

INCREASING SUPPORT TO MIGRANTS & REFUGEES IN NEW ZEALAND

Submission to the United Nations
Universal Periodic Review
New Zealand January 2014

• JOINT SUBMISSION OF CANTERBURY BUSINESS ASSOCIATION & MIGRANT ACTION TRUST

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The Canterbury Business Association (CBA) and Migrant Action Trust (MAT) are not for profit registered charities in New Zealand helping migrants and refugees to NZ ~~them~~ with employment and business support. ~~It is also in general welfare and settlement support where necessary.~~ MAT operates out of Auckland North Island, and CBA operates from ~~Christchurch~~ Christchurch New Zealand.

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• **Introduction**

This submission will focus on the following issues in relation to their effect on immigrants and refugees to New Zealand:

1. **Employment**
2. **Education**
3. **Proposed NZ Immigration Act changes**
4. **Housing,**
5. **Access to Healthcare for migrant women**
6. **Care of Elderly and Disabled**

In light of New Zealand's obligations under international conventions and treaties it has ratified this submission recommends New Zealand to also ratify the Convention on the Rights of Migrant Workers and Their Families. This would give some effect to better monitoring of the treatment of migrants and explicit recognition of migrant rights in New Zealand's employment legislation. It should also be noted that this recommendation is not new, however perhaps it is time that these matters and previous UPR recommendations related to migrants and refugees were given serious consideration. The lack of attention to date is creating a very negative impact on the livelihoods of immigrants and their families in New Zealand and a deteriorating human rights climate for the future settlement, care and protection of the rights of current and future immigrants and refugees to NZ.

New Zealand has come a long way in giving settlement opportunities to immigrants and refugees. In some areas such as giving housing and status to stateless persons it has done exceptionally well. However in other respects the country is slowly losing its enviable position as champion of the same gains it has made for previous waves of immigrants to New Zealand.

An outline of these main issues and recommendations follows:

1. Employment:

Many media reports, research and thesis upon thesis shows that many recent immigrants face major obstacles in securing relevant and rewarding employment. In some instances, they are exploited and under-paid whilst many are under employed or at worst unemployed. ¹

Also there is an incongruity in respecting and being a party to treaties such as CEDAW, CERD and DRIP but not recognize the ICRMW. Related to this is the fact that NZ is yet to become party to the ICESCR which would complement the protocols that NZ is a party to. Notwithstanding this in-

¹ The Human Rights Commission Draft 2013 Report

congruency there is also the fact that the violation for many immigrants of the right to work is upheld by these instruments. For example the advertising of shortage of skills in Christchurch have also been followed immediately by setting up a separate agency advocating that each employer will only be given a work visa for an overseas worker upon a mandated labor market check on any available local skills. This sends a mixed message to the labor market and leaves migrants job seeker in limbo. Many immigrant families have come for the rebuild of Christchurch under the impression there is a skilled shortage and that they would be welcome here and have found it extremely difficult or are unable to secure work due to difficulties with immigration rules and their it's apparent interference with employers rights to hire the best available skills.

It is very difficult we believe to raise public awareness on the rights of migrant workers and their families when local labor legislation does not explicitly accommodate or mention statements on their fair and equal treatment. Recommendation: **We therefore recommend that New Zealand ratify the ICRMW.** This would have three major impacts:

1. The country would be subject to independent review on the treatment of immigrants including in their employment outcomes which would help towards improving the accommodation of immigrants in New Zealand labor market;
2. Local legislation could be brought in line and measured against international standards;
3. New Zealand would be aware and value immigrants differently

For a country that is increasingly reliant and dependant on immigrant labor and for a country that brings in persons also as refugees, this ratification would lend a lot of “teeth” and credibility to the intentions of New Zealand in bringing in Refugees and Migrants.

Recommendation: We also recommend that NZ ratify the ICESR as this would strengthen the ICMR and also help to better monitoring of the employment rights of minorities and migrants to NZ.

2. Education

In 2009 a policy was effected by the Ministry of Social Development to extend the time period required until a recent immigrant could be eligible for a student allowance. All migrants (including refugees) are now required to wait two years from time of receipt of residency before eligibility for a student loan and allowance to enable study at a local tertiary institution.

This arbitrary implementation of policies that limit the rights of migrants is unfortunately becoming characteristic of how immigration rules are being handled here. – This policy has a major impact on migrants’ right to education and the right to work. As most immigrants are not able to find work in their relevant fields immediately upon arrival in New Zealand, they often need to re-qualify. Limiting their eligibility to study in New Zealand until two years after receipt of residency prolongs their period of under or unemployment thereby extending their hardship as new immigrants to New Zealand. We believe it breaches Article 22 Universal Declaration of Human Rights:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Recommendation: New Zealand repeal the unjustifiable two year stand-down period on access to student loans and allowances for new residents

3. Immigration Amendment Bill 2013

The Immigration Amendment Bill is currently just been passed into law. The parliamentary select committee and human rights commission among other groups have already widely condemned the proposed amendments. The Bill proposes to amend the Immigration Act 2009 by providing for wide powers of detention of “mass arrivals” of persons by boat in New Zealand, limiting judicial review of these detention arrangements and limiting the subsequent family reunification options of any “mass arrivals” post this potentially harrowing ordeal. New Zealand has previously had a good record of settling refugees and their families and since 1987 has taken an annual quota of 750 refugees from UNHCR.

An excerpt from the Select Committee review of the Immigration Amendment Bill is inserted here for clarity on the violations of asylum seeker rights which the Bill will impose on those refugee who arrive in mass by boat, now termed the “boat people”:

- *The facility for group detention for groups over 30, as mass arrivals, for an initial period of 6 months and for further periods of detention for up to 28 days with court approval, is, we believe, contrary to the intent of the Bill of Rights Act and Article 31 of the Refugee Convention to which New Zealand is a signatory. Article 31 in particular protects asylum seekers from penalty regardless of mode of entry and requires states not to apply any restrictions other than those that are necessary until their status in the country is regularized. Because we find the administrative argument implausible we believe detaining a group because they arrived by boat with more than ten people amounts to an arbitrary detention. The Bill of Rights Act clause 22 guarantees the right not to be arbitrarily arrested or detained. Article 9 of the Universal bill of Rights also states No one shall be subjected to arbitrary arrest, detention or exile.*
- *We also strongly oppose limits on family reunification based on mode of entry. People who have had to resort to the most extreme form of escape should not be penalized further for the “sins” of others. We believe that this bill has already sent a message to existing refugees and asylum seekers that our Government is starting from a point of fear and reluctance to support them. We want to assure refugees and asylum seekers in New Zealand that we stand by our commitment to the Universal Declaration of Human Rights which enshrines our collective right to seek and to enjoy in other countries asylum from persecution. New Zealand helped draft the Declaration of Human Rights and the right to seek asylum is as important now sadly as it was post world war two. New Zealand only takes up to 750 refugees a year and has not met that target in recent memory. We are willing to work with other parties to seek consensus on how to address any of the drivers behind the numbers of people seeking asylum in our region and also any realistic administrative challenges to processing significant numbers of irregular entries.*
- *Sadly we believe this bill does neither of these things and in fact creates an unnecessary barrier to integration and an unfounded fear of asylum seekers, which undermines our trust in each other as fellow New Zealanders.*

The Immigration Amendment Bill has far reaching powers none before exercised and ushers in a new regime in how refugees are seen—and treated in New Zealand. It does not bode well for any future persons who may indeed seek refuge via escape to the Pacific region. It also sends the message that New Zealand is xenophobic and makes the current refugees uncomfortable in their stay especially those who came via the Tampa Boat debacle in 2008. Further we believe it is a bad precedent of what lengths the Government is prepared to go in the name of defending its borders against helpless ~~refugees—refugees.~~

Recommendation: The New Zealand Parliament should review the Immigration Amendments Bill because it is in clear violation of the New Zealand Bill of Rights Act 1990 and the Refugee Convention.

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4. Housing

Especially in the wake of the Christchurch earthquakes with many houses being destroyed and existing pressure on to rebuild house for residents, the accommodation of immigrant workers has become an issue needing urgent address. Migrant workers have responded to New Zealand's request to fill a worker shortage in the Rebuild. The number of immigrants who have arrived into Christchurch recently ~~has markedly~~has markedly increased as they have come to participate in and help with the Rebuild in Christchurch. The number so far could be well over 300 and the total projected to be needed in the rebuild the city could be anything up to 40,000.

However much delay, debate and seeming confusion over priorities in the Rebuild have meant that worker accommodation has not been given a priority in government planning and therefore none has been supplied to increase its availability.

Many workers are currently living in substandard housing including overcrowded conditions. Given that a number of migrant workers, especially migrant workers from the Philippines, would also like to bring their wives and families over; there is likely to be an ongoing shortage of housing.

Recommendation: The provision of workers' accommodation as part of the Christchurch Rebuild be supported by underlying policy and that this include the necessary immigration policies that will support the repatriation of the immigrants workers' family members and also the period of job search whilst they are in Christchurch New Zealand.

5. Access to health care for temporary visa holders –

As New Zealand becomes increasingly multicultural, many persons (mostly men) both recent immigrants and long standing residents are now seeking marriage of persons either from their home country for cultural reasons or are inclined to bring in a foreign spouse. The migrant woman married to a permanent resident or citizen is not eligible to publicly funded health services – by virtue of a policy which only gives publicly funded healthcare to persons who have been here for person who are on work permits of 24 months and or can be a period from at least 15 to 24 months until they have a residency permit.

This creates a difficult situation for these women who may have children in that time and also need medical attention. As they are also dependent on their husbands for all their care, they have limited freedom, especially where there is a relationship breakdown, which can leave them in a vulnerable position.

Recommendation: That the wives of residents and citizens brought into the country for marriage be afforded two year open work permits helping to alleviate the job search pressures and also to make them eligible for publicly funded medical health services and alleviate the burden on them and their husbands for private medical care of their wives.

That migrants on work permit in NZ be afforded access to healthcare without a minimum requirement of the permit being for a period of more than 12 months.

6. Care for Elderly and Disabled Former Refugees

Many former refugees who are elderly or disabled are facing isolation in New Zealand. More support is needed for programmes that will support them to be integrated into the local community, and support more independent living and greater wellbeing. In addition, ~~support,~~ support for healthcare and employment for these refugees is also required.

In particular, although welcome funding is provided for English tuition, adequate funding for employment assistance programmes or vocational training is not available. Hence we see the high levels of unemployment and under employment of former refugees and continued isolation from mainstream life.

Recommendation: More funding be awarded to care of migrants and refugees, especially to community groups who directly care for their own community members and also to recognized NGOs who are providing employment and welfare assistance and recreation support to disabled former refugees and the elderly.

Concerns, Challenges and Constraints

It is note-worthy to conclude here with and repeat the Human Rights Commission previous observation in the last UPR submission back in 2009:

“New Zealand has a good record of ratifying human rights treaties, after checking for any inconsistencies in New Zealand law. *It is less consistent in fully incorporating those human rights standards in domestic law and applying them in the development of legislation and policy, so that human rights and responsibilities are a reality in the lives of all New Zealanders.* **To better fulfill New Zealand’s international human rights obligations, the Commission recommends explicit government commitment to the full and effective incorporation of ratified international human rights standards in domestic legislation, in policy development and in public sector professional development and training.**

The country is slowly losing ground in matters related to the integration, care and support of former refugees and immigrants – and if the recent policy changes in employment and education and the looming amendments to the Immigration Act are anything to go by, then this is a rather worrying trend in just a short space of four years. More ground is been lost than gained in this matters in New Zealand unfortunately.

Challenges in the country such as dealing with an epic earthquake in the second largest city only stand to exacerbate and increase the chance that the matters we are raising will only be given a second glance. The time to act is now.

RECOMMENDATIONS

A Human Rights immigration policy and immigration act review is carried and in comparison to its impact and effect on employment law, bill of rights and this be done by the international and human rights lawyers. That the strengthening of NGO support be increased in terms of funding training and collaboration to ensure effective monitoring and delivery of services on the ground to support refugees and immigrants.

APPENDIX

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