Act 1992.

New Zealand workers are (in theory) protected against discrimination in the workplace. Every worker has a right to join trade unions and to equal pay. Once refugees receive permanent residence status, they are entitled to the same rights as other NZ permanent residents and citizens. However, despite New Zealand’s relatively low unemployment rates and the equal eligibility of refugees holding permanent residency to work, high rates of refugee unemployment indicate significant refugee obstacles in accessing decent work. The Department of Labour found that: “16% of recently arrived refugees (aged 15-65) were working at six months, and 26% were working at two years.”<sup>83</sup> Other research suggests only 29 per cent of established refugees were employed with another nine per cent seeking employment. Refugees are also commonly unemployed for longer periods of time.<sup>84</sup>

McMillan and Gray found that established refugees experience discrimination in finding work.<sup>85</sup> Refugees’ applications often find their way to the bottom of the hiring pile despite being qualified — or, at times, overqualified — for the job.<sup>86</sup> However, differential treatment between refugees and citizens/other residents does not amount to discrimination under the Refugee Convention. Discrimination on the basis of refugee status is not prohibited by the

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<sup>79</sup> Brandon, C. S., C (2010). "Early engagement " Disability and displacement Forced Migration Review (FMR 35).

<sup>80</sup> Elizabeth Umlas, Urban refugees, the right to work and UNHCR's advocacy activities, *United Nations High Commissioner for Refugees*, May 2011.

<sup>81</sup> Ibid.

<sup>82</sup> Employment Relations Act 2000.

<sup>83</sup> The New Zealand settlement strategy in outline. (n.d.). A future together. <http://www.immigration.govt.nz/NR/rdonlyres/E869C333-69C1-4983-862B-288C9C493839/0/NZImmigrationSettlementStrategyOutline.pdf>

<sup>84</sup> Change Makers Refugee Forum (2012). *People with refugee backgrounds can do the job.* Refugee-background experiences of employment in Wellington. Wellington New Zealand Change Makers Refugee Forum; Ferguson, B. (2011). *The Bhutanese refugee resettlement journey. Part 3: Settlement.* Wellington, Department of Labour; Ferguson, B., E. Plumridge, et al. (2011). *The Bhutanese refugee resettlement journey. Part 2: On arrival.* Wellington, Department of Labour; Searle, W., A. Gruner, et al. (2011). *New Land, New Life: Long-term settlement of refugees in New Zealand (preliminary report)* Department of Labour.

<sup>85</sup> McMillan and Gray (2009) quoted in ChangeMakers Refugee Forum “*People with refugee backgrounds can do the job*”: *Refugee-background experiences of employment in Wellington* (2012) at 29.

<sup>86</sup> Marika Hill “When doors keep closing for refugees” (15 April 2012) [Stuff.co.nz <www.stuff.co.nz/national/6744606/When-doors-keep-closing-for-refugees>](http://www.stuff.co.nz/national/6744606/When-doors-keep-closing-for-refugees).

NZBORA but could constitute discrimination on the basis of ethnic or national origin, which is prohibited by CERD<sup>87</sup> and NZBORA.<sup>88</sup> Government research attributes high refugee unemployment to poor English proficiency. While refugee language skills commonly fall short of employers' expectations, evidence suggests that shifting language proficiency goalposts impede refugees' employment.<sup>89</sup> Another significant problem is the downgrading of overseas qualifications and non-recognition of experience. For example, many medically trained migrant doctors are unable to practice medicine in New Zealand. Auckland Regional Migrant Services, an NGO, helps train overseas-trained doctors for New Zealand's medical exams. However, no state-sponsored programme provides this service. Anecdotal reports suggest migrants passing this training have been unable to obtain jobs.<sup>90</sup> Limited evidence also suggests some employers have refused refugees break time to perform daily prayers or to attend Friday prayer, which is obligatory for Muslim men.<sup>91</sup> Employers must accommodate employees' religious or ethical belief practices as long as any adjustment required 'does not unreasonably disrupt the employer's activities.'<sup>92</sup>

Refugees' difficulty finding sufficient and appropriate employment often drives social security dependency. Their right to social security is discussed in the ICESCR, CEDAW, UNCROC, CRPD and the Refugee Convention, each of which New Zealand has ratified. Mahony and Fozdar note the protection of the right to social security,<sup>93</sup> and its constraint of progressive realisation by states' respective economic and financial situation.<sup>94</sup> It remains, however, that the right to social security is weak in that - like the Resettlement Strategy - it is aspirational, to be worked towards progressively, and constrained by caveats relating to the means at a state's disposal.

Progressive realisation is problematic in the New Zealand context where social security is subject to significant reform. Permanent resident refugees seeking employment may fully access mainstream social services and welfare, including the main unemployment benefit, Jobseeker Support, and other benefits if a sole parents with children under age 14 or suffering from a long-term disability. Convention refugees are not eligible for this kind of assistance but may access the Emergency Benefit (paid at a similar rate to Jobseeker Support).<sup>95</sup> Income support is a flat-rate benefit that is not tied to an employee's previous work history, meaning recently arrived refugees or refugees without New Zealand work experience remain eligible. However, the real value of core benefits is internationally low, and most benefit

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<sup>87</sup> CERD, art 2.

<sup>88</sup> New Zealand Bill of Rights Act 1990, s 19.

<sup>89</sup> McMillan, N. & Gray, A. (2009). *Long-term settlement of refugees: An annotated bibliography of New Zealand and international literature. Prepared for the Department of Labour.*  
<http://www.dol.govt.nz/publications/research/abltsr/abltsr.pdf>

<sup>90</sup> Patti Grogan *Does a Rising Tide Lift All Boats? Refugee Resettlement, Integration and New Zealand's Settlement Strategy* (July 2008) at 34.

<sup>91</sup> Ibrahim, H. H. (2012). *From Warzone to Godzone: Towards a new Model of Communication and collaboration Between schools and Refugee families. Unpublished PhD thesis. University of Canterbury: Christchurch.*

<sup>92</sup> Human Rights Act 1993, s 28(3).

<sup>93</sup> ICESCR, arts 9 and 10.

<sup>94</sup> Committee on Economic, Social and Cultural Rights, above n 2, at [40]-[41]; ICESCR, above n 1, art 2(1).

<sup>95</sup> Department of Labour, *Overview paper: refugee resettlement in New Zealand*, (2004) at 6.

recipients struggle financially, including those from refugee backgrounds<sup>96</sup> Moreover, recent welfare reforms have tightened eligibility criteria, increasing requisite conditionality to continue receiving financial assistance. Refugee-specific data does not exist. Even access to Working for Families, which includes an in-work tax credit, will likely be impeded for many refugees because failure to find employment inhibits working more than the requisite 20 hours per week.

The main benchmark for the Resettlement Strategy's goal of 'self-sufficiency' is that all working-age refugees are in paid work or supported by a family member in paid work. While these are important goals, broader welfare reforms arguably frame the unemployed as 'undeserving' of state assistance, rendering these benchmarks inadequate to reflect the complexities of resettlement for people from CALD backgrounds and varied forced migration experiences. However, the New Zealand government could argue that its withdrawal or reduction of benefits is "reasonable, proportionate and transparent", and compliant with its international obligations to refugees. New Zealand may also make the case that it is simply attempting to provide social security as the means at its disposal progressively allow. International law obligations' weakness in this respect facilitates elastic interpretation of reasonableness should New Zealand wish to refrain from or diminish provision of social security to refugees.

### *Summary*

Although refugees with permanent residence have the same rights as other New Zealanders in the five policy areas discussed, examples from health, housing, education, employment and social security demonstrate that New Zealand's fulfilment of its international obligations depends on various factors, including where a refugee lives and what services and institutions they can access as a result. This variance is intimately linked to the policy of only relocating refugees to designated resettlement areas. These locations have become the focus of most refugee-specific policy and programme activity in a country where the refugee population is relatively small, funding is limited, and service is fragmented and reliant on volunteers. As noted in the previous section, differential treatment of refugees depending on which "category" they fall into is another key factor challenging the equal implementation of ESCR rights. Further adding to the problem is the fact that ESCR in New Zealand are not constitutionally protected.

The need to remedy this situation is urgent given the centrality of ESCR rights to the refugees' everyday lives. Those interviewed six months after their arrival said they mainly needed additional assistance in learning English, accessing education (other than English language), finding work, and understanding immigration policy so as to enable family

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<sup>96</sup> Fletcher, M. and M. Dwyer *A Fair Go for all Children: Actions to address child poverty in New Zealand. A report for the Children's Commissioner and Barnardos* (Wellington: Children's Commissioner, 2008), at 28; Beth Ferguson, *The Bhutanese Refugee Resettlement Journey, Part 3: Settlement*, Department of Labour (2011) at 36-37.

reunification.<sup>97</sup> Several expressed a need for additional information about life in New Zealand (e.g. healthcare and education systems, law, human rights). ESCR are thus clearly central to refugee outcomes. They are also inter-related; poor housing and employment opportunities, for example, are likely to have health repercussions. To ensure that policy accounts for New Zealand's legal obligations to refugees all ESCR must be embedded simultaneously.

## **Conclusion**

New Zealand appears to largely 'meet' its international obligations towards refugees. However, New Zealand policy may not necessarily meet all refugee needs. The obligation to ensure freedom from discrimination is clear yet a central element of New Zealand's refugee policy gives preferential treatment to Quota refugees, particularly in the areas of family reunification and resettlement support. Successful refugee-specific programmes exist and permanent resident refugees may access services available to other New Zealanders. Refugee access to those services depends on refugees' location and the particular priorities of their local DHB or school Board of Trustees. Most refugee-specific services are also provided by NGOs at the mercy of a contractual funding regime that restricts services and drives volunteer dependency. Further user-pays systems for many mainstream social services inhibit refugee access, particularly due to the low incomes of poor employment outcomes and social security dependence. Many of New Zealand's refugee policy inadequacies are associated with the fact that ESCR are not embedded into the domestic human rights framework leaving their implementation somewhat precarious. This provides the space for differential treatment of different categories of refugees in to the areas of health, education, housing and employment. In such a policy context, we believe the aspirational goals of the Resettlement Strategy fail to meet the obligations to which New Zealand has committed.

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<sup>97</sup> *Refugee Voices: A Journey Towards Resettlement*, at 134.