UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report -

Universal Periodic Review of:

NEW ZEALAND

I. BACKGROUND INFORMATION AND CURRENT CONDITIONS

The Government of 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, the Government of 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*. New Zealand became a member of UNHCR's Executive Committee of the High Commissioner's Programme (ExCom) in 2002.

The *Immigration Act 2009* (Act), which came into effect on 29 November 2010 (and supersedes the *Immigration Act 1987*), 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 and is responsible for managing immigration to New Zealand, including the provision of asylum and resettlement.

The vast majority of refugees in New Zealand enter through the resettlement programme. New Zealand accepts up to 750 refugees per year in accordance with its annual quota. Asylum numbers have remained steady at about 300 per year over the last seven years.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

1. Refugee Protection

The Government of 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.

New Zealand also contributes to international responsibility sharing under the resettlement programme by accepting 750 refugees and related family cases annually. In December 2012, further details of the New Zealand Government's Refugee Resettlement Strategy were

released, which indicated a positive focus on the areas of employment, health, education and housing for refugees. UNHCR welcomes the launch of this strategy as an important framework for refugee protection during the resettlement and settlement processes.

2. Birth Registration

Birth registration is essential to ensuring the right of every child to acquire a nationality, by establishing proof of the link between the individual and the State because it documents where a person was born and who a person's parents are and thereby serves to prevent statelessness. UNHCR welcomes the Births, Deaths, Marriages and Relationships Registration Act 1995 (Registrations Act) which lays out a legislative framework ensuring birth registration for all children born in New Zealand (Section 5) as well as any birth that occurs on an aircraft or ship flying the New Zealand flag (Section 8). Other positive aspects of the Registrations Act are the safeguard it provides in respect of birth registration for newborn foundlings found abandoned in the country (Section 7) and facilitation of late birth registration (Section 16).

3. Nationality and statelessness

The provisions in the Citizenship Act 1977 (last amended on 29 November 2010) meet New Zealand's obligations under the 1961 Convention. For example, children born in New Zealand who would otherwise be stateless can acquire citizenship automatically (Section 6(a)) and children who were born abroad to a New Zealand citizen by descent can be registered as a citizen, if they would otherwise be stateless (Section 7). Foundlings are deemed to be New Zealand citizens, if investigations have failed to establish the identity of at least one parent (Section 6(b)). Any person who would otherwise be stateless may be granted the citizenship, if the Minister for Internal Affairs deems appropriate (Section 9). In addition, citizens of New Zealand can only make a declaration of renunciation of their nationality, when they are recognized by the law of another country as a citizen (Section 15). There is no provision stipulating loss or withdrawal of citizenship for citizens of New Zealand who have long-term residence abroad and New Zealand's nationality cannot be deprived in any case, if it would leave the person stateless (Section 17).

III. KEY ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: <u>Refugee Resettlement</u>

Whereas New Zealand's resettlement programme represents a positive model both regionally and globally, UNHCR continues to encourage the Government of New Zealand to increase its overall refugee quota in order to respond to the increasing resettlement needs globally. In particular, UNHCR has also expressed concern with regard to the requirement of the New Zealand Government that resettlement from Africa and the Middle East be supported by the presence of family links in New Zealand. This requirement limits the scope for inclusion of protection priority cases and further impacts on the overall geographic balance of the quota.

In February 2013, the Government of New Zealand announced a bilateral agreement with Australia indicating that from June 2014, 150 refugees from Australia will be accepted by New Zealand each year. Should these places be taken from the existing quota, UNHCR is concerned that this may negatively impact the geographical balance of New Zealand's resettlement programme and result in an effective reduction in the overall capacity of the resettlement programme to respond to protection priority cases identified by UNHCR globally.

Recommendations:
UNHCR recommends that the Government of New Zealand:

- Consider increasing its resettlement quota or, at a minimum, accounting for the 150 places from Australia as additional to the total resettlement quota, thus preserving the spaces available for resettlement.
- Maintain the global character of the resettlement programme by reflecting a full geographic spread and ensure that priority focus remains on protection needs and vulnerability of individuals when assessing resettlement caseloads rather than place of origin or connection with New Zealand.

Issue 2: <u>Protection gaps within the proposed Immigration Amendment Bill 2012</u>
UNHCR welcomed the opportunity to comment[1] on the draft Immigration Amendment Bill 2012, yet to be passed, which is designed to respond to the possibility of 'mass groups' of asylum-seekers (originally set at 10 or more persons, but in amended legislation now defined as 30 or more persons) arriving in New Zealand by boat.

The proposed legislative amendments raise important concerns about the compatibility with New Zealand's obligations under the 1951 Refugee Convention and other human rights instruments to which it is party. Furthermore, it represents a significant change of direction from New Zealand's historically very positive approach to asylum-seekers and refugees.

Discrimination
The draft Immigration Amendment Bill 2012 introduces provisions that promote the differential treatment, including in relation to detention, of asylum-seekers and refugees based solely on their mode of arrival by boat. This raises concerns regarding compliance with the principle of non-discrimination and Article 31 of the 1951 Refugee Convention, which takes into account the fact that refugees may be compelled to enter a country illegally in order to escape persecution and which also provides that Contracting States shall not apply to the movements of refugees restrictions other than those which are strictly necessary, and that any restrictions shall only be applied until such time as their status is regularized, or they obtain admission to another country.

Suspension of Refugee Status Determination
Under this new draft, there exists the potential for the suspension of refugee status determination. No regulations have been proposed which outline the circumstances under which this step may be contemplated, however, leading to concerns that such a suspension may be arbitrary in nature.

Administrative Detention
The draft Immigration Amendment Bill 2012 introduces a provision which requires the mandatory detention of asylum-seekers who arrive in New Zealand by boat as part of a 'mass group' containing 30 or more persons.

[1] UNHCR's written submission on the legislation can be found at:
http://unhcr.org.au/unhcr/index.php?option=com_content&view=article&id=249&catid=37&Itemid=61

Detention of asylum-seekers and refugees should normally be avoided and be a measure of last resort. Alternatives to detention should be sought and given preference, in particular for certain categories of vulnerable persons. If detained, asylum-seekers should be entitled to minimum procedural guarantees, including the possibility to contact and be contacted by UNHCR. *UNHCR's Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* highlight that "the position of asylum-seekers may differ fundamentally from that of ordinary migrants in that they may not be in a position to comply with the legal formalities for entry. They may, for example, be unable to obtain the necessary documentation in advance of their flight because of their fear of persecution and/or the urgency of their departure. These factors, as well as the fact that asylum-seekers have often experienced traumatic experiences, need to be taken into account in determining any restrictions on freedom of movement based on illegal entry or presence."[2]

UNHCR associates itself with the recommendation of the Committee on the Elimination of Racial Discrimination, which called upon New Zealand to *"[…] ensure that the Immigration Amendment Bill of 2012 accords to international standards in the treatment of persons in need of international protection so that it does not unfairly and arbitrarily discriminate against asylum seekers."*[3]

Policy Changes

UNHCR also has concerns with the policy changes announced by the Government of New Zealand, which would follow if the Immigration Amendment Bill 2012 were to be enacted.

Specifically, these new policy changes would include a requirement that persons already recognized as refugees would have to re-establish their need for international protection three years after the original determination and that permanent residency would not be approved until this reassessment is finalized. This new procedure does not provide finality and certainty for refugees and does not correctly reflect the cessation clauses of the 1951 Refugee Convention.

Additionally, the new policy changes propose differential treatment for asylum-seekers arriving by boat as part of a 'mass arrival' with regard to family reunification, as during the 3 year period prior to a refugee's status being reassessed and then finalized, the refugee is unable to apply for family reunification with immediate family members.

Recommendations:

UNHCR recommends that the Government of New Zealand:

- Revise the draft Immigration Amendment Bill 2012 to ensure that considerations of deterrence and penalty are excised entirely from the operative parts of the Bill and that only elements that are genuinely required to meet the operational exigencies of a mass arrival are included.

Discrimination

2 UN High Commissioner for Refugees, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, available at: http://www.unhcr.org/refworld/docid/503489533b8.html

[3] Committee on the Elimination of Racial Discrimination, CERD/C/NZL/CO/18-20, 82nd session, 1 March 2013, para. 20, available at: http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-NZL-CO-18-20_en.pdf

- Take steps to ensure that, if passed, the draft Immigration Amendment Bill 2012 does not provide for differential treatment of refugees and asylum-seekers based on their mode of arrival which is arbitrary or unreasonable.

Suspension of refugee status determination

- Ensure that any suspension of refugee status determination be strictly time-bound and objectively justified.
- Take steps to ensure that the decision to suspend refugee status determination is done within a procedural framework and accompanied by procedural safeguards.
- Ensure that the use of a suspension is not done for the purpose of deterrence or penalty.

Administrative Detention

- Ensure that the detention of asylum-seekers is only used as a last resort, and where necessary, for as short a period as possible and apply alternatives to detention. Decisions to detain must be made following an individualized assessment of risk, not a group-based category based on the manner of arrival.
- Ensure that the decision to detain an asylum-seeker is based on an individual assessment and not the circumstances of their arrival.

Policy changes

- Facilitate a process through which refugees can acquire permanent residency with certainty and within a reasonable time so that they can have finality and integrate into society.

Issue 3: <u>Protection gaps with the proposal to transfer asylum-seekers to 'regional processing centres'</u>

At the time of the announcement that New Zealand would take 150 refugees from Australia, the Government of New Zealand also indicated that it might, subject to enabling legislation, consider transferring any asylum-seekers who arrived by boat to New Zealand to so-called 'regional processing centres' in Papua New Guinea (Manus Island) and Nauru.

In this regard, UNHCR again associates itself with the recommendation of the UN Committee on the Elimination of Racial Discrimination, which urged New Zealand to "[…] *refrain from sending asylum-seekers to the Australian off-shore detention facilities until the conditions meet international standards*."[4]

UNHCR observes that this proposal raises serious concerns. UNHCR has found serious shortcomings at the Nauru and PNG processing centres to which asylum-seekers have been transferred, including in reception conditions and delays in establishing legal frameworks for refugee status determination.

UNHCR's position has always been for all asylum-seekers arriving into a country's territory to be given full access to a full and efficient refugee status determination process in that country. This would be consistent with general practice, and in line with the principle of non-discrimination.

Recommendation:

4 Committee on the Elimination of Racial Discrimination, CERD/C/NZL/CO/18-20, 82nd session, 1 March 2013, para. 21, available at: http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-NZL-CO-18-20_en.pdf

UNHCR recommends that any asylum-seekers arriving to New Zealand, whether by sea or air, be given access to the full refugee status determination process in New Zealand.

Issue 4: <u>Prevention of Statelessness and Protection of Stateless Persons</u>

UNHCR acknowledges the Government of New Zealand's efforts to contribute to the prevention of statelessness through its accession to the 1961 Convention and welcomes several safeguards against statelessness found in the *Citizenship Act 1977*, which meet New Zealand's obligations to prevent and reduce statelessness under the 1961 Convention. However, UNHCR has observed that the protection that ensures that foundlings found abandoned in New Zealand are granted New Zealand citizenship only applies to newborn children and does not also extend to older foundlings who are unable to communicate information needed to identify their parents or place of birth. Although children who fall in that category may be granted nationality as a special case, under section 9(1) of the Act, that power is discretionary.[5]

Accession to the *1954 Convention relating to the Status of Stateless Persons* would assist the Government of New Zealand in establishing a framework for the treatment of stateless persons and provide such persons with stability and security, as well as ensure that certain basic rights and needs are met. These include, but are not limited to, the right to education, employment, housing and public relief. Importantly, the 1954 Convention also guarantees stateless persons a right to identity and travel documents and to administrative assistance.

Recommendations:

UNHCR recommends that the Government of New Zealand:

- Review domestic legislation and practices to ensure that the safeguard to foundlings apply to "all young children who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth", in accordance with *Guidelines on Statelessness No.4: Ensuring Every Child's Right to Acquire a Nationality through Article 1-4 of the 1961 Convention on the Reduction of Statelessness*.[6]
- Accede to the *1954 Convention relating to the Status of Stateless Persons*.
- Establish a formal statelessness determination procedure in national legislation to better identify and protect stateless individuals in a migratory context.

Human Rights Liaison Unit
Division of International Protection
UNHCR
June 2013

[5] Section 9(2) provides that in considering whether to authorize the grant of New Zealand citizenship to any person under s 9(1), the Minister: (a) may have regard to such of the requirements of s 8(2) (as subject to s 8(3) to (9)) as the Minister thinks fit; and (b) must have regard to the requirements of s 9A(1) (but subject to the Minister's discretion under s 9A(2) and (3)).

[6] UN High Commissioner for Refugees, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, 21 December 2012, HCR/GS/12/04, available at: http://www.refworld.org/docid/50d460c72.html

ANNEX

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies -

Universal Periodic Review:

New Zealand

We would like to bring your attention to the following excerpts from **UN Treaty Monitoring Bodies' Concluding Observations and Recommendations** relating to issues of interest and persons of concern to UNHCR with regards to New Zealand.

Committee on the Elimination of Racial Discrimination
CERD/C/NZL/CO/18-20, 82nd Session
1 March 2013

Positive aspects
3. The Committee notes with appreciation the numerous legislative and policy developments which have taken place in the State party since its last report to combat racial discrimination, including:
(a) The Immigration Act of 2009 that entered into force on 29 November 2010, which removed barriers for foreign national children to access education and limited the situations in which asylum seekers may be detained.

4. Numerous valuable programmes, strategies and other initiatives aimed at improving ethnic relations and raising the awareness of the population with regard to racial discrimination, integration, tolerance and multiculturalism, including the Youth Employment Package, the Alcohol and Other Drugs Courts, the New Zealand Police ethnic strategy and recommendations included in the study "A Fair Go for All?"

Political racist speech
10. The Committee regrets the recent inflammatory remarks by a Member of Parliament vilifying persons from Central Asia or the Middle East based on their skin colour and country of origin as well as their religion, but welcomes the strong criticism of such statements by the Minister of Justice and Ethnic Affairs and the Race Relations Commissioner, among others, as well as the unanimous resolution passed by the Parliament reaffirming the State party's commitment to preserving an inclusive multi-ethnic society (arts. 4, 5 and 7).
The Committee urges the State party to intensify its efforts to promote ethnic harmony through, inter alia, raising awareness in order to combat existing stereotypes and prejudices against certain ethnic and religious groups.

Detention of asylum seekers
20. The Committee notes the intention by the State party to table the Immigration Amendment Bill of 2012, which provides for the mandatory detention of asylum seekers and persons falling within the ambit of the statutory definition of a "mass arrival", namely, those arriving in a group of more than 10.[7] The Committee is concerned that this provision may

[7] This provision has been amended to now reflect that is concern groups of 30 or more.

have the effect of depriving persons who are in need of international protection of their liberty solely based on the manner of their arrival in the State party (arts. 2 and 5).
The Committee recalls its General Recommendation No. 30 (2004) on discrimination against non-citizens and reiterates its position that State parties to the Convention should ensure the security of non-citizens, in particular with regard to arbitrary detention. The Committee urges the State party to ensure that the Immigration Amendment Bill of 2012 accords to international standards in the treatment of persons in need of international protection so that it does not unfairly and arbitrarily discriminate against asylum seekers.

21. The Committee welcomes the State party's decision to admit 150 asylum seekers from Australian off-shore refugee detention centers located in Papua New Guinea and Nauru. However, the Committee is concerned at reports that the State party is considering sending future asylum seekers to the said facilities, which has been criticized by the UNHCR because of the conditions under which asylum seekers are detained and because of other problems (arts. 2 and 5).
The Committee urges the State party to refrain from sending asylum seekers to the Australian off-shore detention facilities until the conditions meet international standards.

Committee on Economic, Social and Cultural Rights
E/C.12/NZL/CO/3, 48th Session
7 May 2012

Positive aspects
5. The Committee welcomes the range of measures taken by the State party to promote the realization of economic, social and cultural rights, noting the following in particular:
[…]
(b) The entitlements for refugees and asylum-seekers introduced under the Immigration Act 2009;

Committee on the Rights of the Child
CRC/C/NZL/CO/3-4, 56th Session
19 January 2011

Education, including vocational training and guidance
44. The Committee notes with appreciation the numerous efforts of the State party in the sphere of education, including the new Education Amendment Act and Maori Education strategy (2008-2012). The Committee also welcomes the legal guarantee of access to free education accorded to undocumented children. However, the Committee is concerned that several groups of children have problems being enrolled in school or continuing or re-entering education, either in regular schools or alternative educational facilities, and cannot fully enjoy their right to education, notably children with disabilities (children with special educational needs), children living in rural areas, Maori, Pacific and minority children, asylum-seeking children, teenage mothers, dropouts and non-attendees for different reasons. Furthermore, the Committee is concerned:

(a) That only 20 hours of free early childhood education and care are available and that there is limited access for many children, especially those in need;
(b) That many public schools are pressuring parents to make "donations";
(c) That bullying is a serious and widespread problem, which may hinder children's attendance at school and successful learning; and
(d) At the number of school suspensions and exclusions and that it affects in particular children from groups which in general are low on school achievement.

45. The Committee recommends that the State party:

(a) Ensure that all children have access to high quality early childhood education and care that, at a minimum, is free for socially disadvantaged families and children;

(b) Continue and strengthen its efforts to reduce negative effects of the ethnic (cultural, regional) and social background of children on their enrollment and attendance in school;

(c) Invest considerable additional resources in order to ensure the right of all children, including children from all disadvantaged, marginalized and school-distant groups, to a truly inclusive education;

(d) Use the disciplinary measure of permanent or temporary exclusion as a means of last resort only, reduce the number of exclusions and ensure the presence of social workers and educational psychologists in school in order to help children at risk with their schooling

(e) Take steps to ensure that parents are not pressured into making donations to schools and that children are not stigmatized if their parents do not, or are unable to, make such donations; and

(f) Further intensify its efforts to eliminate bullying and violence in schools, including through teaching human rights, peace and tolerance.

Committee against Torture

CAT/C/NZL/CO/5, 42nd Session
1 May 2009

Non-refoulement and detention of asylum seekers and undocumented migrants

6. While noting that the Immigration Bill has incorporated the language of article 3 of the Convention, the Committee notes with concern that asylum-seekers and undocumented migrants continue to be detained in low security and correctional facilities. The Committee is further concerned at the continued issuance of security-risk certificates under the Immigration Act, which could lead to a breach of article 3 of the Convention, as the authorities may remove or deport a person deemed to constitute a threat to national security, without having to give detailed reasons or disclose classified information to the person concerned. The Committee is also concerned that the use of classified information by the State Party for purposes of detention of asylum seekers and undocumented migrants may result in a violation of their fundamental rights to due process, and may expose them to removal to countries where they might be at risk of torture. (arts. 2 and 3)

The State party should consider putting an end to the practice of detaining asylum-seekers and undocumented migrants in low security and correctional facilities, and ensure that grounds upon which asylum may be refused remain in compliance with international standards, especially the 1951 Convention relating to the Status of Refugees. Where there is a risk that a person may be subject to torture if returned to his or her country of origin, the State party should undertake a thorough assessment of his

or her claim, in full compliance with the provisions of article 3 of the Convention. The State Party should also ensure, as indicated by the delegation, that the right of detained asylum seekers and undocumented migrants to *habeas corpus* and to an effective appeal is guaranteed under the Immigration Bill.

Training of law enforcement personnel and immigration officials

7. The Committee notes that training on human rights obligations is provided for police recruits, prison personnel and armed forces. It is however concerned at the insufficient training provided to immigration officials and personnel employed at immigration detention centres. (art. 10)

The State party should ensure that education and training of all immigration officials and personnel, including medical personnel, employed at immigration detention centres, are conducted on a regular basis. The State party should also continue to ensure adequate training for personnel to detect signs of physical and psychological torture and ill-treatment of persons deprived of their liberty, and integrate the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment) in the training of all professionals involved in the investigation and documentation of torture. In addition, the State party should continue to assess the effectiveness and impact of all its training programmes on the prevention and protection from torture and ill-treatment.