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New Zealand is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First Optional Protocol. New Zealand's refugee determination system operated on an extra-statutory basis until 1999, when the Immigration Amendment Act of that year inserted a new section, Part VIA, into the 1987 Immigration Act.[1]

New Zealand's two-tiered asylum system received 1,523 applications in 2000, 1,791 applications in 2001, and 489 in the first half of 2002.[2] Officers of the Refugee Status Branch (RSB), who are charged with making first-instance decisions,[3] adjudicated 2,495 claims during the year, granting 467 and denying 2,028.[4] 1,424 claims were pending first-instance decisions at the end of the year.[5] The Refugee Status Appeals Authority (RSAA), an independent body staffed by a number of practicing or recently retired lawyers drawn from outside Government and one ex officio representative of the UNHCR,[6] decided 944 appeals, granting 40 and denying 904.[7] The jurisdiction of the Authority is strictly confined to the determination of refugee issues and it is precluded from making any immigration decisions including whether successful refugee claimants

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[1] Immigration Amendment Act 1999, § 40. The new Part VIA of the Immigration Act 1987 came into force on 1 October 1999: Immigration Amendment Act 1999, § 1(3). These provisions are to be read with the Immigration (Refugee Processing) Regulations 1999 (SR 1999/285).

[2] Letter from Hon. Lianne Dalziel, Minister of Immigration of New Zealand, to Suzanne Spears, Debevoise & Plimpton (July 8, 2002) (on file with Debevoise & Plimpton) [hereinafter New Zealand Response to LCHR Questionnaire].

[3] Immigration Act 1987, §§ 129E to 129M.

[4] *Id.*

[5] *Id.*

[6] Rodger Haines QC, *An Overview of Refugee Law in New Zealand: Background and Current Issues,* Inaugural Meeting of the International Association of Refugee Law Judges (IARLJ) Australia/New Zealand Chapter (10 March 2000).

[7] U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2002 at 111, *available at* http://www.refugees.org/WRS2002. (Immigration and Refugee Services of America 2002) [hereinafter USCR WORLD REFUGEE SURVEY 2002].

should be granted residence permits.[8] In the first quarter of 2002, 250 applications were filed.[9]

Judicial review of decisions of the RSAA is available, but it must be commenced within three months, unless the High Court decides that, by reason of special circumstances, further time should be allowed.[10] In practice, few decisions of the RSAA reach the High Court on judicial review, and even fewer still the Court of Appeal. Furthermore, only a small proportion of these cases have raised issues of substantive refugee law. [11]

Decisions as to whether to issue undocumented immigrants, including asylum seekers, "permits" (visas) to remain in the country pending the determination of their immigration or asylum status claims, are made at the discretion of New Zealand Immigration Service (NZIS) officers.[12] The Immigration Act does not specifically provide for the detention of asylum seekers. However, Section 128B of the Immigration Act allows the NZIS and police to detain individuals at the border if their eligibility for a permit is not immediately ascertainable or there are "reasonable grounds for believing" that they constitute a genuine risk to national security or public order (because they have committed serious crimes, are involved in terrorism or organizations with criminal objectives, or are likely to commit serious crimes, acts of terrorism or drug offenses).[13] Section 128(5), by contrast, grants the NZIS and police the power to detain individuals who have been refused permits to remain in the country pending the determination of their immigration or asylum status claims pending their "departure from New Zealand on the first available craft."[14]

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[8] Haines, *supra* note 6.

[9] UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, ASYLUM TRENDS IN 28 INDUSTRIAL COUNTRIES: JANUARY TO MARCH 2001—JANUARY TO MARCH 2002, *available at* http://www.unhcr.ch/cgi-bin/texis/vtx/home/+2wwBmelFXx8wwwwnwwwwwwwhFqAIRERfIRfgItFqA5BwBo5Boq5AFqAIRERfIRfgIcFqF+8afDm15BGowcoSnmagd1DBGon5Dzmxwwwwwww/opendoc.pdf (June 13, 2002) (last accessed Aug. 29, 2002) [hereinafter *Asylum Trends in 28 Industrialized Countries*].

[10] Haines, *supra* note 6.

[11] Haines, *supra* note 6.

[12] Refugee Council of New Zealand, *Submission to the Foreign Affairs, Defense and Trade Committee on the Transnational Organized Crime Bill* (May 2002).

[13] Immigration Amendment Act 1999, § 128(B).

[14] Immigration Amendment Act 1999, § 128(5).

Prior to September 19, 2001, only 5% of refugee claimants were detained and of those all were deemed to be flight or security risks under §128B.[15] However, on that date, amid security concerns following the attack on the US and as 131 people rescued off Australia from the Tampa were on their way to New Zealand, the NZIS issued a new Operational Instruction to its officers regarding the interpretation of policy and the exercise of discretion pursuant to §128(5) of the Immigration Act.[16] The Operational Instruction directed immigration officers, "in deciding whether or not in a particular case detention [of a refugee status claimant] is justified, and the type of detention justified", to be guided by various factors stated under two specific headings.[17]

Under the first heading, a warrant of commitment in a penal institution may be justified: where an asylum seeker is or is suspected to be a person to whom one of the disqualifications listed in section 7(1) of the Act applies;[18] to protect national security or

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[15] Helen Tunnah, *Judge Reserves Asylum Finding*, THE NEW ZEALAND HERALD, June 20, 2002.

[16] HUMAN RIGHTS FOUNDATION OF AOTEAROA NEW ZEALAND AND THE REFUGEE COUNCIL OF NEW ZEALAND, INC., FREEDOM'S RAMPARTS ON THE SEA: THE DETENTION OF ASYLUM SEEKERS IN NEW ZEALAND (May 2002), *available at* http://www.humanrights.co.nz/docs/Freedoms_Ramparts.doc (last accessed Aug. 29, 2002) [hereinafter Ramparts].

[17] Statement of Claim (Application for Judicial Review), In the Matter of the Immigration Act 1987 and In the Matter of Sections 21, 22 and 23 of the New Zealand Bill of Rights Act 1990, Between the Refugee Council of New Zealand and the Human Rights Foundation, and the Attorney-General (Dec. 2001), *available at* http://www.humanrights.co.nz/docs/Refugee_Proceedings.doc (last accessed Aug. 29, 2002) [hereinafter Statement of Claim In the Matter of the Immigration Act].

[18] The categories of people outlined in section 7(1) of the Immigration Act 1987, include: (a) people who have been convicted and sentenced to imprisonment for 5 years or more at any time, or have been convicted and sentenced to imprisonment for 12 months or more in the past 10 years; (b) people against whom a removal order is in force; (c) people who have been deported from any country, including New Zealand; (d)

people who are likely to commit an offence against the Crimes Act 1961 or the Misuse of Drugs Act 1975; (e) people likely to facilitate, or engage in, an act of terrorism; (f)

people who may have engaged in, or have claimed responsibility for, an act of terrorism inside or outside New Zealand; (g) people who are members of, or adhere to, a group engaged in, or that has claimed responsibility for, an act of terrorism inside or outside New Zealand; (h) people who are a threat to security or public order in New Zealand; and (i) people who are members of, or adhere to, any organisation which has criminal objectives or is engaged in criminal activities, and whose presence in New Zealand would constitute a threat to the public interest or public order. NEW

public order; while the identity of an asylum seeker is verified; or where an asylum seeker has destroyed or otherwise disposed of their travel or identity documents with the intention of misleading NZIS officials. Under the second heading, a warrant of commitment for residence at the Mangere Accommodation Centre may be justified: where the identity of an asylum seeker cannot be ascertained to the satisfaction of the NZIS but there do not appear particular reasons for detaining her in a penal institution or releasing her; where an asylum seeker is in poor health; where an asylum seeker has arrived as part of a group of 10 or more; where a preliminary assessment suggests that the merits of the asylum seeker's claim are not strong; or where an asylum seeker has no valid travel and/or identity document and there may be delay or difficulty in obtaining them in the event that the claim is declined.[19] According to the Instruction, "[t]he detention of persons at the border who claim refugee status but are not granted a permit is not limited to the specific circumstances outlined; …[a]ll cases depend upon an individual assessment of their circumstances."[20]

As a result of the instruction, 94% of the asylum seekers who entered the country after it went into effect were reportedly detained.[21] Between September 19, 2001 and January 31, 2002, 208 out of 221 individuals who sought asylum were held, either in Auckland Central Remand Prison (ACRP) or in the Mangere Reception Centre (MRC), pursuant to §128(5) and the Operational Instruction.[22] By mid-April, 2002, over 100 people were detained, 25 in ACRP and 101 at MRRC.[23]

In December 2001, the Refugee Council of New Zealand and the Human Rights Foundation challenged the Operational Instruction in the High Court on behalf of all refugee claimants and an unnamed individual plaintiff arrested and detained as a consequence of it. The individual plaintiff claimed damages in the amount of NZ$150,000.[24] The plaintiffs' first claim was that §128(5) constituted an inappropriate section of the Immigration Act under which to detain asylum seekers, given that it granted the NZIS "quick turnaround" power, for the purpose of ensuring that illegal

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ZEALAND IMMIGRATION SERVICE, website *available at* http://www.immigration.govt.nz/operations_manual/3492.htm#o3492 (lasted accessed Sept. 15, 2002).

[19] Statement of Claim In the Matter of the Immigration Act, *supra* note 17.

[20] *Id.*

[21] Tunnah, *supra* note 15.

[22] *Id.*

[23] Ramparts, *supra* note 16.

[24] Statement of Claim In the Matter of the Immigration Act, *supra* note 17.

entrants were held pending their departure "on the first available craft".[25] This power, they argued, was not appropriate for the detention of asylum seekers who, in light of the principal of *non-refoulment*, would clearly not be departing on the first available craft.[26] Their second claim was that detentions of asylum seekers resulting from the Operational Instruction constituted violations of the New Zealand Bill of Rights Act and the Refugee Convention, and were contrary to UNHCR Guidelines for the Detention of Refugees, UNHCR Executive Committee Conclusion 44, and the part of the NZIS Operational Manual that deals with the detention of refugee status claimants.[27]

On June 27, 2002, High Court Justice David Baragwanath ruled that the Operational Instruction and the resulting practice of detaining almost all asylum seekers was unlawful on the grounds alleged in the plaintiffs' second claim.[28] In ruling it unlawful, he said that it breached Article 31.2 of the Refugee Convention, which requires that restrictions on movement be no more than "necessary".[29] He found that "'[n]ecessary' in this context means the minimum required…to allow the Refugee Status Branch to be able to perform its functions, to avoid real risk of criminal offending, [or] to avoid real risk of absconding."[30]

Having found the Operational Instruction to be "fundamentally defective", Justice Baragwanath opened the door for those who were affected by it to make individual claims for compensation and for the next stage of the unnamed plaintiff's $150,000 claim.[31] The ruling could affect as many as 350 asylum seekers and cost the government

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[25] In the Matter of the Immigration Act, *supra* note 24*; also* Refugee Council of New Zealand, *Submission to the Foreign Affairs, Defense and Trade Committee on the Transnational Organized Crime Bill* (May 2002).

[26] *Id.*

[27] *Id.*

[28] Refugee Council of New Zealand Inc v Attorney-General (High Court Auckland, M1881-AS01, 27 June 2002, Baragwanath J) - Supplementary Judgment of Baragwanath J, *available at* http://www.humanrights.co.nz/docs/Refugee_v_Attorney-General_Judgment.doc (last accessed Aug. 29, 2002) [hereinafter Supplementary Judgment]; *also* Refugee Council of New Zealand Inc v Attorney-General (High Court Auckland, M1881-AS01, 31 May 2002, Baragwanath J) - Interim Judgment of Baragwanath J, *available at* http://www.humanrights.co.nz/docs/Interim_Decision.doc (last accessed Aug. 29, 2002) [hereinafter Interim Decision].

[29] Interim Decision, *supra* note 28.

[30] *Id.*

[31] Supplementary Judgment, *supra* note 28.

millions of New Zealand dollars.[32] The Minister of Immigration was reported as saying that she believes the finding was based on too narrow an interpretation of the Refugee Convention.[33] The Crown is appealing the decision in the New Zealand Court of Appeal and is likely to apply for a stay pending that appeal.[34] According to the New Zealand press, the government continues to detain almost all asylum seekers initially, despite Justice Baragwanath's ruling.[35]

While the case was pending, on June 12, 2002, the New Zealand Parliament passed a Transnational Organized Crime Bill that amended the Immigration Act to allow detained asylum seekers conditional release pending the adjudication of their claims (see *Alternatives to detention* below).[36] This relaxation of the restrictions on detained asylum seekers was in response to a May 31, 2002, interim ruling by Justice Baragwanath, in which he found that all refugee claimants detained under the challenged Operational Instruction were entitled to apply for bail,[37] and to arguments made by the Refugee Council of New Zealand before Parliament on the subject.[38]

On July 17, 2002, the UN Human Rights Committee criticized New Zealand for its detention and treatment of asylum seekers since the 2001 terrorist attacks in the United States.[39] In noted that the post-September 11 policy may have been introduced without New Zealand fully considering its obligations under the ICCPR.[40] Told that the Government had since amended its policy to comply with the High Court ruling (it is not known whether it was told that the Government is appealing), the Committee said it

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[32] Helen Tunnah, *Refugee Case Will Open Way to Claims*, THE NEW ZEALAND HERALD, June 28, 2002.

[33] *Refugee case appeal*, THE NEW ZEALAND HERALD, July 1, 2002.

[34] New Zealand Response to LCHR Questionnaire, *supra* note 2.

[35] Helen Tunnah, *Treat Refugees Better Says UN*, THE NEW ZEALAND HERALD, Aug. 14, 2002.

[36] Hon. Phil Goff, *Govt passes tough new anti people-smuggling legislation*, MEDIA STATEMENT, June 12, 2002, *summary available at* http://www.refugee.org.nz/news.htm#12%20June%202002a.

[37] Interim Decision, *supra* note 28.

[38] Refugee Council of New Zealand, *Submission to the Foreign Affairs, Defense and Trade Committee on the Transnational Organized Crime Bill* (May 2002).

[39] *Concluding Observations of the Human Rights Committee: New Zealand* ¶11, U.N. Doc. CCPR/CO/75/NZL (July 17, 2002) [hereinafter UNHRC Conclusions].

[40] *Id.*

remained concerned about the possible impact of the punishment of preventive detention and would continue to monitor the issue in New Zealand.[41]

Is there independent review of the detention decision? Limited.

The initial decision whether to detain asylum seekers is made administratively and on a discretionarily basis by NZIS officers.[42] Section 128 of the Immigration Act provides that persons detained because they have been refused permits may be detained for 28 days, pending their removal to whence they came.[43] Section 128B, by contrast, provides that persons whose eligibility for a permit is not immediately ascertainable or are suspected of being ineligible for a permit because they pose a risk to security or public order may be detained while it is determined whether or not they are in fact ineligible for a permit.[44]

Recognizing that the application of §128 to asylum seekers is awkward, as determination of their claims generally takes longer than 28 days, in 1991 the Court of Appeal recommended that specific legislative provision be made for the detention of refugee claimants.[45] However, when Parliament amended §128 in 1999, it chose to work within the existing statutory framework, which made no distinction between asylum seekers and other immigrants.[46] Previously, if detainees held under §128 had not already been released or removed from the country, or it appeared unlikely that they would be removed within the 28 day period, release was mandatory.[47] Similarly, once it was determined that detainees held under §128B did not threaten security or public order, they were granted temporary permits and immediately released.[48]

The 1999 Amendment Act, however, provided that warrants of commitment issued under §128 could be extended by a District Court Judge for an unlimited number of seven-day

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[41] UNHRC Conclusions, *supra* note 39 at 10; Tunnah, *supra* note 35.

[42] Refugee Council of New Zealand, *Submission to the Foreign Affairs, Defense and Trade Committee on the Transnational Organized Crime Bill* (May 2002).

[43] Immigration Act, § 128.

[44] Immigration Act, § 128(B).

[45] *D v. Minister of Immigration* 2 NZLR 673 (1991).

[46] Asher Davidson, Is Detention Defensible?: Article 31(2) of the Refugee Convention and Its Implementation in New Zealand, (June 2000), *available at* http://www.refugee.org.nz/davidson.htm (last accessed Aug. 29, 2002) [hereinafter Is Detention Defensible?].

[47] Immigration Act, § 128(13), now repealed.

[48] Immigration Act, § 128B(5)(a), now repealed.

periods in the case of individual applicants or for as long as a District Court Judge found necessary in the case of mass arrivals.[49] It also provided that once it was determined that a person detained under §128B did not threaten security or public order, an immediate decision must be made whether or not to grant a permit. If a permit was granted, the person was released. If a permit was not granted, the person became subject to detention under §128, which might be extended until they were removed from New Zealand.[50]

Although, under the 1999 Amendment, a judge decided every seven days whether an individual applicant was still a person to whom §128 applied, unless the NZIS had issued the applicant a permit, the judge was obligated to extend the person's warrant of commitment.[51] Thus, in effect, there was no judicial input into detention, unless a case was brought to the High Court by an application for habeas corpus or judicial review, and bail could not be granted.[52] As discussed above, however, on May 31, 2002, the High Court ruled that people claiming asylum must be permitted to apply to a District Court Judge for bail and on June 12, 2002, Parliament amended the Immigration Act to allow detained asylum seekers conditional release pending the adjudication of their claims.[53] The release on conditions of a person detained under section 128 of the Immigration Act is now a matter for the Judge to decide, taking into account all the circumstances of the case[54] (see below *Alternatives to detention*).

All detention decisions may be subject to judicial review in the High Court at any time at the initiative of the claimant.[55] However, as there is no legal aid available for judicial review or habeas corpus proceedings for asylum seekers, few asylum are able to challenge their detention before the High Court (see below *Is there access to government-funded legal aid?*).

Are there limits on the period of detention? No.

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[49] Immigration Act, § 128(13B)(a) as substituted by Immigration Amendment Act 1999 §37(2).

[50] Immigration Act, § 128B(5)(a) as substituted by Immigration Amendment Act 1999 §39(1).

[51] Ramparts, *supra* note 16.

[52] *Id.*

[53] Hon. Phil Goff, *Govt passes tough new anti people-smuggling legislation*, MEDIA STATEMENT, June 12, 2002, *summary available at* http://www.refugee.org.nz/news.htm#12%20June%202002a.

[54] *Id.*

[55] New Zealand Response to LCHR Questionnaire, *supra* note 2.

As noted above, the 1999 Amendments to the Immigration Act made it possible to prolong detention for the entire status determination process and potentially indefinitely.[56] Domestic and international NGOs have been highly critical of the absence of a time limit in the Immigration Act, particularly in the case of mass arrivals, whose detention does not need to be assessed at seven day intervals, as in the case of individual applicants. According to the Immigration Minister herself:

> UNHCR has … noted, with a degree of regret, the provision allowing continued detention in situations where a mass arrival potentially of a group of asylum seekers has occurred. The current draft does not seem to specify any time limits to the period of detention, nor does it contain specific provisions to ensure an expeditious but fair processing of those persons who indeed apply for refugee status in New Zealand…[D]etention of asylum seekers is considered inherently undesirable, but if exceptionally resorted to, it is to be clearly prescribed by law.[57]

Although the 2002 Amendment contained in the Transnational Organized Crime Bill provided for conditional release of asylum seekers, it did not place a time limit on the detention of those who are denied release.

Is there periodic review of detention? Limited.

As noted above, after 28 days in detention, individuals must be brought before a District Court Judge every seven days for a determination of whether they are still subject to ¶128 of the Immigration Act. After 28 days in detention, members of a group that arrived together also must be brought before a District Court Judge; however, their detention does not need to be reviewed every seven days thereafter. As noted above, this periodic review is ineffective, given that the judge does not have discretion to release an asylum seeker who has not been granted a permit. However, as of May 31, 2002, all asylum seekers may be granted conditional release from detention by a District Court Judge on the application of an immigration officer or the claimant at any time (see below *Alternatives to Detention*).

Is there access to government-funded legal aid? Limited.

Refugee status claimants have the right to be represented in the initial stages of the refugee status process and in detention matters.[58] There is no legal aid available for judicial review or habeas corpus proceedings for detention of refugees, however.[59]

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[56] Is Detention Defensible, *supra* note 46.

[57] UNHCR submissions on Immigration Amendment Bill, read into the record by Lianne Dalziel, House of Representatives, *Hansard*, Vol. 576, 15635, *as cited by* Is Detention Defensible?, *supra* note 46, at ¶99, note 123.

[58] New Zealand Response to LCHR Questionnaire, *supra* note 2.

[59] Ramparts, *supra* note 16.

According to the Human Rights Foundation of Aotearoa and the Refugee Council of New Zealand, this makes it simply unfeasible for refugee claimants to take proceedings to the High Court to challenge detention or permit decisions.[60]

Government-funded legal aid for representation must be applied for and is means-tested.[61] The NZIS provides asylum seekers upon their arrival a list of lawyers to contact and indicates the Legal Services Agency will appoint them a lawyer if they choose not to hire one themselves.[62] Upon their arrival to the MRRC, asylum seekers are given an information pack, which includes information about their rights.[63] However, NGOs are concerned and officials admit, that there are often long delays before claimants receive government-funded legal aid.[64] Concerns have also been raised about the experience and qualifications of the lawyers on the list provided by the NZIS. In February 2002, the Auckland District Law Society suggested that an accreditation scheme be established for refugee lawyers, but action has yet to be taken on this initiative.[65] Asylum seekers' access to their attorneys is limited by the small number of phones and fax machines, as well as the prohibition on making calls to cell phones in the ACRP and MRRC. [66]

Alternatives to detention: Yes.

As noted above, the option of conditional release was established by the Immigration Amendment Act 2002 in June 2002. Asylum applicants may apply at any time to the District Court to be released on conditions. A conditional release order may specify any conditions that the judge thinks fit to impose and must specify: (a) a date or occurrence when it expires; (b) the location to which the person must report when it expires; (c) where the person must reside; (d) reporting requirements, to the Police or NZIS; and (e) required attendance at refugee status interviews.[67]

A breach of conditions permits the police to make a warrentless arrest and a District Court Judge to reconsider the conditional release.[68] The NZIS may apply to a District

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[60] *Id.*

[61] New Zealand Response to LCHR Questionnaire, *supra* note 2; *also* Legal Services Agency website at http://www.lsa.govt.nz (last accessed Sept. 15, 2002).

[62] Ramparts, *supra* note 16.

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] New Zealand Response to LCHR Questionnaire, *supra* note 2.

[68] *Id.*

Court Judge for the cancellation of conditional release in the event that further information comes to light or circumstances change so that conditional release of a claimant is no longer deemed appropriate.[69] The District Court Judge has the discretion as to whether to grant the application.[70]

There is no general requirement that asylum seekers on conditional release reside at a particular place; however, the Auckland Refugee Council's Grove Hostel is one possibility.[71] The only restrictions on freedom of movement are the reporting requirements imposed by the District Court judge.[72] Asylum seekers released on conditions are not lawfully able to work.[73]

Vulnerable groups: No special treatment.

According to the Minister of Immigration:

> The detention of all refugee status claimants is a matter that is determined on a case by case basis having regard to all of the circumstances of their case. The degree of vulnerability of a claimant (determined by age, sex, medical conditions or history of trauma) is a factor in every case in deciding whether detention is justified. If detention is, nonetheless justified, it is also a factor in deciding whether detention should occur in a penal institution or a more open, low security environment where such persons may be granted leave.[74]

Persons under the age of 18, pregnant women, and elderly, handicapped and mentally ill persons have all reportedly been detained since September 2001 with no special treatment.[75]

The Minister of Immigration is reportedly aware that children should not be detained.[76] The NZIS has developed a set of Guidelines of the Treatment of Unaccompanied Children, and has reportedly endeavored to abide by the Statement of Good Practice set

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[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] Ramparts, *supra* note 16.

[76] Ramparts, *supra* note 16 (citing a 10/24/01 Meeting with the Minister).

out by the Save the Children and UNHCR S*eparated Children in Europe Programme*.[77] Nonetheless, two boys of 16 and 17 from the *Tampa* were initially detained at ACRP. Apparently, no reasons for their detention were given and the no effort was made to find other facilities to accommodate them.[78] They were released following the intervention of several NGOs, lawyers and government Ministers.[79] Upon their release they joined other children from the *Tampa* in a group home.[80] Only two of the children who were on the *Tampa* have been assigned individual guardians; although, the Children Youth and Families Service (CYFS) has invested heavily in the care of all of the children.[81] Children who arrived on the *Tampa* were promptly enrolled in school, which was reportedly not the case for some children who arrived since September 2001.[82]

Children under the age of 17 are not eligible to sponsor their immediate family members for residence under the Family Sponsored Stream, a problem that has become particularly acute due to the large number of unaccompanied minors who arrived on the *Tampa*.[83] In May 2002, the NZIS was reviewing this problem for the purpose of making recommendations to the Immigration Minister.[84]

New Zealand officials reportedly agree that it is inappropriate to detain pregnant women and newborn babies.[85] Nevertheless, several pregnant women have been detained at MRRC. In December a baby was born there; although soon after her birth she was moved to the ARC Hostel. Prior to seeing a doctor upon her arrival to MRRC, a pregnant woman with diabetes was detained at the airport for a long period. As recently as May, 2002, a woman was in detention who was 9 months pregnant.[86]

At least one unaccompanied elderly man over 60 and one wheelchair bound individual has been detained at MRRC since September 2001, according to Human Rights

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[77] *Id.*

[78] *Id.*

[79] *Id.*

[80] *Id.*

[81] *Id.*

[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] *Id.*

[86] *Id.*

Foundation of Aotearoa and the Refugee Council of New Zealand.[87] NGO visitors to ACRP and MRRC report with concern detainees exhibiting many symptoms of trauma: nervousness, anxiety, aggressive attitudes, muteness, distrust and withdrawal.[88] The Refugees as Survivors Centre does not have sufficient funding to care for detained asylum seekers and the availability of mental health care inside the detention centers is difficult to evaluate.[89]

[87] *Id.*

[88] *Id.*

[89] *Id.*