

# RCNZ

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Patron: Judge Coral Shaw

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16 July 2012

**Secretary  
Committee on the Elimination of Racial Discrimination**

UNOG -OHCHR  
CH-1211 Geneva 10  
Switzerland

By Email: [cerd@ohchr.org](mailto:cerd@ohchr.org)

**Re: Consideration of New Zealand's Immigration Amendment Bill 2012 under  
CERD'S early warning and urgent action procedure**

We write to request a review of the Immigration Amendment (Mass Arrivals) Bill 2012 (New Zealand) under the Committee on the Elimination of Racial Discrimination's (CERD) early warning and urgent action procedure.

We note that CERD has long recognised the need to eliminate discrimination against refugees and asylum seekers and to ensure that refugees are entitled to all rights and freedoms without distinction of any kind. Specifically in relation to New Zealand, CERD in 2007 noted its concern that asylum seekers were detained in correctional facilities in New Zealand and recommended an end to this practice. In addition CERD recommended that New Zealand "ensure that grounds upon which asylum may be refused remain in compliance with international standards, especially the 1951 Convention relating to the Status of Refugees."<sup>1</sup>

In May 2012 the New Zealand Government introduced an Immigration Amendment Bill into Parliament with the stated aim of deterring people smugglers. The Bill is currently before the Transport and Industrial Relations Select Committee (**Select Committee**). The Select Committee has heard public submissions and is due to report back to the House of Parliament on 10 September 2012.

In broad terms the proposed amendments:

- provide for the mandatory detention of a "mass arrival" under a group warrant;
- remove the right to be heard before the Immigration and Protection Tribunal;
- limit rights to judicial review for asylum seekers; and
- empower the suspending of the processing of refugee and protection claims by regulation.

In addition the Bill enables a number of policy proposals which limit the rights of asylum seekers who are part of a "mass arrival".<sup>2</sup>

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<sup>1</sup> CERD/C/NZL/CO/17

<sup>2</sup> Such as limiting the availability of family reunification.

The Bill breaches New Zealand's obligations under the 1951 Refugee Convention, international human rights norms, and domestic human rights legislation. Submissions made by the United Nations High Commissioner for Refugees and the New Zealand Human Rights Commission highlight the significant human rights concerns with the Bill and associated policy changes. These and other submissions can be accessed and will be forwarded. Enclosed is the copy of the UNHCR submission.

We note that CERD has stated in General Recommendation 30 (2004) that "under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim", and that State Parties "must ensure the security of non-citizens, in particular with regard to arbitrary detention"<sup>3</sup> The aims and purpose of the Bill are unjust and the measures proposed are not proportionate. The Bill discriminates against asylum seekers who are part of a "mass arrival" and if passed will result in significant social consequences.

Attached for your information are a copy of the Bill<sup>4</sup> and the Immigration Minister's announcement of the Bill dated 30 April 2012<sup>5</sup>. Thank you for your consideration.  
Yours sincerely

Kailesh Thana

**Secretary**  
**The Refugee Council of New Zealand**

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<sup>3</sup> *General Recommendation No.30: Discrimination Against Non Citizens* : . 01/10/2004.

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/e3980a673769e229c1256f8d0057cd3d?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/e3980a673769e229c1256f8d0057cd3d?Opendocument)

<sup>4</sup> [http://www.legislation.govt.nz/bill/government/2012/0016/latest/DLM4439209.html?search=ts\\_bill\\_Immigrati on\\_resel\\_25\\_h&p=1](http://www.legislation.govt.nz/bill/government/2012/0016/latest/DLM4439209.html?search=ts_bill_Immigrati on_resel_25_h&p=1)

<sup>5</sup> <http://www.nathanguy.co.nz/index.php?/archives/709-New-measures-to-deter-people-smugglers-announced.html>