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

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**Abstract:** New Zealand has ratified many of the same international instruments instructing resettled refugees' rights as other resettlement countries. However, New Zealand has adopted broad strategies with little policy specificity or funding to ensure settling refugees' rights are upheld. In examining selected rights, this article demonstrates that New Zealand refugee policy remains aspirational yet precarious in two main ways. First, refugee pathways to protection, via the UN quota system or as Convention refugees, significantly affect both settlement support and family reunification. Second, policy implementation is often inconsistent and, at times, discriminatory, because economic, social and cultural rights are inadequately embedded into New Zealand's human rights framework. It is thus difficult to claim that New Zealand consistently and sufficiently meets its international obligations, despite the aspirations articulated within New Zealand's recently developed Refugee Resettlement Strategy.

**Keywords:** refugee; policy; resettlement; human rights; New Zealand; international.

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## **1 Introduction**

New Zealand has accepted refugees since World War II and maintained a commitment to settling 750 refugees as part of its quota programme since 1987 (Beaglehole, 2013). In this context, Immigration New Zealand (INZ), which is responsible for coordinating refugee-specific services, along with other government agencies has consulted the refugee sector and used longitudinal research on Quota refugees to inform New Zealand's Refugee Resettlement Strategy (Department of Labour, 2004; Ministry of Business Innovation and Employment, 2012). Since July 2013, this strategy has guided a whole-of-government framework to achieve five agreed settlement outcomes for refugees and their families:

- **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 (Immigration New Zealand, 2012).

The strategy's attention to refugee settlement is welcome but we argue that it remains an aspirational document identifying the need for, but unable to guarantee, refugee access to specific goods and services. This is because, although New Zealand mostly complies with its international obligations regarding refugee settlement, its policy approach is constrained and potentially discriminatory in many ways.

This article does not attempt to examine settlement policy compliance with every international human right enjoyed by refugees in New Zealand. Instead, the first section of the paper indicates how a refugee's pathway to protection, via the United Nations (UN) quota system, as asylum seekers and subsequently Convention refugees, or as refugees joining their families in New Zealand under the Refugee Family Support Category (RFSC) significantly affects both settlement support and family reunification. The second section identifies how inadequately embedded economic, social and cultural rights (ESCR) undermine implementation leading to inconsistent and discriminatory policy compliance and dependence on non-state actors. Overall, we argue that New Zealand's approach to settling refugees remains both aspirational and precarious (and at times exclusionary), despite the country's long history of welcoming refugees to its shores.

## **2 Different pathways to protection, different settlement experiences**

This first section provides evidence that the pathway by which refugees gain protection in New Zealand matters significantly in terms of their subsequent settlement experience.

Crock (in this issue) highlights how refugees can gain protection through multiple channels in New Zealand. *Quota refugees* are people selected overseas by the United Nations High Commissioner for Refugees (UNHCR) using 1951 UN Refugee Convention criteria. Within the quota, New Zealand reserves a place for women at risk, medical/disabled, and emergency protection cases with a focus on family links underlying these categories. In addition, New Zealand may accept asylum seekers, whose claim upon arrival or during their stay in New Zealand is approved by the Refugee Status Branch of INZ or, on appeal, by the Immigration and Protection Tribunal. Once their refugee status is determined, 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 (‘Reunification refugees’ – see later discussion in this article). 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 UNHCR (see Beaglehole, 2013).

Tellingly, the Refugee Resettlement Strategy explicitly states that it only applies to refugees arriving under New Zealand’s quota programme with an intention (though not as a formal written commitment) to expand the programme to all refugees at an unspecified future date. This current approach reflects and reinforces historical discrimination against Convention refugees that permeates both refugee settlement support and family reunification policy (Bloom and Udaheureka, 2014; McBrien, 2014).

### *2.1 Targeted settlement support*

A refugee’s protection pathway significantly affects the level of settlement support received in New Zealand. Within New Zealand, a ‘Quota refugee’ is someone who already has refugee status prior to their arrival and is resettled through an agreement with UNHCR and the government as part of its annual 750 person resettlement programme. A ‘Convention refugee’ is a person who came to New Zealand as an asylum seeker and has had their request successfully granted for refugee status on the basis of the 1951 United Nations Convention Relating to the Status of Refugees. Quota refugees are favoured largely (but not exclusively) because their orientation programme initially houses them free of charge for six weeks at the Mangere Refugee Resettlement Centre (MRRC) in Auckland. In addition to information about New Zealand society and culture and preparation for participation in the labour market, they receive free medical screening (and referrals if necessary), psycho-social needs assessments, free General Practitioner (GP) and primary healthcare (including counselling services), and basic dental care, including fillings and extractions (Mortensen et al., 2012). The Auckland University of Technology conducts English language programmes and offers special needs support for Quota refugees at all educational levels within MRRC. Conversely, Convention refugees receive no formal orientation which excludes them from the various housing, health and educational opportunities afforded Quota refugees. Convention refugees whose refugee status *is* determined, do not then benefit from acknowledgement, redress for the detrimental disadvantage of non-refugee status during status determination and access to previously denied support during that period.

Upon leaving the MRRC, Quota refugees are currently resettled in Auckland, Hamilton, Palmerston North, Wellington and Nelson. The automatic permanent residence status, granted to Quota refugees makes them eligible (and prioritised as high need) for a Housing New Zealand (HNZ) home, whose rental payments cannot exceed 25% of a

family's weekly income. However, a HNZ home is not guaranteed and is based on availability. In some areas such as Nelson where there are few HNZ homes available, accommodation within the private rental sector is common. 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. Convention refugees, similar to other migrants (including Reunification refugees), face a two-year wait before they can obtain residency and thus access HNZ housing. Convention refugees are occasionally granted state housing earlier on a discretionary basis [Manning and James, (2011), p.235] and 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. Continuation of government policy that links access to government assistance to a person's immigration status will have severe implications for refugees arriving in New Zealand and seeking asylum as part of a 'mass arrival'. Mass arrival refugees 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 (Bloom and Udahemuka, 2014).

Differential access 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. However, information about this service is not well disseminated and sparsely utilised (Mortensen et al., 2012; Bloom and O'Donovan, 2013). The Auckland Refugees as Survivors organisation (an NGO that maintains a presence at MRRC and in the Auckland community) also offers mental health assessment, initial treatment and referral services to newly arrived Quota and to some Convention refugees. New Zealand has a publicly funded health system that covers free emergency care and secondary care, subsidised primary healthcare and subsidised prescription medicines. Many of the subsidies, such as the Community Services Card, which allows 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 (Perumal, 2010).

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 Multicultural Learning and Support Services (MCLaSS). Quota refugee and Reunification refugee children of school age are eligible for funding for English for Speakers of Other Languages (ESOL) training in schools. Convention refugees, however, do not have automatic access to this support. While greater (though not always equitable) educational support exists for refugee children of categories other than Quota (Bloom and O'Donovan, 2013), this is not the same for health. Reunification and Convention refugees are excluded from the screening for vision and hearing impairments afforded to Quota refugees accommodated at the MRRC. This, once again, paints a picture of differential and discriminatory access.

## *2.2 Family reunification*

The right to family unity is perhaps the most compelling case of differential treatment resulting from refugees' varied pathways to protection. The Refugee Resettlement Strategy makes no mention of this issue perhaps because, as Mahony and Fozdar note in their introductory article, the Refugee Convention provides no explicit international

obligation relating to refugee family reunification. However, the International Covenant on Civil and Political Rights (ICCPR, 1966) states that everyone has the right to protection from arbitrary or unlawful interference with their family [Article 17 (1) and (2)], which is “the natural and fundamental group unit of society and is entitled to protection by society and the State” [Article 23(1)]. Moreover, men and women of marriageable age have a right to marry and found a family [Article 23 (2)], inferring a state obligation to ensure family unity or family reunification (Hathaway, 2005). However, as noted by Hathaway (2005, p.557), the question of whether family reunification policy is sufficient “will likely be measured in relation to the usual (and fungible) ‘reasonableness’ standard.” While this view expresses some cynicism about the utility of the ‘reasonableness’ yardstick, we argue that reasonableness requires a culturally appropriate interpretation of ‘family’.

As noted, New Zealand immigration policy offers several pathways for reunification of family members of refugees who have entered through the Quota system:

- 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 offshore Refugee Quota Branch interview. INZ begins the process of attempting to reunify the family after the Quota refugee has arrived at the MRRC. 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 the UNHCR for emergency resettlement of a family member facing very serious danger. However, the New Zealand Government retains discretion in such circumstances – discretion it appears to exercise only in relation to Quota refugees (Immigration New Zealand, 2014a, S4.20.1; 20.5). The New Zealand section in UNHCRs (2011 rev 2014, p.15) provides that Convention refugees “may not sponsor family through the Refugee Quota Programme, but their family members may be considered for inclusion in the programme if their cases are referred to New Zealand by UNHCR”.
- The RFSC – ‘Reunification refugees’ allows for up to 300 individuals a year to enter New Zealand on permanent residence visas. Quota refugees can sponsor a family member, and that family member’s partner and children, for New Zealand residence. 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)” exists. 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 for at least three years [INZ (2014a) S4.10.20(g)]. Since this policy was introduced in 2007, it has focused on tier one applications, while tier two applications were accepted only for three days in 2012 (Immigration New Zealand, n.d.). Both Quota refugees and Convention refugees can apply to sponsor family members as Reunification refugees (commonly referred as RFSC or RFSC in New Zealand). However, 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 (see Bloom and O’Donovan, 2013).

- Refugees can also effect family reunification by obtaining temporary or permanent residence visas through standard immigration channels. People obtaining residence under these categories are technically classed as ‘migrants’ rather than ‘refugees’. That status excludes access to Quota refugee resettlement support, imposing the same heightened residency 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 residency for family members who 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 [ChangeMakers Refugee Forum, (2009), p.8, p.26].

New Zealand’s refugee family reunification policy meets or exceeds its international obligations for Quota refugees in many respects: 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; and attempts are made to reduce bureaucratic barriers to reunification such as fees, administrative requirements, and waiting times [Immigration New Zealand, 2014a; S4.20.1; S3.15(c); S4.10.60.15(c)].

However, the annual 750-person quota can include a number of people with family links already in New Zealand. 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, an Immigration New Zealand (2014b) report shows that only 215 visas were granted in 2012, 154 in 2011 and 200 in 2010. More encouragingly, 401 visas were granted in 2013 and 257 in 2014 (as at 30 September 2014). Data on the actual arrivals of those granted visas are not collected. Given the significant costs of travelling to New Zealand, it is highly likely that some people holding these visas do not actually arrive in New Zealand, despite non-government organisation (NGO) 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 [Department of Labour, (2004), p.145].

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 does adopt a comparatively liberal definition of ‘immediate family’ including spouses, partners, children up to the age of 24 and children adopted by custom. New Zealand policy does not recognise additional spouses in a polygamous marriage (Immigration New Zealand, 2014a; R2.1.25), although additional wives are in practice permitted entry where there are children involved to ensure family unity. 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 (and protracted) 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 considered only where an intake does not fill 'family reunification' places [Wellington Community Law Centre, (2011), pp.38–39]. Relatives outside INZs family definition cannot gain entry as Reunification refugees or via standard immigration policy. As a consequence, we argue that INZs policy falls short of UNHCRs broader recommended approach, based on 'dependency', including emotionally, physically or economically dependent relatives.

While New Zealand policy accords some priority to family reunification, especially for Quota refugees, it falls short of international obligations and international best practice in several substantive areas. Refugees have high hopes for family reunification. However, "the time and energy committed to seeking reunification can be a substantial barrier to progress occurring in other areas of resettlement" [ChangeMakers Refugee Forum, (2009), p.17], including education, employment, financial security and acculturation [Refugees as Survivors New Zealand, (2012), p.16]. The impact of reunification is evident in Wellington Refugees as Survivors Trust's discharge of 93% of assisted families upon realisation of family reunification goals (ChangeMakers Refugee Forum, 2009; Choummanivong et al., 2014).

### 2.3 *Summary*

Refugee communities have advocated for both settlement support and family reunification to apply equally to Quota refugees, Convention refugees and Reunification refugees. However, the Refugee 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). However, Article 2(1) of ICCPR and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (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 HRAs list of prohibited grounds of discrimination. In addition, Article 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, therefore, raises questions as to New Zealand's compliance with Article 7 of the Refugee Convention. We therefore believe a real issue exists as to whether New Zealand is engaging in unlawful discriminatory conduct as a result of its differential treatment of refugees arriving through different settlement pathways.

### 3 The precariousness of ESCR

The Refugee Resettlement Strategy identifies access to high quality healthcare, education and housing, along with adequate income, as central to the settlement process of all refugees. We argue, however, that such access is limited by the precariousness of ESCR rights in New Zealand. As Mahony and Fozdar note, states have considerable discretion to decide the means employed to give full recognition to ICESCR provisions. The NZBORA 1990 protects civil and political rights. However, despite repeated recommendations from the Committee on Economic, Social and Cultural Rights (CESCR), the New Zealand Government 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. Therefore, and as Opie (2012) notes, ESCR are not generally justiciable in New Zealand. General protection from discrimination and the rights of ethnic, linguistic and cultural minorities are provided for to a certain extent in the NZBORA and the 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 to refrain from retrogressive ESCR-related measures [Opie, (2012), p.481].

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: the unevenness of access to ESCR due to regional variability in refugee-specific services; inadequate funding of refugee-specific services; and discrimination facilitated by New Zealand’s failure to embed ECSR in its human rights framework.

#### 3.1 Variance in refugee-specific services

The ability to realise ESCR depends partly on where a refugee lives, due to regional variance in the availability of refugee-specific services. This issue is heavily associated with the government policy of nominating a limited number of resettlement centres, upon which refugee-specific programmes are 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 social services delivery, as discussion of health and education demonstrates.

Health and wellbeing are key components of the Refugee Resettlement Strategy and, as earlier noted, all refugees with permanent residence can access New Zealand’s 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 (Mortensen et al., 2012) *Refugee Health Handbook* describes refugees’ demographically specific common medical issues and includes information on providing culturally sensitive services. Variance in waiting

times, cost and access to specialist services (particularly in mental health and disability) across DHBs demonstrate variance in service provision accompanying variant interpretation and implementation of this Handbook (see also Choummanivong et al., 2014; Marlowe and Humpage, 2016).

Although the Refugee Resettlement Strategy prioritises English language skills, it does acknowledge education's importance for ensuring refugees have the knowledge and skills to participate in society. Yet refugees also have varied experience accessing appropriate education. Once they gain permanent residence, children and young people from refugee backgrounds (Convention and Quota) are eligible for free primary and secondary schooling. Refugee students also receive Ministry of Education (Ministry of Education, 2014a) funding for five years of English language support (two years of intensive support followed by three years of standard ESOL funding). The Ministry of Education's (2014b) 'Refugee Flexible Funding Pool' can also provide specific schools with additional resources to address broader issues preventing refugee background students from participating and achieving in mainstream school programmes. These resources include: 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 and Migrant Education Coordinators assist student enrolment and adjustment. Assistance includes liaising with families and community groups to sensitise 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 (Ministry of Education, 2014c). However, the predominantly metropolitan location of Regional Refugee and Migration Education Coordinators disproportionately locates the extra funds and services in these areas. This, along with New Zealand's scarcity of Islamic-based schools, limits the right to educational choice, which has been a central tenet of educational policy since the 1980s (Humpage, 2009; Warsame et al., 2014). Although the Ministry of Education's (2014b) *Refugee Handbook for Schools* provides refugee support information for all schools, it predominantly focuses on learning differences and making students feel welcome. Given schools are governed by individual Boards of Trustees, its suggestions are also implemented inconsistently across the country, making its effectiveness unclear (Humpage, 2009; Ibrahim, 2012; see also Marlowe and Humpage, 2016).

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

Differential access to, and awareness of, services is further linked to NGOs' role as state-funded service providers. Services vary more widely than government-run service provision because few NGOs exist in more than one main centre, even if the primary refugee resettlement agency – New Zealand Red Cross (formerly Refugee Services) – is present in all of these localities. Refugee sector NGOs must also compete for funding contracts, discouraging (although not necessarily precluding) collaboration and consistency (see Ferguson, 1994). Improved NGO-to-government communication can be observed since the mid-2000s. However, funding is frequently insufficient to provide high quality professional services rendering many services dependent on volunteers that can create varied service quality and consistency (Grey and Sedgwick, 2013; Beaglehole,

2013). We now examine the associated employment, health, education and housing implications related to service provision and support.

Red Cross Refugee Services implements a 'Pathways to Employment' programme that assists individuals from refugee backgrounds to plan and secure employment and career goals. These services are presently available only to newly arrived and established Quota refugees and also asylum seekers, Convention refugees, other humanitarian categories and those coming to New Zealand under family reunification. In addition and encouragingly, Red Cross New Zealand's strategy also endeavours to support these other refugee groups irrespective of their legal status by 2020 in broader settlement based outcomes though these plans would be funding dependent (see <http://www.redcross.org.nz>). MCLaSS provides refugees with free ESOL classes and assessment in Wellington, Porirua and Lower Hutt. MCLaSS prioritises service provision to employment-seeking refugees. The Refugee Resettlement Strategy suggests paid employment and financial self-sufficiency is central to settlement. For the greatest chance of paid refugee employment, aforementioned 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, a range of extra subsidies or free services exist 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 under 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 Work and Income New Zealand Special Needs grant for dental care. Despite these provisions, refugees' healthcare costs commonly remain prohibitive. Reports show that New Zealand's largest refugee groups, located in Auckland (which has New Zealand's largest proportion of refugees), suffer high rates of heart disease, diabetes, poor nutrition and limited physical activity comparative to the general population. Evidence also suggests that sparse refugee awareness of extra health service subsidies through the Community Services Card has caused low refugee uptake of these benefits (Mortensen et al., 2012).

Similarly, the New Zealand Action Plan for Human Rights [Human Rights Commission, 2010] raises concerns about 'voluntary donations' that state schools request (but often expect) parents to pay, in addition to uniform, stationery and course-related expenses. These costs impede access to New Zealand's generally high quality education for low-income households, particularly when internet and computer access already exaggerate disparities (Marlowe and Humpage, 2016). Since 2004, the Ministry of Education has also contracted for the provision of refurbished computers and internet access to 80–100 families of refugee backgrounds who have children on an annual basis through the 'Computers in Homes' project (see <http://cihrefugee.blogspot.co.nz/>). However, cost is a far greater barrier to education for adults. Refugees over 18 years of age, like other permanent residents, can access educational services and may qualify for free English or English for Employees tuition from English Language Partners (ELP) which is New Zealand's largest provider of English language programmes in the country. Refugees cite contact with English language speakers and courses as the two greatest sources of assistance in improving

their written and spoken English. However, ELPs use of volunteer instructors causes variable availability and quality (Human Rights Commission, 2010). Those learning English post-arrival found polytechnic and university courses most beneficial [Human Rights Commission, (2010), p.201]. The cost of these courses may, however, be prohibitive. Many students from low-income backgrounds are eligible for the Student Allowance, a ‘needs based’ weekly stipend. Domestic tertiary education students may borrow (government-subsidised) tuition fees through the government’s student loan scheme. Research suggests that six months after arrival, only 28% of refugees obtained a student loan, rising to 89% after two years. Refugees often delay tertiary education because of cost-related obstacles including scarce student loan information and exclusion from assistance based on inadequate time spent in New Zealand (ChangeMakers Refugee Forum, 2011; O’Rourke, 2011). This situation is troubling given the relationship between refugees’ English language competency and their employment prospects two years after arrival in New Zealand (see Department of Labour, 2004; O’Donovan and Sheikh, 2014).

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 Refugee Resettlement Strategy [Immigration New Zealand, (2012), p.7] identifies housing as a key goal. However, the desired integration housing outcome is described as a “reduced housing subsidy for refugees (after two years and five years in New Zealand)”. New Zealand’s predominantly private sector rental market makes refugees, particularly those with English language difficulties, vulnerable to predatory leasing arrangements (Human Rights Commission, 2010). Measurement of refugee housing adequacy, which the HRC notes as a major concern, is not available.

### 3.3 *Discrimination*

We argue that an inadequate domestic legal framework results in varied and insufficient settlement policy measures as well as space for discrimination between refugee categories. A clear example is housing.

As argued earlier, only Quota refugees are offered free MRRC housing for six weeks and are then assisted by a settlement team within INZ who work with the Ministry of Social Development and HNZ to secure the provision of housing. Access to state housing for Convention refugees, by comparison, depends on HNZs discretionary operational policy. However, one trade-off for such assistance is that Quota refugees have limited choice in where they live if they wish to enjoy access to resettlement support. They are advised to go to one of six main resettlement population centres across New Zealand after INZ assessment (this decision is often made tentatively off shore during the interview process). Settlement location decisions consider the location of support services, where refugees have family/friends, the 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 Nelson and in earthquake-affected Christchurch which has a suspended settlement programme due to a housing shortage) requires sourcing accommodation from the private sector.

In addition, New Zealand houses are also often of insufficient size to accommodate large or extended families, exaggerating refugees’ lack of choice. The Committee on Economic Social and Cultural Rights (1991) 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". This is difficult to achieve when refugees have so little choice over housing.

The potential for discrimination is also evident in health. All types of refugees with permanent residence are able to access mainstream healthcare services and specific attention has been paid to some refugee health issues. However, a scarcity of professional interpreters and healthcare professionals trained to respect customary practices limits refugee access to health services in practice [Human Rights Commission, (2010), p.345]. 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. In addition, 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" [Office of Ethnic Affairs et al., (2007), p.21]. Patients frequently use family members (including children) as interpreters to discuss health-related information (Human Rights Commission, 2010; Deng and Marlowe, 2013; Mortensen et al., 2014, 2012; Mortensen, 2008).

The aforementioned constraints contribute to under-utilisation of many facilities and services established to meet refugees' health needs. They also make it difficult for refugees to realise their rights as consumers. Right 5(1) of the Code of Health and Disability Services Consumers' Rights (Health Consumers Code) states: "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" [The Health and Disability Commissioner, (1996), Right 5(1)]. Moreover, the Health Consumers Code recognises consumers' rights to freedom from discrimination and 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 (Health Consumers Code, Right 4). Fulfilling these rights remains difficult where inadequate interpreting services exist.

The right to education is similarly compromised in New Zealand. As noted by Mahony and Fozdar (in this issue), international obligations require that education is accessible to all persons, especially the most vulnerable groups in society. Temporary special measures may be adopted to achieve de facto equality for disadvantaged groups without constituting discrimination. Former Quota refugees (i.e., permanent residents) can access better educational services than those received by persons of alien status such as asylum applicants (cf. eligibility for student loans). However, temporary measures advancing de facto refugee equality by addressing discrepancies in English language course awareness and course funding are inadequate. While prima facie rights to education compliance exist, limited temporary affirmative action measures perpetuate discrimination against all categories of refugees.

For example, research suggests that children from refugee backgrounds often change schools, affecting a child's acculturation (Ibrahim, 2012). 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 (Human Rights Commission, 2010). It also states there are no reliable means to monitor the number of young people who are not engaged in education. Poor attendance monitoring raises additional questions about education's accessibility for those with refugee backgrounds where data specifying students' refugee status are limited (Human Rights Commission, 2010). 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' education services limiting their education and opportunities to acculturate to New Zealand society (see Brandon and Bloom, 2014).

New Zealand workers are (in theory) protected from discrimination in the workplace. However, permanent resident refugees often struggle more than other permanent residents to realise these rights. In 2011, the UNHCR confirmed that the right to work should be defined as decent work and that "even where refugees have the legal right to work, advocacy is necessary" [Umlas, (2011), p.17]. While New Zealand has not fully 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. These include the Employment Relations Act 2000, the Equal Pay Act 1972, the Holidays Act 2003, the Minimum Wage Act 1983, and the Health and Safety in Employment Act 1992. However, despite New Zealand's relatively low unemployment rates and the equal employment eligibility of permanent resident refugees, high refugee unemployment rates indicate significant obstacles for refugees in accessing decent work. Research suggests only 29% of Quota refugees were employed while a further 9% were seeking employment (ChangeMakers Refugee Forum, 2012). Refugees are also commonly unemployed for longer periods of time than other New Zealanders as reports highlight reduced opportunities to participate in the labour market and a reluctance for employers to employ them (Department of Labour, 2011; Searle et al., 2011; O'Donovan and Sheikh, 2014).

ChangeMakers Refugee Forum (2012) and McMillan and Gray (2009) indicate the concerns these statistics raise about workplace discrimination, where even refugees who have settled in New Zealand for many years find it difficult to secure work. Refugees' applications, like other New Zealanders from minority backgrounds, are often overlooked despite being qualified – or, at times, overqualified – for jobs. 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 alone is not prohibited by the NZBORA but could constitute discrimination on the basis of ethnic or national origin, which is prohibited by the Committee on the Elimination of Racial Discrimination (CERD), the NZBORA (1990) and the Human Rights Act (1993). Government research attributes high refugee unemployment to poor English proficiency. While refugee language skills commonly fall short of employers' expectations, evidence suggests that shifts in language proficiency goalposts impede refugees' employment (Marlowe et al., 2014). Another significant problem is the downgrading of overseas qualifications and non-recognition of experience. For example, many medically trained migrant doctors are unable to practise medicine in New Zealand. Auckland Regional Migrant Services, an NGO, helps prepare overseas-trained doctors for New Zealand's medical exams. Anecdotal reports suggest migrants passing this training have still been unable to obtain jobs (Grogan, 2008). Some evidence also suggests some

employers have refused refugees breaks to perform daily prayers or to attend Friday prayer, which is obligatory for Muslim men (McMillan and Gray, 2009). Employers must accommodate employees' religious or ethical belief practices as long as any adjustment required does not unreasonably disrupt the employer's activities (McMillan and Gray, 2009). Full realisation of employment rights, therefore, remains extremely challenging for many refugees.

Difficulty finding sufficient and appropriate employment often drives dependency on social security payments. A 2009–2010 Department of Labour survey of more than 500 former Quota refugees found that 51% of respondents were using some form of a government benefit as their main source of income (Searle et al., 2011). The right to social security is located 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, and its constraint of progressive realisation by states' respective economic and financial situations (see also McMillan and Gray, 2009). It remains, however, that the right to social security is weak in that – like the Refugee Resettlement Strategy – it is aspirational, to be worked towards progressively.

Progressive realisation is problematic in New Zealand where social security is subject to significant reform. Recent changes have tightened eligibility criteria and increased requisite conditionality to receive financial assistance (O'Donovan and Sheikh, 2014). Former refugees with permanent seeking employment may fully access mainstream social services and welfare. This includes the Jobseeker Support unemployment benefit, and other benefits if they are a sole parent with children under the age of 14 or suffering from a long-term disability. Convention refugees are ineligible for this assistance though they may access the Emergency Benefit (paid at a similar rate to Jobseeker Support) but this still excludes the accommodation benefit or other 'extras' (Bloom and O'Donovan, 2013). Such income support is paid as a flat-rate benefit that is not tied to an employee's previous work history. Recently arrived refugees or refugees without New Zealand work experience remain eligible. However, the real value of core benefits is internationally low. Most benefit recipients struggle financially, including those from refugee backgrounds (see O'Donovan and Sheikh, 2014; Department of Labour, 2011).

The Refugee Resettlement Strategy's goal of 'self-sufficiency' uses paid work or support by a family member in paid work for all working-age refugees as its benchmark. Given the barriers to settlement described above, these benchmarks do not adequately reflect the settlement complexities faced by forced migrants. Observers could interpret such a benchmark as supporting broader welfare reforms that frame the unemployed as 'undeserving' of state assistance including sole parents and caregivers. However, New Zealand could argue that its withdrawal or reduction of benefits is 'reasonable, proportionate and transparent', and therefore compliant with its international obligations (UN Framework for Human Rights Based Design). New Zealand may also argue that it is attempting to provide social security to the extent its means progressively allow. Weak international law obligations in this respect facilitate an elastic 'reasonableness' interpretation were New Zealand to constrain social security provision for refugees. This elasticity is particularly apparent given social and economic rights are frequently subject to shifts in New Zealand's political leadership. Although this has consequences for the entire population, refugees are disproportionately vulnerable to shifts in availability and cost of social services because they are already disadvantaged in accessing these.

### 3.4 Summary

Although Quota refugees with permanent residence have the same rights as other New Zealanders in the five policy areas discussed (and to a lesser extent for Convention refugees), examples from health, housing, education, employment and social security demonstrate that New Zealand's compliance with its international obligations depends on various factors, including refugee location and consequent service and institutional access. This variance is intimately linked to the policy of relocating refugees to designated settlement areas. These locations have become the focus of refugee-specific policy and programme activity in a country where the refugee population is relatively small, funding is limited, and services are fragmented and reliant on volunteers. As already noted, differential refugee treatment depending on refugees' pathways also challenges equal ESCR implementation. Exaggerating this problem is the absence of ESCR constitutional status or domestic embeddedness.

Revising ESCRs status is urgent given its centrality to refugees' everyday lives. Refugees interviewed six months after arrival cite additional assistance in learning English, accessing education (other than English language), finding work, and understanding immigration, particularly family reunification, policy as most important (Department of Labour, 2004). Significantly, former refugees settled in New Zealand for ten years also cite these priorities (Searle et al., 2011). ESCR are thus clearly central to refugee outcomes. They are also interdependent; poor housing and employment opportunities, for example, negatively affect health outcomes. To ensure that policy sufficiently responds to New Zealand's refugee settlement legal obligations we believe all ESCR must be embedded simultaneously. The Refugee Resettlement Strategy's strong focus on employment will remain aspirational unless the other four policy areas are also addressed. Alongside these considerations is the growing recognition that policy should be informed by refugee voices and participation (see Elliott and Yusuf, 2014; Gray and Elliott, 2001) – participation that highlights where New Zealand could do better to meet its refugee settlement obligations.

## 4 Conclusions

New Zealand appears to largely 'meet' its international obligations towards Quota refugees. However, New Zealand policy does not necessarily meet all refugee needs and rights. The obligation to ensure freedom from discrimination is clear. However, a central element of New Zealand's refugee policy gives preferential treatment to Quota refugees, particularly in the areas of settlement support and family reunification. Successful refugee-specific programmes exist and refugees with permanent residency 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 constrained by funding and the refugee category that a person has. They are provided by NGOs at the mercy of a contractual funding regime that restricts services and drives volunteer dependency. Further, the user-pays systems for many mainstream social services inhibit refugee access, particularly due to the low incomes associated with 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 refugee categories in the areas of health, education, housing and employment. In such a policy context, we believe the aspirational goals of the Refugee Resettlement Strategy will be insufficient to respond to the obligations to which New Zealand has committed and need to be further underpinned by strong and inclusive policies and guidelines.

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