

## New Zealand Immigration Detention Profile

**Profile Updated: June 2016**

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### INTRODUCTION

New Zealand has exhibited contradictory postures with respect to asylum seekers and refugees. While it has been lauded in the past for its treatment of people seeking international protection it has more recently adopted policies that are in line with the restrictive approach of its neighbour Australia. This has led to a renewed focus on using detention as a way to deter arrivals.

A case in point is a 2013 agreement between the two countries whereby New Zealand agrees to annually resettle 150 asylum seekers from Australia, many of whom would come from offshore detention facilities like those in Nauru and Papua New Guinea. Observers criticized the deal for appearing to bolster Australian claims about “queue-jumping” refugees and because the 150 people covered in it would replace a portion of the 750 claimants New Zealand accepts each year. The country’s Race Relations Commissioner said: “Anything that can be done to relieve the situation of the people in the offshore Australian detention camps has to be a good thing, but to do it at the cost of other refugees coming here seems a little unfair.”<sup>1</sup>

The 2013 deal was tested in early 2016 after Papua New Guinea’s Supreme Court ruled that the offshore detention centre used by Australia on Manus Island was unconstitutional. However, when New Zealand offered to take some asylum seekers from the Manus facility under the 2013 agreement, Australia said no. Prime Minister Malcolm Turnbull reasoned that “Settlement in a country like New Zealand would be used by the people smugglers as a marketing opportunity.”<sup>2</sup>

At the time of the 2013 agreement, New Zealand Prime Minister John Key justified it saying that the country’s Mangere Accommodation Centre was not designed for long-term stays and that Wellington could try to place some of its own asylum seekers in the offshore sites. He said: “One of the ideas I had was maybe we can actually use the [Australian] offshore detention centres and that will actually act as a deterrent. We might want to go down that route.”<sup>3</sup> This suggestion was widely condemned. The UN Committee on the Elimination of Racial Discrimination urged New Zealand “to refrain from sending asylum seekers to a neighbouring country’s offshore detention

<sup>1</sup> Geelong Advertiser. 2013. “Kiwi Refugee Angst.” 12 February 2013

<sup>2</sup> Davidson, Helen, “Turnbull rejects New Zealand offer to take 150 refugees from detention,” The Guardian, 29 April 2016, <http://www.theguardian.com/australia-news/2016/apr/29/turnbull-rejects-new-zealand-offer-to-take-150-refugees-from-detention>.

<sup>3</sup> Timaru Herald. 2013. “NZ may put refugees in Aust camps Move may deter 'boat people' – PM.” 12 February 2013.

facilities until the conditions met international standards.”<sup>4</sup> In the report on its 2014 mission to New Zealand, the UN Working Group on Arbitrary Detention reiterated this recommendation, stating: “New Zealand should clearly prohibit the transfer of asylum seekers to detention centres in third countries that do not meet international human rights standards.”<sup>5</sup>

Shortly after the agreement was made, New Zealand adopted an amendment to its immigration law allowing for the use of detention in cases of “mass arrivals” of unauthorized migrants coming by boat. The amendment (the “Immigration Amendment Act 2013”) was promoted as a measure to combat people smuggling. Human rights groups heavily criticized provisions in the amendment, including the possibility of indefinite detention, the “mass arrival warrant” provision that increases the risk of arbitrary detention, the detention of families with minors, the suspension of the asylum process, limitations on judicial review, and the fact that the amendment does not include an “explicit presumption against detention.”<sup>6</sup>

Observers have pointed to the irony that New Zealand has never experienced irregular maritime arrivals that its laws are aimed at addressing. While some officials have highlighted New Zealand’s purported track record in humanitarian affairs, wrote one journalist, they “tend not to refer to its comparatively paltry refugee resettlement program. Nor do they refer to its response to ‘boat people,’ for the simple reason that New Zealand has never been faced with this kind of arrival.”<sup>7</sup>

These latest developments come after years of increasingly heated public debate about refugees and migration. In October 2010, for example, Prime Minister John Key argued that although New Zealand would not pay for and run a “regional processing centre” for arriving boat people, having such a facility somewhere in the region “could fit” with the country’s policies. Referring to a then-recent arrival by boat of asylum seekers in Canada, Key said, “If they can get to Canada they can get to New Zealand so we are looking at our own legislation and our response to this issue.”<sup>8</sup>

These pronouncements were followed by a number of high profile cases in which asylum seekers apprehended by Australian officials claimed that their intended destination was New Zealand. In one case from April 2012, a group of 10 Chinese nationals who were members of Falun Gong arrived in Darwin, Australia, claiming that they wanted to proceed to New Zealand because it did not have mandatory detention laws. A month later, in May 2012, then-Immigration Minister Nathan Guy introduced the Immigration Amendment Act 2012, making explicit reference to the Chinese case: “Ten illegal migrants may seem like a small number, but once such an

<sup>4</sup> Human Rights Council. 2013. “Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: New Zealand.” 7 November 2013.

<sup>5</sup> Working Group on Arbitrary Detention. 2015. “Report of the Working Group on Arbitrary Detention: Addendum Mission to New Zealand.” United Nations. 6 July 2015. A/HRC/30/36/Add.2.

<sup>6</sup> Amnesty International (AI). 2013. “NEW ZEALAND : AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 18TH SESSION OF THE UPR WORKING GROUP, JANUARY-FEBRUARY 2014.” June 2013.

<sup>7</sup> Neumann, Klaus. 2013. “Just hook around Tasmania and pop across the Tasman.” Inside Story. 21 June 2013. <http://inside.org.au/just-hook-around-tasmania-and-pop-across-the-tasman/#sthash.u7MxLiMk.dpuf>.

<sup>8</sup> Vance, Andrea. 2010. “Controversial British firm named to run Mt Eden prison.” Dominion Post. 15 December 2010.

arrival has been achieved, New Zealand could be seen as a more attractive option for like-minded people.”<sup>9</sup>

While it has comparatively low numbers of asylum seekers and undocumented migrants, New Zealand has one of the world’s largest percentages of immigrants. In 2013, New Zealand ranked 3rd among OECD countries “in terms of the share of immigrants in its population.”<sup>10</sup> As of 2015, according to the UN Department of Economic and Social Affairs, New Zealand’s foreign-born population was more than 1,039,700, representing 23 percent of the country’s total population.<sup>11</sup>

## LAWS, POLICIES, PRACTICES

**Key norms.** The principal norms relevant to immigration-related detention in New Zealand are contained in the Bill of Rights Act of 1990, the Immigration Act 2009, the Immigration Amendment Act 2009 as amended in 2013 and 2015 and the Corrections Act 2004.

Section 22 of the Bill of Rights, on “Liberty of the Person,” provides that “Everyone has the right not to be arbitrarily arrested or detained.”

The Immigration Act 2009 replaced the previous law, Immigration Act 1987. The 2009 law introduced several significant changes, including increased powers for immigration officers to arrest and detain migrants, and extended detention without judicial review. In promoting the law, the Department of Labour (DoL) claimed that it would “provide for a tiered detention and monitoring system that includes a greater ability to use reporting and residence requirements instead of secure detention.”<sup>12</sup>

The Immigration Amendment Act 2013 provides several notable changes to the Immigration Act. Importantly, and in contrast to the DoL’s assessment of the 2009 law, the 2013 law appears to constrain the level of discretion authorities have with respect to detention decisions when dealing with “mass arrivals” (see the section “Grounds for detention, mandatory detention, arbitrary detention” below). The Act, which provides for the possibility of indefinite detention, states that its purpose is “to provide a practicable and administratively workable time period within which arrival processing of the mass arrival group can be completed” and “any threat or risk to security or to the public arising from, or that may arise from, the members of the mass arrival group ... may be properly assessed.”

The Corrections Act 2004 includes provisions regarding the detention of irregular migrants and asylum seekers in New Zealand’s prison system. Section 181 of the Act empowers the Department of Corrections to share information about specific offenders with the Department of Labour (now the Ministry of Business, Innovation,

<sup>9</sup> Neumann, Klaus. 2013. “Just hook around Tasmania and pop across the Tasman.” Inside Story. 21 June 2013. <http://inside.org.au/just-hook-around-tasmania-and-pop-across-the-tasman/#sthash.u7MxLiMk.dpuf>.

<sup>10</sup> Organisation for Economic Co-operation and Development (OECD), 2016, *Foreign-born population (indicator)*, Accessed on 10 June 2016, <https://data.oecd.org/migration/foreign-born-population.htm>

<sup>11</sup> United Nations, Department of Economic and Social Affairs, Population Division (2015). Trends in International Migrant Stock: The 2015 Revision (United Nations database, POP/DB/MIG/Stock/ Rev.2015). See [www.unmigration.org](http://www.unmigration.org)

<sup>12</sup> Department of Labour (DoL). Website. Regulatory impact statement—immigration act: monitoring and detention. <http://www.dol.govt.nz/publications/general/ris-immigration-act-monitoring.asp>

and Employment) when it is for immigration purposes. Cooperation between the two departments is also outlined in Section 302 of the 2009 Immigration Act.

**Grounds for detention, mandatory detention, arbitrary detention.** The Immigration Act 2009 (s. 310) provides that police can detain a foreign national if he/she is: (a) denied entry into the country at an airport and awaiting deportation; (b) not carrying proper identification documents; (c) suspected of constituting a threat or risk to security; or (d) has breached residence and reporting requirements. Further, if a foreign national has a false, fraudulent, or expired visa, has had their refugee status cancelled, or is deemed a threat to security, they are liable for deportation and can also be detained (s. 154-163).<sup>13</sup>

In addition to these grounds, the Immigration Amendment Act 2013 introduced new stipulations in the Immigration Act that expand the state's detention powers. S. 317a of the amended Immigration Act provides that an immigration officer "may" make an application to judicial authorities for a "mass arrival warrant" authorising "the detention ... of the members of a mass arrival group" of more than 30 people. The Act provides a number of criteria to help officials determine whether such a warrant is required, including whether it is necessary "to effectively manage the mass arrival group"; "to manage any threat or risk to security"; "to uphold the integrity or efficiency of the immigration system"; or "to avoid disrupting the efficient functioning of the District Court."

The amended Immigration Act also appears to provide some limited discretion to the judge handling the application for a mass arrival warrant. However, if the judge finds that all the conditions stipulated in the application are met, he or she "must" grant the warrant (s. 317b).

Some observers have contended that the amended law provides for mandatory detention, which the UN High Commissioner for Refugees argues is contrary to international law. According to the New Zealand Human Rights Commission (HRC), the Immigration Amendment Act 2013 "provides for the mandatory detention of a 'mass arrival' and imposes other restrictions on people arriving in New Zealand as part of a 'mass arrival'."<sup>14</sup> However, the UN Working Group on Arbitrary Detention, after its 2014 mission to the country, reported that "New Zealand does not have a mandatory detention policy for asylum seekers, refugees, or immigrants in an irregular situation. Detained asylum claimants and undocumented persons who have been refused entry into the country have a right to habeas corpus to challenge the need for their detention."<sup>15</sup>

A comparison of the provisions in the New Zealand law to mandatory provisions in other national legal systems underscores the higher levels of discretion provided for in the NZ law. For instance, Australia's Migration Act states that "Parliament considers that it is in the national interest that each non-citizen who is a designated

<sup>13</sup> Immigration New Zealand. Website. "Immigration Act 2009: Deportation." Last updated 9 September 2011. <http://www.immigration.govt.nz/NR/exeres/120B21BA-5039-427A-B038-E37CB73F5001.htm>.

<sup>14</sup> Human Rights Commission. 2012b. "Immigration Amendment Bill 2012: Submission by the Human Rights Commission to the Transport and Industrial Relations Committee." 8 June 2012.

<sup>15</sup> Working Group on Arbitrary Detention. 2015. "Report of the Working Group on Arbitrary Detention: Addendum Mission to New Zealand." United Nations. 6 July 2015. A/HRC/30/36/Add.2.

person should be kept in custody until he or she: (a) leaves Australia; or (b) is given an entry permit” (Migration Act 1958, as amended by Migration Act 1992). The law defines precisely who is to be considered a “designated person,” leaving no discretion to authorities.

In contrast to Australia, but more like New Zealand, is Malta. All persons who are given deportation orders in Malta mandatorily must be detained. However, the law provides discretion with respect to the issuing of deportation orders. Article 14.1 of Malta’s Immigration Act states: “If any person is considered by the Principal Immigration Officer to be liable to removal as a prohibited immigrant under any of the provisions of article 5, the said Officer may issue a removal order against such person who shall have a right to appeal.”

Even if the NZ law does not provide for mandatory detention, the law’s provision on designating mass arrivals appears to provide for arbitrary detention, which runs contrary to international norms that require individual assessments of each case to determine issues of necessity and proportionality before depriving someone of his or her liberty. As UNHCR states in its 2012 detention guidelines, “‘Arbitrariness’ is to be interpreted broadly to include not only unlawfulness, but also elements of inappropriateness, injustice and lack of predictability. To guard against arbitrariness, any detention needs to be necessary in the individual case, reasonable in all the circumstances, and proportionate to a legitimate purpose.”

In legal advice provided in early 2012 during the debate over the proposed Immigration Amendment Act, the Ministry of Justice argued, “We consider that there is a legitimate purpose for detention, as detention of multiple individuals under a single warrant for a longer initial period of detention may be justified in the unique circumstances of a mass arrival. These circumstances, coupled with proper safeguards to ensure the detention is necessary and limited to a reasonable period, leads us to conclude that the Bill does not enable arbitrary detention. The Bill, therefore, appears to be consistent with the right to be free from arbitrary detention affirmed in s 22 of the Bill of Rights Act.”<sup>16</sup>

The New Zealand Human Rights Commission countered this argument, stating: “The Commission disagrees with this advice and considers that the detention provisions place a prima facie limit on the right to be free from arbitrary detention which cannot be justified.”<sup>17</sup>

**Detaining authorities.** The Immigration Act 2009 introduced changes from the previous immigration law with respect to who can detain people for immigration-related reasons. The Act provides that designated immigration officers have the authority to arrest and detain foreign nationals suspected of being unlawfully in New Zealand. Under the old Immigration Act, the authority to arrest and detain lay solely with members of the police (s. 312).<sup>18</sup>

<sup>16</sup> Ministry of Justice. 2012. “Immigration (Mass Arrivals) Amendment Bill.” 3 April 2012.

<sup>17</sup> Human Rights Commission. 2012. “The Immigration Amendment Bill: Mandatory Detention for Boat People: Do We Need It?” Public Forum, 20 August 2012. <http://www.hrc.co.nz/race-relations/new-zealand-diversity-forum-2/programme/the-immigration-amendment-bill-mandatory-detention-for-boat-people-do-we-need-it>.

<sup>18</sup> Immigration New Zealand. Website. “Immigration Act 2009: Deportation.” Last updated 9 September 2011. <http://www.immigration.govt.nz/NR/exeres/120B21BA-5039-427A-B038-E37CB73F5001.htm>.

**Length of detention.** New Zealand law provides various possibilities for the length of time a person can remain in immigration detention, including indefinite detention. For people included in a mass arrival warrant, there appears to be no maximum limit as immigration officers are authorised to detain asylum seekers who arrive as part of a “mass group” containing 30 or more persons for an initial period of six months, which then is renewable at 28-days-interval. (s. 317e).

For people not covered under a mass arrival warrant, there are various stages of detention (s. 316). During the initial stage of detention, people suspected of violating immigration laws can be held for a period of 96 hours without judicial review.<sup>19</sup> Under the previous immigration law, this initial detention period was limited to 72 hours. While this increase in length was criticized by the New Zealand Human Rights Commission, officials justified the increase as a way to give more time to officials to process people apprehended at the border and limit the number of people transferred to prisons.<sup>20</sup>

Foreign nationals are generally held at police stations during this initial period until a decision is made on their cases. If their identity has not been established, or they cannot be deported within 96 hours, an immigration officer can apply to a District Court Judge for a “warrant of commitment,” which extends detention up to 28 days (s. 316).<sup>21</sup> In these cases the person is transferred from a police station to one of New Zealand’s prisons.

The law does not specify a limit on how many times a “warrant of commitment” can be requested for a person, stating only that an official can apply “for a warrant of commitment (or a further warrant of commitment) authorising a person’s detention for up to 28 days” (s. 316). Government sources contend that “there is a general six-month limit on immigration detention except where a foreign national hinders their own departure.”<sup>22</sup> S. 323 of the Immigration Act stipulates specific grounds that must be met in order to justify detention beyond six months, including “that the person’s deportation or departure is prevented by some action or inaction of the person” and “that no exceptional circumstances exist that would warrant release.” If a judge is not satisfied that these conditions are met, he/she must order the release of the person.

**Asylum seekers.** New Zealand law provides for the detention of asylum seekers under specific circumstances. People who arrive as part of a “mass arrival group” (30 or more people) are subject to detention and their determination procedures are suspended as long as they remain under a “mass arrival warrant” (s. 135a).

Asylum seekers arriving at the border who are not part of a “mass arrival group” can initially be held in police custody pending a risk assessment and court hearing. After

<sup>19</sup> Ngatai, Jessica. 2010. *Study on Children and Migration*. Human Rights Commission. 14 May 2010. [http://www2.ohchr.org/english/issues/migration/consultation/docs/National%20Human%20Rights%20Institutions/NZ\\_Human\\_Rights\\_Commission.doc](http://www2.ohchr.org/english/issues/migration/consultation/docs/National%20Human%20Rights%20Institutions/NZ_Human_Rights_Commission.doc)

<sup>20</sup> Ngatai, Jessica. 2010. *Study on Children and Migration*. Human Rights Commission. 14 May 2010. [http://www2.ohchr.org/english/issues/migration/consultation/docs/National%20Human%20Rights%20Institutions/NZ\\_Human\\_Rights\\_Commission.doc](http://www2.ohchr.org/english/issues/migration/consultation/docs/National%20Human%20Rights%20Institutions/NZ_Human_Rights_Commission.doc) (accessed 12 August 2010).

<sup>21</sup> Immigration New Zealand. Website. “Immigration Act 2009: Deportation.” Last updated 9 September 2011. <http://www.immigration.govt.nz/NR/exeres/120B21BA-5039-427A-B038-E37CB73F5001.htm>.

<sup>22</sup> Department of Labour (DoL). Website. Regulatory impact statement—immigration act: monitoring and detention. <http://www.dol.govt.nz/publications/general/ris-immigration-act-monitoring.asp>

the hearing, claimants are either detained at a prison if identity or security concerns are raised or conditionally released to an approved address in their community or placed in the Mangere Accommodation Centre, which reportedly does not operate as a detention centre. Prisons and police stations do not provide separate facilities for immigrants in an irregular situation or asylum seekers.<sup>23</sup>

Asylum seekers appear to be only rarely detained in prisons. According to the Department of Corrections, between 2004-2010, only about 50 asylum seekers were transferred to "penal custody," and on only 14.1 percent of asylum seekers continued to be detained after their initial court hearing.<sup>24</sup><sup>25</sup> It generally takes three to five months for a decision to be made by a refugee and protection officer on an asylum claim.<sup>26</sup> According to DoL statistics, those apprehended upon arrival and then transferred to penal detention spend on average anywhere between 6-12 weeks in custody.<sup>27</sup>

Foreign nationals already detained in a prison under section 310 of the 2009 Immigration Act can claim asylum, but should do so within two days of being taken into custody.<sup>28</sup> In these cases, protection officers have access to the prison to interview asylum seekers and are encouraged to make a decision as quickly as possible, ideally within 20 weeks. Claimants, even children and vulnerable people, however, remain detained in prison until a decision is made, at which point they are released if granted refugee status.<sup>29</sup> Between July 2004 and April 2010, 4.4 percent of refugee claims were from those already detained.<sup>30</sup>

NGOs appear to be given access to visit asylum seekers confined in prisons, and detained asylum seekers have full access to legal representation and other support.<sup>31</sup> Nevertheless, concerns have been raised about limits in the ability of NGOs to have sufficient access to detainees to assist in them in their asylum applications<sup>32</sup> and about asylum seekers and irregular migrants who had not been provided with legal representation and free interpretation services.<sup>33</sup>

<sup>23</sup> Working Group on Arbitrary Detention. 2015. "Report of the Working Group on Arbitrary Detention: Addendum Mission to New Zealand." United Nations. 6 July 2015. A/HRC/30/36/Add.2.

<sup>24</sup> Poole, G.E. (Refugee Council of New Zealand). 2010a. Email message to Alex MacKinnon (Global Detention Project). 26 August 2010. Global Detention Project. Geneva, Switzerland.

<sup>25</sup> Reeve, Kelley (Prison Services, Department of Corrections). 2010. Letter to Alex MacKinnon (Global Detention Project). 24 September 2010. Global Detention Project. Geneva, Switzerland.

<sup>26</sup> Immigration New Zealand (INZ). 2010a. *Immigration New Zealand Statistics: Refugees*. Department of Labour. 31 July 2010. <http://www.immigration.govt.nz/NR/rdonlyres/FCDA531E-8691-4DE0-807B-DD2484DDA329/0/RF1RefugeeStatusAppsAcceptedAndDecided02Aug2010.pdf>

<sup>27</sup> Robinson, Glenys (Border Security Group, Department of Labour). 2010. Letter to Alex MacKinnon (Global Detention Project). 6 October 2010. Global Detention Project. Geneva, Switzerland

<sup>28</sup> *Immigration Act 2009*. 2009. Public Act 2009 No. 51. 16 November 2009. <http://www.legislation.govt.nz/act/public/2009/0051/latest/viewpdf.aspx>

<sup>29</sup> *Immigration Act 2009*. 2009. Public Act 2009 No. 51. 16 November 2009. <http://www.legislation.govt.nz/act/public/2009/0051/latest/viewpdf.aspx>

<sup>30</sup> Reeve, Kelley (Prison Services, Department of Corrections). 2010. Letter to Alex MacKinnon (Global Detention Project). 24 September 2010. Global Detention Project. Geneva, Switzerland.

<sup>31</sup> Poole, G.E. (Refugee Council of New Zealand). 2010b. Email message to Alex MacKinnon (Global Detention Project). 25 August 2010. Global Detention Project. Geneva, Switzerland.

<sup>32</sup> Refugee Council of New Zealand (RCNZ). 2009. *UNHCR Annual Consultations: NGO & Refugee Representatives Dialogue: Summary Report*. United Nations High Commissioner for Refugees. December 2009. <http://www.rc.org.nz/Annual%20Consultations%20Report%202009.pdf>

<sup>33</sup> Working Group on Arbitrary Detention. 2015. "Report of the Working Group on Arbitrary Detention: Addendum Mission to New Zealand." United Nations. 6 July 2015. A/HRC/30/36/Add.2.

According to the Ministry of Business, Innovation and Employment, the number of asylum seekers taken into custody on arrival to the country decreased significantly between 2004 and 2015. During 2004-2005, 62 asylum seekers were initially detained at “open non-secure facility” while 14 were “initially detained in penal custody”.<sup>34</sup> More recently, in 2012-2013, seven people were placed at the Mangere Accommodation Centre and five in penal institutions. In 2013-2014, the numbers were nine and four, respectively; in 2014-2015, seven and six.<sup>35</sup>

According to Department of Labour statistics, eight asylum seekers were detained at the border in FY 2009-10, originating from Nigeria, Sri Lanka, South Africa, Algeria, Iran, Pakistan and Iraq. While the GDP was unable to obtain figures for irregular migrants in detention, according to the Department of Labour asylum seekers detained in prisons were held for an average of 6.25 weeks in FY 2009-10, compared to 11.8 weeks in FY 2008-09 and 6.9 weeks in FY 2007-08.<sup>36</sup>

Largely owing to its geographic location, asylum claims in New Zealand are significantly lower in comparison to Australia. As of the end of 2014, New Zealand had 91 pending asylum cases and had 1,349 certified refugees.<sup>37</sup> In 2014, 288 asylum seekers applied for refugee status, compared to 8,988 in Australia.<sup>38</sup> During the year, 78 applications were approved, while 223 were declined.<sup>39</sup> In 2015, 352 refugee claims were made, 133 were approved and 155 declined.<sup>40</sup> Since 2007, the approval rate for refugee claimants to New Zealand has remained between 25 and 30 per cent. According to the UNHCR, in 2014, the recognition rate was 25.9 per cent.<sup>41</sup>

The top five countries of origin among asylum seekers in 2014-2015, were China (27), Fiji (27) Pakistan (25), Sri Lanka (20) and Iran (17).<sup>42</sup>

Asylum seekers can appeal to the Immigration and Protection Tribunal if their claims are rejected. For those detained, the appeal must be made within five working days of the decision. Legal aid is available to those wanting to challenge their decision, a significant change provided for through the 2009 amendments to the Immigration

<sup>34</sup> Reeve, Kelley (Prison Services, Department of Corrections). 2010. Letter to Alex MacKinnon (Global Detention Project). 24 September 2010. Global Detention Project. Geneva, Switzerland.

<sup>35</sup> New Zealand Human Rights Commission, Submission to the CAR in relation to NZ's 6<sup>th</sup> periodic review, March 2015, [https://www.hrc.co.nz/files/6314/3130/4434/HRC\\_submission\\_to\\_CAT\\_Final.pdf](https://www.hrc.co.nz/files/6314/3130/4434/HRC_submission_to_CAT_Final.pdf)

<sup>36</sup> Robinson, Glenys (Border Security Group, Department of Labour). 2010. Letter to Alex MacKinnon (Global Detention Project). 6 October 2010. Global Detention Project. Geneva, Switzerland.

<sup>37</sup> United Nations High Commissioner for Refugees (UNHCR). 2014. *Statistical Yearbook 2014*, Annexes. Table 1. [file:///C:/Users/Romane/Downloads/Statistical\\_Yearbook\\_2014.pdf](file:///C:/Users/Romane/Downloads/Statistical_Yearbook_2014.pdf)

<sup>38</sup> United Nations High Commissioner for Refugees (UNHCR). 2014. *Statistical Yearbook 2014*, Annexes. Table 10. [file:///C:/Users/Romane/Downloads/Statistical\\_Yearbook\\_2014.pdf](file:///C:/Users/Romane/Downloads/Statistical_Yearbook_2014.pdf)

<sup>39</sup> United Nations High Commissioner for Refugees (UNHCR). 2014. *Statistical Yearbook 2014*, Annexes. Table 10. [file:///C:/Users/Romane/Downloads/Statistical\\_Yearbook\\_2014.pdf](file:///C:/Users/Romane/Downloads/Statistical_Yearbook_2014.pdf)

<sup>40</sup> New Zealand Immigration, *Refugee Status Branch Claims and Decisions, 2005-2015*, <https://www.immigration.govt.nz/documents/statistics/rsbrefugeeandprotectionstatpak.pdf>

<sup>41</sup> United Nations High Commissioner for Refugees (UNHCR). 2014. *Statistical Yearbook 2014*, Annexes. Table 10. [file:///C:/Users/Romane/Downloads/Statistical\\_Yearbook\\_2014.pdf](file:///C:/Users/Romane/Downloads/Statistical_Yearbook_2014.pdf)

<sup>42</sup> New Zealand Immigration, *Refugee Status Branch Claims by Nationality, 2014-2015*, <https://www.immigration.govt.nz/documents/statistics/rsbrefugeeandprotectionstatpak.pdf>



Act.<sup>43</sup> In 2014, the Immigration and Protection Tribunal heard 190 cases from people whose status claims were declined. Of these, 81 were granted and 110 were dismissed.<sup>44</sup>

**Minors.** With the adoption of the Immigration Amendment Act 2013, the Immigration Act formally provided for the detention of minors who are accompanied by a parent or guardian as part of a “mass arrival group” (s. 317c5). Previously, the Immigration Act did not provide explicitly for the detention of minors. However, nor was there “an explicit presumption against detention of children, and reference to [United Nations Convention on the Rights of the Child] obligations.”<sup>45</sup>

Minors must have a responsible adult to represent their interests (either a parent or a responsible adult nominated by immigration authorities) (s. 375),<sup>46</sup> be able to express views on detention, and have these views considered at any of their proceedings (s. 377).<sup>47</sup>

Despite New Zealand’s provisions regarding the detention of children, some advocates have pointed to positive aspects in its treatment of asylum seekers to argue that the country could play a role in regional efforts to end the immigration detention of children. This idea was explored during a May 2016 event in New Zealand that was part of the global [End Immigration Detention of Children](#) campaign.<sup>48</sup>

**Alternatives to detention.** At the discretion of an immigration officer, foreign nationals liable for arrest can be offered an alternative to detention when not part of a “mass arrival group.” Under s. 315 of the Immigration Act, alternatives include residing at a specified place, reporting to a specified place at certain times, and/or having a guarantor ensure compliance with residence and reporting requirements. Immigration officers, however, also have the discretion to end any agreement with respect to alternatives, while foreign nationals can be arrested and detained if they violate any of the residence and reporting requirements.

For asylum seekers there is a sliding scale of options: detention in prison, confinement at the Mangere Accommodation Centre, or conditional or unrestricted release. Conditional release is offered at the discretion of an immigration officer<sup>49</sup> and

<sup>43</sup> New Zealand Human Rights Commission, Submission to the CAR in relation to NZ’s 6<sup>th</sup> periodic review, March 2015, [https://www.hrc.co.nz/files/6314/3130/4434/HRC\\_submission\\_to\\_CAT\\_Final.pdf](https://www.hrc.co.nz/files/6314/3130/4434/HRC_submission_to_CAT_Final.pdf)

<sup>44</sup> Immigration and Protection Tribunal, Annual Report 2014-2015, published by the Judge Peter Spiller in August 2015, <http://www.justice.govt.nz/tribunals/immigration-protection-tribunal/annual-reports/annual-report-2015>

<sup>45</sup> Ngatai, Jessica. 2010. *Study on Children and Migration*. Human Rights Commission. 14 May 2010. [http://www2.ohchr.org/english/issues/migration/consultation/docs/National%20Human%20Rights%20Institutions/NZ\\_Human\\_Rights\\_Commission.doc](http://www2.ohchr.org/english/issues/migration/consultation/docs/National%20Human%20Rights%20Institutions/NZ_Human_Rights_Commission.doc)

<sup>46</sup> *Immigration Act 2009*. 2009. Public Act 2009 No. 51. 16 November 2009. <http://www.legislation.govt.nz/act/public/2009/0051/latest/viewpdf.aspx>

<sup>47</sup> *Immigration Act 2009*. 2009. Public Act 2009 No. 51. 16 November 2009. <http://www.legislation.govt.nz/act/public/2009/0051/latest/viewpdf.aspx> / Ngatai, Jessica. 2010. *Study on Children and Migration*. Human Rights Commission. 14 May 2010. [http://www2.ohchr.org/english/issues/migration/consultation/docs/National%20Human%20Rights%20Institutions/NZ\\_Human\\_Rights\\_Commission.doc](http://www2.ohchr.org/english/issues/migration/consultation/docs/National%20Human%20Rights%20Institutions/NZ_Human_Rights_Commission.doc)

<sup>48</sup> Evening Report, “NZ could play key role in ending child detention, say refugee advocates”, May 13<sup>th</sup> 2016. <http://eveningreport.nz/2016/05/13/nz-could-play-key-role-in-ending-child-detention-say-refugee-advocates/>.

<sup>49</sup> Field, Ophelia. 2006. *Alternatives to Detention of Asylum Seekers and Refugees*. United Nations High Commissioner for Refugees. April 2006. <http://idcoalition.org/wp-content/uploads/2008/12/unhcr-doc-on-alternatives-with-alice-edwards.pdf>

asylum seekers must attend any interviews with immigration authorities during the refugee determination process (s. 315(1)).<sup>50</sup>

Asylum seekers granted conditional release have the option of staying with members of their family or community, or at a hostel. Since 2006 the Auckland Refugee Council has run one such hostel, which hosts those awaiting a decision on their claims, as well as a small number whose claims have been denied but where the principle of non-refoulement applies. The majority of residents come from the Democratic Republic of Congo, Somalia, and Afghanistan, and they stay between six and 12 months. In general there is a one-year limit at the hostel unless Immigration New Zealand (INZ) denies someone a work permit due to “identity issues.” In June 2009 there were 12 residents at the hostel: 6 men, 3 women and 3 children. Three of these had been there for more than 2 years.<sup>51</sup>

**Deportation.** With adoption of the Immigration Act 2009, the New Zealand deportation process “was simplified to better balance efficiency with fairness,” according to the Immigration department. Among the changes highlighted by the government: “The terms ‘removal’ and ‘revocation’ are no longer used. Instead, the single term ‘deportation’ is used. People who are deported, and aged 18 or over, may be prohibited from re-entering New Zealand for two years, five years or permanently, depending on the reason for deportation.”<sup>52</sup>

Part 6 of the Immigration Act (sections 153-182) contain detailed provisions regarding deportation, including who is liable to deportation. Foreign nationals subject to deportation include those residing in New Zealand unlawfully because visa expired, was granted in error, or obtained using fraudulent means. Additional grounds include “criminal offending”; “matters relating to character”; “breaching conditions of a resident visa”; “cancellation of refugee and/or protection status where the person is not a New Zealand citizen”; and “being a risk or threat to security.”<sup>53</sup>

During 2015, more than 1,300 overseas visitors were denied entry to New Zealand, mostly because border officials did not believe their stated travel purpose was genuine.<sup>54</sup> The top five countries of original of those refused entry were Hong Kong (China) (115), South Africa (94), Great Britain (89), Taiwan (88) and Malaysia (85).<sup>55</sup>

During 2011, New Zealand reportedly deported 664 people, including 149 women and 515 men, with most deportees coming from Samoa.<sup>56</sup> According to statistics published by New Zealand Refugee Law, the number of executed removal orders

<sup>50</sup> *Immigration Act 2009*. 2009. Public Act 2009 No. 51. 16 November 2009.

<http://www.legislation.govt.nz/act/public/2009/0051/latest/viewpdf.aspx>

<sup>51</sup> Auckland Refugee Council Inc. (ARCI). 2009. *Hostel Report from July 2008 to June 2009*. <http://www.aucklandrefugeecouncil.org/hostelreport.htm>

<sup>52</sup> *Immigration Act 2009*. 2009. Public Act 2009 No. 51. 16 November 2009. <http://www.legislation.govt.nz/act/public/2009/0051/latest/viewpdf.aspx>

<sup>53</sup> *Immigration Act 2009*. 2009. Public Act 2009 No. 51. 16 November 2009. <http://www.legislation.govt.nz/act/public/2009/0051/latest/viewpdf.aspx>

<sup>54</sup> Immigration New Zealand, *Statistics on Migration*, 2015. <https://www.immigration.govt.nz/about-us/research-and-statistics/statistics>

<sup>55</sup> Immigration New Zealand, *Statistics on Migration*, 2015. <https://www.immigration.govt.nz/about-us/research-and-statistics/statistics>

<sup>56</sup> New Zealand Herald. 2012. “Samoa, India and China top deportation list.” 25 October 2012. [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10842665](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10842665)

has steadily declined over the last several years, with 970 in 2005-2006, 838 in 2007-2008, 740 in 2008-2009, and 688 in 2009-2010 (RefNZ website “Statistics”).

**Privatisation.** In 2009, the Parliament passed the Corrections (Contract Management of Prisons) Amendment Act, which allows private companies to manage prisons and detention centres in New Zealand. According to the Department of Corrections, “Contract management of prisons is where private sector organisations competitively tender for contracts to manage the operation of a prison. The prison is operated by an external party, under the terms of a contract with Government, where Corrections remains ultimately responsible to the public and Government. The Government’s objective is to use private sector innovation and international experience to improve quality, efficiency and cost-effectiveness across the corrections system.”<sup>57</sup>

In 2010, the private security firm Serco was awarded a contract to operate the Mt. Eden Corrections Facility, which is used to hold non-citizens in administrative detention. Serco has been harshly criticized for its operations at prisons in detention centres in Australia and the United Kingdom.<sup>58</sup>

According to a news report, “Serco New Zealand, the local unit of the UK’s Serco Group, reaped a modest profit in the first full year of its \$300 million, 10-year contract to run Mt Eden/Auckland Central Remand Prison for the Department of Corrections. Profit was \$368,623 in calendar 2012, from about \$1 million in 2011, when it took over full management of the facility mid way through the year.”<sup>59</sup>

Serco “is also part of the Fletcher Building-led group that last year won the contract to design, build and operate Auckland’s new 960-bed Wiri prison in south Auckland, which is due to open in 2015. ... The Wiri prison was the first of the government’s so-called public-private partnerships, or PPPs, where the private sector is allowed to invest in what has traditionally been a public sector role of providing health, education and other facilities.”<sup>60</sup>

In 2013, the government announced that as part of its plans to rehab the Mangere refugee accommodation centre, it was hiring a private contractor to construct new facilities, which the government would lease back over time.<sup>61</sup>

## DETENTION INFRASTRUCTURE

Similar to other countries that have relatively small populations of undocumented non-citizens and receive few asylum seekers (like [Ireland](#)), New Zealand lacks a dedicated system of migrant detention centres. Instead, it uses police stations and prisons to hold detainees. It also operates an accommodation centre for asylum

<sup>57</sup> Department of Corrections (DoC). News Bulletin. “Contract Management of Prisons Project.”

Undated. [http://www.corrections.govt.nz/news-and-publications/contract\\_management\\_of\\_prisons\\_project.html](http://www.corrections.govt.nz/news-and-publications/contract_management_of_prisons_project.html)

<sup>58</sup> Vance, Andrea. 2010. “Controversial British firm named to run Mt Eden prison.” Dominion Post. 15 December 2010.

<sup>59</sup> Underhill, Andrea, “Serco reaps modest profit from first full-year running Mt Eden jail”, NBR, 10 June 2013.

<http://www.nbr.co.nz/article/serco-reaps-modest-profit-first-full-year-running-mt-eden-jail-bd-141322>

<sup>60</sup> Underhill, Andrea, “Serco reaps modest profit from first full-year running Mt Eden jail”, NBR, 10 June 2013.

<http://www.nbr.co.nz/article/serco-reaps-modest-profit-first-full-year-running-mt-eden-jail-bd-141322>

<sup>61</sup> National Party. 2013. “Budget 2013: Rebuild for Mangere refugee centre.” 10 May 2013. <http://www.national.org.nz/Article.aspx?articleId=40952>

seekers that provides varying degrees of limitations on freedom of movement depending on the individual case.

New Zealand does not make available detailed statistics about where immigration detainees are held or how many people are detained. In response to a request from the Global Detention Project (GDP), an official at the Department of Labour wrote, “The Department does not hold information regarding which prisons hold asylum seekers or which particular corrections facility irregular migrants or asylum seekers were held at.”<sup>62</sup>

The Department of Corrections (DoC) statistics on people held in the prison system also do not make readily available data on people confined for immigration-related reasons. According to quarterly prison statistics published in September 2013, less than one percent of the 7,900 people in the prison system on 30 September 2013 were held for “administrative” purposes.<sup>63</sup> Previously, in 2010, the Department of Corrections responded to a GDP information request by providing a statistics on the total number of asylum seekers transferred to prisons after being detained at the border, which totalled just over 50 during the period 2004-2010.<sup>64</sup>

According to a 2010 communication from the Refugee Council of New Zealand (RCNZ), “The Government has plans, which RCNZ fully supports, to build a small secure facility at the Mangere Centre and stop any and all detention in any correctional facility.”<sup>65</sup> However, when queried about this, an official at the Department of Labour claimed that there were “no plans at present to build” such a facility.<sup>66</sup> On the other hand, in mid-2013, the government announced that it would spend several million dollars to rehab the Mangere facility to provide space to “accommodate” people who arrive as part of “mass arrival groups.”<sup>67</sup> Commenting on the building project in mid-2013, New Zealand Immigration Minister Michael Woodhouse said that asylum seekers housed in the new facility would be low security risks, and that prisons would continue to be used for those considered high risk. “There are no plans to build a separate detention centre where there are people for whom security is an issue and it is required that they be detained. ... It is almost certainly to be prisons.”<sup>68</sup>

**Police stations.** Under the Immigration Act 2009, any police station in New Zealand can be used to detain a person without a warrant of commitment for up to 96 hours (s. 331b),<sup>69</sup> including both undocumented migrants and asylum seekers whose

<sup>62</sup> Robinson, Glenys (Border Security Group, Department of Labour). 2010. Letter to Alex MacKinnon (Global Detention Project). 6 October 2010. Global Detention Project. Geneva, Switzerland.

<sup>63</sup> Department of Corrections (DoC). 2013. “Prison facts and statistics - September 2013.

<sup>64</sup> Reeve, Kelley (Prison Services, Department of Corrections). 2010. Letter to Alex MacKinnon (Global Detention Project). 24 September 2010. Global Detention Project. Geneva, Switzerland.

<sup>65</sup> Poole, G.E. (Refugee Council of New Zealand). 2010a. Email message to Alex MacKinnon (Global Detention Project). 26 August 2010. Global Detention Project. Geneva, Switzerland.

<sup>66</sup> Robinson, Glenys (Border Security Group, Department of Labour). 2010. Letter to Alex MacKinnon (Global Detention Project). 6 October 2010. Global Detention Project. Geneva, Switzerland.

<sup>67</sup> Fairfax NZ News. 2013. “\$5m rebuild for refugee centre.” 10 May 2013

<sup>68</sup> Fairfax NZ News. 2013. “\$5m rebuild for refugee centre.” 10 May 2013

<sup>69</sup> *Immigration Act 2009*. 2009. Public Act 2009 No. 51. 16 November

2009. <http://www.legislation.govt.nz/act/public/2009/0051/latest/viewpdf.aspx> / Blakemore, Dean (Immigration New Zealand). 2010. Email message to Alex MacKinnon (Global Detention Project). 31 August 2010. Global Detention Project. Geneva, Switzerland.

identity is uncertain. Under the previous immigration act detention could only last up to 72 hours. Individuals reportedly are generally detained at police stations for less than 48 hours.<sup>70</sup>

The appropriateness of using these facilities for immigration purposes has been criticized by human rights groups. For instance, the Papakura police station in Auckland has been criticised for not providing separate facilities for migrants and asylum seekers, as well as overcrowding and poor hygiene. Detainees also claimed being denied access to their belongings and being forced to sleep in cells without a mattress. Additional concerns have been raised over the fact that police officers have not been trained in dealing with asylum seekers.<sup>71</sup> Moreover, in its May 2009 report, the UN Committee against Torture criticised the insufficient training in human rights provided to immigration officials.<sup>72</sup>

**Prisons.** As of 2015, New Zealand appeared to have 20 prisons in operation (DoC website). According to information gathered by the Global Detention Project, only a handful of prisons appear to be used regularly for the purposes of immigration-related detention. These include the Mt. Eden Corrections Facility (formerly Auckland Central Remand Prison), Waikeria Prison, and the Arohata Prison for Women.<sup>73</sup>

Generally, detainees are held in the remand sections of prisons, although in most cases they appear not to be segregated from criminal detainees.<sup>74</sup> The Mt. Eden Corrections Facility opened its doors in 2011 under the management of Serco, a multinational private prison contractor.

While there is no separate protocol for women, those detained are held in one of New Zealand's three women's prisons, located in Auckland, Wellington, and Christchurch.<sup>75</sup> Currently, young males under the age of 17, as well as 18 and 19 year olds deemed vulnerable, can be held at youth units maintained by the Department of Corrections. Those under 17 can also be held at a youth justice facility operated by Child, Youth and Family.<sup>76</sup>

<sup>70</sup> Human Rights Foundation of New Zealand (HRF). 2009. *Alternative report on the 5th periodic report of the New Zealand Government under the International Convention Against Torture*. April 2009. [http://www2.ohchr.org/english/bodies/cat/docs/ngos/HRFA\\_NZ42.pdf](http://www2.ohchr.org/english/bodies/cat/docs/ngos/HRFA_NZ42.pdf)

<sup>71</sup> Human Rights Foundation of New Zealand (HRF). 2009. *Alternative report on the 5th periodic report of the New Zealand Government under the International Convention Against Torture*. April 2009. [http://www2.ohchr.org/english/bodies/cat/docs/ngos/HRFA\\_NZ42.pdf](http://www2.ohchr.org/english/bodies/cat/docs/ngos/HRFA_NZ42.pdf)

<sup>72</sup> Committee Against Torture (CAT). 2009. *Concluding observations of the Committee against Torture: New Zealand*. 14 May 2009. CAT/C/NZL/CO/5. [http://www.hrc.co.nz/hrc\\_new/hrc/cms/files/documents/19-May-2009\\_14-32-51\\_UN\\_Convention\\_against\\_torture\\_report\\_on\\_NZ.pdf](http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/19-May-2009_14-32-51_UN_Convention_against_torture_report_on_NZ.pdf)

<sup>73</sup> Working Group on Arbitrary Detention. 2015. "Report of the Working Group on Arbitrary Detention: Addendum Mission to New Zealand." United Nations. 6 July 2015. A/HRC/30/36/Add.2.

<sup>74</sup> Reeve, Kelley (Prison Services, Department of Corrections). 2010. Letter to Alex MacKinnon (Global Detention Project). 24 September 2010. Global Detention Project. Geneva, Switzerland

<sup>75</sup> Reeve, Kelley (Prison Services, Department of Corrections). 2010. Letter to Alex MacKinnon (Global Detention Project). 24 September 2010. Global Detention Project. Geneva, Switzerland

<sup>76</sup> Reeve, Kelley (Prison Services, Department of Corrections). 2010. Letter to Alex MacKinnon (Global Detention Project). 24 September 2010. Global Detention Project. Geneva, Switzerland

Human rights groups have argued that prisons are inappropriate places to use for immigration-related detention.<sup>77</sup> The Working Group on Arbitrary Detention highlighted this after its 2014 mission to the country.<sup>78</sup>

**Mangere Accommodation Centre.** Located in a former army barracks, the Mangere Accommodation Centre (MAC)—also known as the Mangere Refugee Resettlement Centre—is the sole facility in New Zealand dedicated entirely to housing refugees and asylum seekers. As of 2015, the 70-year-old facility had a capacity of 150, though there were plans to increase Mangere’s capacity to 192 beds and provide a surge capacity of 300 in the case of a mass arrival by sea.<sup>79</sup>

The centre’s population is predominantly made up of incoming UN Quota Refugees being resettled in the country (of which New Zealand accepts 750 annually), as well as asylum seekers whose identity is uncertain and who do not pose either a risk of absconding or to national security.<sup>80</sup> Both are housed together, which has reportedly at times caused resentment and tension between the two groups, and has led to criticism of differences in treatment, including a lack of parity in accessing housing and employment support services.<sup>81</sup> On average, asylum seekers spend six weeks at the centre. While at the MAC, the Immigration Act officially classifies them as “detainees.”<sup>82</sup>

The Global Detention Project codes the centre as non-secure facility, thus *not* a detention site. This coding is based in large measure on the reporting of the WGAD after its 2014 mission. It stated: “Quota refugees who are accommodated at the Centre are New Zealand residents and as such can freely leave the Centre without seeking permission. The regime for persons who had requested protection status was harder than the regime for persons who had already obtained refugee status. Both categories of people may leave the Centre, but those who have requested protection status must request authorization.”<sup>83</sup>

<sup>77</sup> Committee Against Torture (CAT). 2009. *Concluding observations of the Committee against Torture: New Zealand*. 14 May 2009. CAT/C/NZL/CO/5. [http://www.hrc.co.nz/hrc\\_new/hrc/cms/files/documents/19-May-2009\\_14-32-51\\_UN\\_Convention\\_against\\_torture\\_report\\_on\\_NZ.pdf](http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/19-May-2009_14-32-51_UN_Convention_against_torture_report_on_NZ.pdf) / Human Rights Foundation of New Zealand (HRF).

2009. *Alternative report on the 5th periodic report of the New Zealand Government under the International Convention Against Torture*. April 2009. [http://www2.ohchr.org/english/bodies/cat/docs/ngos/HRFA\\_NZ42.pdf](http://www2.ohchr.org/english/bodies/cat/docs/ngos/HRFA_NZ42.pdf)

<sup>78</sup> Working Group on Arbitrary Detention. 2015. "Report of the Working Group on Arbitrary Detention: Addendum Mission to New Zealand." United Nations. 6 July 2015. A/HRC/30/36/Add.2.

<sup>79</sup> Fairfax NZ News. 2013. "\$5m rebuild for refugee centre." 10 May 2013.

<sup>80</sup> Immigration New Zealand (INZ). 2010c. Refugee Resettlement Factsheet. Department of Labour. 16 December 2010. <http://immigration.govt.nz/migrant/general/generalinformation/media/refugeefactsheet.htm> (accessed 10 January 2011). / Poole, G.E. (Refugee Council of New Zealand). 2010b. Email message to Alex MacKinnon (Global Detention Project). 25 August 2010. Global Detention Project. Geneva, Switzerland.

<sup>81</sup> Refugee Council of New Zealand (RCNZ). 2009. *UNHCR Annual Consultations: NGO & Refugee Representatives Dialogue: Summary Report*. United Nations High Commissioner for Refugees. December 2009. <http://www.rc.org.nz/Annual%20Consultations%20Report%202009.pdf> / Dunstan, Stephen et al. 2004. *Refugee Voices: A Journey Towards Resettlement*. Department of Labour. 2004.

<http://www.immigration.govt.nz/NR/rdonlyres/31A8BBED-915C-488C-AB49-607A41B6A32B/0/Refugeevoices02Backgroundpp71108.pdf>

<sup>82</sup> Field, Ophelia. 2006. *Alternatives to Detention of Asylum Seekers and Refugees*. United Nations High Commissioner for Refugees. April 2006. <http://idcoalition.org/wp-content/uploads/2008/12/unhcr-doc-on-alternatives-with-alice-edwards.pdf>

<sup>83</sup> Working Group on Arbitrary Detention. 2015. "Report of the Working Group on Arbitrary Detention: Addendum Mission to New Zealand." United Nations. 6 July 2015. A/HRC/30/36/Add.2.

New Zealand authorities characterize the facility as “open detention.”<sup>84</sup> The structure itself reportedly resembles a hostel, as there are no security guards or walls,<sup>85</sup> and while electronic gates are in place, in practice they are mainly used to keep non-residents out.<sup>86</sup>

According to the Refugee Council of New Zealand, “some categories of asylum seekers have restricted access to leaving the premises and others must sign in and out with restricted hours of freedom of movement.” While it is effectively based on an honour system, if an asylum seeker violates these restrictions they can be detained at a prison.<sup>87</sup> This is in contrast to Quota Refugees, who have no restrictions on leaving the centre during the day or staying away overnight.<sup>88</sup> It is very rare, however, that an asylum seeker is transferred from the MAC to a prison; there were only four such occurrences between July 2007 and June 2010.<sup>89</sup>

Immigration New Zealand (INZ) manages the centre, with the help of NGOs such as Refugee Services New Zealand and Refugees as Survivors.<sup>90</sup> Some institutions, such as the Auckland University of Technology, are helping the Centre with programmes for refugees. It is designed to accommodate both adult and minor asylum seekers, and it has a separate one-block section used specifically for women and children. Children are only accommodated with adults if they are with family members and it is in their best interests.<sup>91</sup>

The number of asylum seekers at the MAC has declined significantly over the past five years. In 2015, at the time of the WGAD’s visit, the Centre was accommodating a refugee quota intake of 138 persons who were participating in the six-week reception programme and undergoing health assessments, as well as eight asylum seekers (four of whom had been detained under the Immigration Act 2009 and four of whom were on conditional release to the Centre). Only 15 were held at the centre in FY

<sup>84</sup> Department of Labour (DoL). Website. Regulatory impact statement—immigration act: monitoring and detention.<http://www.dol.govt.nz/publications/general/ris-immigration-act-monitoring.asp>

<sup>85</sup> Poole, G.E. (Refugee Council of New Zealand). 2010a. Email message to Alex MacKinnon (Global Detention Project). 26 August 2010. Global Detention Project. Geneva, Switzerland.

<sup>86</sup> Thammavongsa, Nikorn. 2009. *Mangere Refugee Resettlement Centre*. Unitec Institute of Technology. 2009.<http://unitec.researchbank.ac.nz/bitstream/handle/10652/1380/Nikorn%20Thammavongsa%20MArch.pdf?sequence=1>

<sup>87</sup> Poole, G.E. (Refugee Council of New Zealand). 2010a. Email message to Alex MacKinnon (Global Detention Project). 26 August 2010. Global Detention Project. Geneva, Switzerland

<sup>88</sup> Refugee Council of New Zealand (RCNZ). 2009. *UNHCR Annual Consultations: NGO & Refugee Representatives Dialogue: Summary Report*. United Nations High Commissioner for Refugees. December

2009.<http://www.rc.org.nz/Annual%20Consultations%20Report%202009.pdf>; Field, Ophelia. 2006. *Alternatives to Detention of Asylum Seekers and Refugees*. United Nations High Commissioner for Refugees. April

2006.<http://idcoalition.org/wp-content/uploads/2008/12/unhcr-doc-on-alternatives-with-alice-edwards.pdf>

<sup>89</sup> Robinson, Glenys (Border Security Group, Department of Labour). 2010. Letter to Alex MacKinnon (Global Detention Project). 6 October 2010. Global Detention Project. Geneva, Switzerland.

<sup>90</sup> Immigration New Zealand (INZ). 2010c. Refugee Resettlement Factsheet. Department of Labour. 16 December 2010.<http://immigration.govt.nz/migrant/general/generalinformation/media/refugeefactsheet.htm>/Thammavongsa,

Nikorn. 2009. *Mangere Refugee Resettlement Centre*. Unitec Institute of Technology. 2009.<http://unitec.researchbank.ac.nz/bitstream/handle/10652/1380/Nikorn%20Thammavongsa%20MArch.pdf?sequence=1> / Field, Ophelia. 2006. *Alternatives to Detention of Asylum Seekers and Refugees*. United Nations High Commissioner for Refugees. April 2006.<http://idcoalition.org/wp-content/uploads/2008/12/unhcr-doc-on-alternatives-with-alice-edwards.pdf>

<sup>91</sup> Ngatai, Jessica. 2010. *Study on Children and Migration*. Human Rights Commission. 14 May 2010.[http://www2.ohchr.org/english/issues/migration/consultation/docs/National%20Human%20Rights%20Institutions/NZ\\_Human\\_Rights\\_Commission.doc](http://www2.ohchr.org/english/issues/migration/consultation/docs/National%20Human%20Rights%20Institutions/NZ_Human_Rights_Commission.doc)

2009-10, compared to 34 in FY 2006-07 and 62 in FY 2004-05.<sup>92</sup> Both local NGOs and UNHCR have expressed concern that the declining numbers are due to the growing interdiction of asylum seekers at transit airports, preventing genuine refugees from reaching New Zealand and filing asylum claims.<sup>93</sup>

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<sup>92</sup> Reeve, Kelley (Prison Services, Department of Corrections). 2010. Letter to Alex MacKinnon (Global Detention Project). 24 September 2010. Global Detention Project. Geneva, Switzerland.

<sup>93</sup> Refugee Council of New Zealand (RCNZ). 2010. *United Nations Roundtable Forum in Korea on Alternatives to Detention*. RCNZ. May 2010. <http://www.rc.org.nz/United-Nations-Roundtable-Forum-in-Korea-Apr2010.pdf> / *Immigration Act 2009*. 2009. Public Act 2009 No. 51. 16 November 2009. <http://www.legislation.govt.nz/act/public/2009/0051/latest/viewpdf.aspx>