



PLEASE TAKE ME TO A SAFE PLACE

THE IMPRISONMENT OF ASYLUM SEEKERS IN AOTEAROA NEW ZEALAND

AMNESTY
INTERNATIONAL



Amnesty International is a movement of 10 million people which mobilises the humanity in everyone and campaigns for change so we can all enjoy our human rights. Our vision is of a world where those in power keep their promises, respect international law and are held to account. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and individual donations. We believe that acting in solidarity and compassion with people everywhere can change our societies for the better.

© Amnesty International 2021

Except where otherwise noted, content in this document is licensed under a Creative Commons (attribution, non-commercial, no derivatives, international 4.0) licence.

<https://creativecommons.org/licenses/by-nc-nd/4.0/legalcode>

For more information please visit the permissions page on our website: www.amnesty.org

Where material is attributed to a copyright owner other than Amnesty International this material is not subject to the Creative Commons licence.

First Published in 2021 by Amnesty International Aotearoa New Zealand Incorporated,

111 Karangahape Road, Auckland 1010, NZ

PO Box 110103, Victoria Street West, Auckland 1148, NZ

Index: ASA 32/4113/2021
Original language: English
amnesty.org.nz



CONTENTS

EXECUTIVE SUMMARY & RECOMMENDATIONS	04
METHODOLOGY	08
ASYLUM SEEKERS, DETENTION AND HUMAN RIGHTS	10
The right to seek asylum	10
The right to liberty and security of the person	11
Rights in detention	12
Detention of asylum seekers in criminal justice facilities	12
The imprisonment of asylum seekers in Aotearoa New Zealand	13
THE CONVEYER BELT TO PRISON	14
“The wild west” - arrival at the border	16
Searches at the border	16
Detention at a Police Station	20
“Rubber stamping” - The District Court	22
BEHIND BARS: THE PRISON EXPERIENCE	24
Excessive periods in prison	24
We want to be recognised as human beings” – rights in prison	26
Mental and physical health	27
Specific needs of people seeking asylum	28
Imprisoning trauma survivors	28
Passing the buck: Immigration New Zealand vs the Department of Corrections	29
Double bunking	30
Strip searched	34
Access to family, friends or outside support	36
Clothing and bedding	37
Language, culture and religion	39
Experiences of violence in detention	42
NON CUSTODIAL MEASURES	45
Māngere Refugee Resettlement Centre	45
Release on conditions in the community	46
LIVING IN THE SHADOW OF PRISON	48
How they see Aotearoa New Zealand	48
CONCLUSION AND RECOMMENDATIONS	50
GLOSSARY OF TERMS	53

EXECUTIVE SUMMARY & RECOMMENDATIONS

PLEASE TAKE ME TO A SAFE PLACE

The imprisonment of asylum seekers in criminal justice facilities in Aotearoa New Zealand

“Please take me to a safe place” are the desperate words of a 20-year-old African asylum seeker pleading to be released from prison in Auckland. After fleeing danger in his home country, he thought he would finally be safe in Aotearoa New Zealand. However, he was instead arrested and detained in a criminal prison solely on immigration grounds. He was only released after his refugee status was recognised, seven months later.

In 2014, the United Nations Working Group on Arbitrary Detention made a 15-day visit to Aotearoa New Zealand. In their report presented to the Human Rights Council in 2015, they highlighted their concern that Aotearoa New Zealand “is using the prison system to detain irregular migrants and asylum seekers, including Waikeria Prison, Arohata Prison for Women and Mt. Eden Corrections Facility. These prisons, and police stations, do not provide separate facilities for immigrants in an irregular situation or asylum seekers.”¹ They recommended the abolishment of this practice.²

In the subsequent years after the visit from the working group, the Government of Aotearoa New Zealand has continued to detain asylum seekers and irregular migrants in police stations and prisons.

The number of asylum claimants detained in prison per year, shown by first year of detention only.

Corrections Facility Name	First Year Detained						Totals
	2015	2016	2017	2018	2019	2020	
Mt Eden Corrections Facility	8	15	12	10	18	3	66
Waikeria Prison	2	0	1	1	0	0	4
Rimutaka Prison	1	2	0	0	1	0	4
Auckland Region Women’s Corrections Facility	1	0	0	1	0	1	3
Christchurch Men’s Prison	0	1	1	0	1	0	3
Hawkes Bay Prison	0	0	0	2	0	0	2
Christchurch Women’s Prison	0	0	0	0	1	0	1
Spring Hill Corrections Facility (SHCF)	0	1	0	0	0	0	1
Other Facility	0	1	0	0	0	0	1
Auckland Central Remand Prison	1	0	0	0	0	0	1
Totals	13	20	14	14	21	4	86

First Year Asylum Claimants Were Detained in Prison Under section 316 of the Immigration Act 2009 Across Correctional Facility Name as at 10 November 2020.

Table source: Immigration New Zealand

1. Report of the Working Group on Arbitrary Detention on its visit to New Zealand (24 March to 7 April 2014), UN Doc. A/HRC/30/36/Add.2, 6 July 2015, para. 71.
2. Report of the Working Group on Arbitrary Detention on its visit to New Zealand (24 March to 7 April 2014), UN Doc. A/HRC/30/36/Add.2, 6 July 2015, para. 1.

Between the years 2015 to 2020, Immigration New Zealand imprisoned approximately 86 people seeking asylum. Whilst the majority of people who apply for asylum in Aotearoa New Zealand are not detained at any stage, legislation and practice still allow for the detention of some asylum seekers solely on immigration grounds. Immigration New Zealand can imprison an asylum seeker to hold them for future deportation pending the determination of their claim if they are considered at risk of absconding within Aotearoa New Zealand, pending satisfactory establishment of their identity, or on broad “threat to security” grounds. In some cases, the Immigration Act 2009 effectively reverses the presumption of liberty, contrary to international human rights standards.

These 86 people had to pass through a complex hybrid of civil and criminal detention processes. This usually began by being arrested at the airport or in the community, detained in a police cell for several nights, brought before a judge in the District Court, and taken to a prison managed by the Department of Corrections or a private prison provider contracted by the Government. Their detention in a police cell or prison ranged from several days to several years. Despite not being charged with a criminal offence in Aotearoa New Zealand, asylum seekers detained in a prison are subject to essentially the same regime as remand accused prisoners.

Our findings from research conducted into the continuation of these policies in the last six-year period demonstrate that they have put refugees and asylum seekers at risk, and in some cases, constitute human rights violations. Their stories and the policies and practices that have contributed to the findings of this report are a stark picture of the human rights failures and harms of this policy for the people who are subject to it.

Our investigations have documented a case where a reported survivor of torture, later recognised as a refugee, was allegedly raped whilst being double bunked in prison. Immigration New Zealand admitted to imprisoning several other people, later also recognised as refugees, who were past survivors of torture, mistreatment or sexual or gender-based violence. We also interviewed a case where a man reported being caught up in the notorious “fight clubs” at Mt Eden Corrections Facility, resulting in him being forced to regularly fight other remand prisoners. Three men spoke of how their treatment led them to want to end their life. All spoke of the negative impacts on their well-being from their prison experience, and the shock that Aotearoa New Zealand would detain asylum seekers. One man spent over three years of his life in limbo in prison as his claim for asylum was processed and his hand was broken in an altercation with a cellmate. All those we interviewed reported being double bunked at some point with remand prisoners in prison and it was standard practice to be strip searched. Language barriers for some meant they suffered in silence and couldn’t even ask for help. Three were detained in prison despite a community group or family member offering to host them in the community. Their accounts and experiences are included throughout this report and tell the human side of the complex web of systems, policies, laws and processes that they are subjected to. Their brave stories echo why international human rights bodies have repeatedly noted the inappropriateness and harms of the use of police stations and prisons to detain asylum seekers and other immigration detainees and that it should not take place.⁵ Amnesty International is calling for immediate and urgent reform to end these practices.

3. This particular report focuses primarily on the detention of asylum seekers in criminal justice facilities and the conditions. It does not discuss in detail whether the detention itself is arbitrary, but this is an area of focus that requires further research.
4. Regulation 184 of the Corrections Regulations 2005. There is one narrow exception to this, which is that an immigration detainee may keep their own hairstyle.
5. See the UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012 (hereinafter: UNHCR Detention Guidelines); UN Working Group on Arbitrary Detention, Revised Deliberation No. 5 on deprivation of liberty of migrants, 7 February 2018, http://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf (hereinafter: WGAD 2018); UNHCR Executive Committee, Conclusion No. 44 (XXXVII) – 1986, Detention of Refugees and Asylum Seekers, UN Doc. 12A A/41/12/Add.1.

EXECUTIVE SUMMARY & RECOMMENDATIONS

OUR RECOMMENDATIONS

Amnesty International urges the Government of Aotearoa New Zealand to:

RECOMMENDATION 1:

End the use of criminal justice facilities such as police stations and prisons to detain asylum seekers or irregular migrants, since these are designed for those within the realm of the criminal justice system.

RECOMMENDATION 2:

Reform the Immigration Act 2009 to ensure that it is consistent with international human rights standards, including the following amendments:

- a) Explicitly protect in law the presumption against immigration detention in all circumstances.
- b) Introduce international human rights standards on the use of immigration detention in Part 9 of the Immigration Act, including a statutory obligation to adhere to the requirements of detention only as a last resort and to comply with the requirements of legality, necessity, proportionality and non-discrimination.
- c) Any decision to detain is based on an individualised assessment and not the circumstances of arrival or asylum claim.
- d) Introduce a prohibition in law on the immigration detention of people at increased risk of human rights violations who have sought asylum, including: torture survivors, children under 18 and their families or guardians, pregnant or lactating women, those with serious medical conditions, people with disabilities and older persons.
- e) Introduce a total maximum duration for detention provided by law which should be reasonable in its length. Once this period has expired the individual concerned should automatically be released.
- f) For cases where restrictions to the rights to liberty or freedom of movement are necessary, introduce an obligation in law to consider non-custodial measures before resorting to detention.

RECOMMENDATION 3:

Ensure that community alternatives to detention are available, funded adequately and accessible to asylum seekers and irregular migrants in policy and practice, without discrimination.

RECOMMENDATION 4:

Immediately review cross-agency failures to ensure due process rights at all stages of the immigration detention process, in co-operation with rights holders, lawyers, the UNHCR and civil society organisations. This should include, but not be limited to:

- a) Access to and funding of civil legal aid representation at all stages of detention that meaningfully ensures the right to challenge immigration detention and pursue asylum claims.
- b) Access to interpreters at all stages of detention and provision of relevant documentation in their own language. The interpretation or translation provided should be of a standard which enables the detainee to fully understand the proceedings around their case.
- c) Immigration detainees are handed information as soon as possible about the reasons for a detention decision and details on their rights in a language they understand, preferably at the airport.

- d) Immigration detainees are given access to a qualified immigration lawyer before their court appearance and ideally at the first interview stage.
- e) Judicial review of immigration detention is not only of a procedural nature but must also allow for substantive consideration of the case at each hearing.
- f) Search practices, including strip searches for immigration detainees are reviewed.
- g) Adequate time for proper health checks and screening prior to transfer to any detention facility, including appropriate assessment, diagnoses, and treatment of any illnesses, injuries or disabilities and that immigration detainees are not transferred to a facility where these health needs cannot be addressed or under circumstances in which their health would be adversely affected.
- h) Human rights and asylum-specific training of Immigration New Zealand officers and legal counsel, police officers and the judiciary.

RECOMMENDATION 5:

If immigration detention is used as a last resort and is legal, necessary and proportionate, ensure that any restrictions on movement or detention conditions comply with relevant international human rights standards, including:

- a) Ensure that all immigration detainees can communicate freely and in full confidentiality with visitors and that they have adequate opportunity to communicate with the outside world.
- b) Ensure that all immigration detainees can exercise their right to access legal counsel, interpreters, doctors, refugee and migrant assisting organisations, members of their families, friends, religious and social assistance and the UNHCR, and that this right is not impeded in practice.
- c) Ensure that all immigration detainees are afforded regular and sufficient periods to make telephone calls at times that are appropriate for the part of the world they are calling.
- d) Ensure that all immigration detainees are given regular and sufficient periods of time to send and receive email and to receive information.
- e) Ensure that there are no limits on the number of letters that can be sent and received by immigration detainees. Legal mail should not be opened or otherwise read by prison or detention centre staff.
- f) Allow any immigration detainee to have reasonable access to a radio, television and/or internet.
- g) Take steps to ensure that immigration detainees have access to a library that is adequately stocked with recreational and instructional books.
- h) Ensure that immigration detainees have appropriate food in line with their culture and religious beliefs whilst detained.
- i) Ensure that detention centre/prison rules are provided in a language detainees understand, in particular that information on accessing a medical professional, a lawyer, making a complaint and access to phone calls/outside world should all be provided in a language that is understood.

EXECUTIVE SUMMARY & RECOMMENDATIONS

- j) Ensure the right to the highest attainable standard of health, including access to adequate mental health care is met.
- k) Ensure free and full access for independent agencies such as faith and community interest groups; local, national, and international governmental organisations; and non governmental organisations, and permit them to monitor detention conditions.
- l) Ensure that community organisations are provided adequate funding and resources to house and support refugees and asylum seekers.

RECOMMENDATION 6:

Individuals who have been subjected to human rights violations in custody must have accessible and effective remedies. In particular, the Government of Aotearoa New Zealand must ensure that allegations are promptly, impartially, independently and thoroughly investigated, that victims have access to an effective remedy and receive reparation, and that those responsible are brought to justice in accordance with international human rights law and fair trial standards.

METHODOLOGY

Our research, analysis and findings are based on a variety of primary and secondary sources relating to the imprisonment of people who have sought asylum in Aotearoa New Zealand between the years of 2015 to 2020. These include interviews with 20 people, including refugees and asylum seekers and those working closely with them, such as support workers or lawyers. Our sources also include court documents, legislation and operational policies, official documents obtained under the Official Information Act, such as statistics, documents and emails, immigration, prison and legal files of individuals, and credible or independent inspections of prisons.

The first-hand testimonies come from the direct experiences and words of 12 people who have sought asylum in Aotearoa New Zealand and were detained in prison at some point between 2015 and 2020 on immigration grounds. Not all 12 testimonies have been featured in this report as individual case studies, but all were included in our overall analysis and inform the recommendations made. We carried out semi-structured interviews in September and November of 2020. All interviews with asylum seekers were carried out in person, primarily on site at the Asylum Seekers Support Trust Hostel, which is the primary organisation in Aotearoa New Zealand dedicated to supporting or hosting asylum seekers in the community.

Of the 12 testimonies included, 11 interviews were carried out after the interviewees had been released from prison and one was interviewed whilst still detained in prison. Ten had been detained on arrival at the airport and two had been detained after living as an irregular migrant in the community and claiming asylum after being served with a deportation order.

Eleven asylum seekers were men and one was a woman, which is generally representative of the profile of asylum seeker detainees in Aotearoa New Zealand. They were from a number of different countries, including Somalia, Sri Lanka, Iran, Turkey and China. Some shared their story through an accredited interpreter sourced through a trusted partner organisation or with a support worker who spoke their language. For reasons of privacy and security, the sources have not been identified and false names have been used. The information included in the case studies featured in this report has been independently verified unless otherwise indicated.⁶

The people we interviewed dedicated significant time to telling their experiences, and shared personal and difficult stories. We are indebted to them for trusting us with their experiences.

We also carried out interviews with two support staff from the Asylum Seekers Support Trust and interviews with six lawyers, who between them, have decades of experience representing asylum seekers who have been detained and imprisoned in Aotearoa New Zealand. These were carried out in person or using videoconference. Parts of their comments, quotes and analysis are also included in the report.

We engaged with relevant Government departments to request official information and statistics, clarify relevant operational policies and respond to some allegations. This included a final opportunity for the Ministers of Immigration, Justice, Corrections and Police to respond prior to publishing.

At time of publishing, the Minister of Immigration and Justice and the Minister of Corrections had responded to Amnesty International's right to reply letter. The Minister of Immigration advised that he was not able to provide a comprehensive response prior to the deadline but welcomed an opportunity to meet with Amnesty International following the release of the full report.

The Minister of Corrections provided a brief response to Amnesty International prior to publishing with clarifications and comments. These primarily related to Correction's role in that it does not decide who is placed in a prison, the privacy of legal mail, and interpretation services in prison. This included that people in prison should have access to a translation service on phone calls or in meetings with their legal advisor, or meeting with Corrections staff, and that the Department is currently working on a pilot for the development of translated information into different languages.

6. "Alleges", "claims" or "reported" has been used if independent verification has not been possible of a particular incident or claim.

ASYLUM SEEKERS, DETENTION AND HUMAN RIGHTS

For many decades, Aotearoa New Zealand has been party to a number of core treaties that relate directly to its international human rights obligations relating to the rights of asylum seekers in detention.⁷ These include, among others, the 1951 Convention Relating to the Status of Refugees (the Refugee Convention), the International Covenant on Civil and Political Rights (the ICCPR), The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture) and the International Covenant on Economic, Social and Cultural Rights (the ICESCR). Some domestic laws in Aotearoa New Zealand incorporate some of these human rights standards indirectly or directly.

To honour obligations under these human rights treaties domestically, Aotearoa New Zealand is required to both refrain from actions that interfere with human rights, protect people against human rights abuses and take positive steps to facilitate the enjoyment of human rights for all.⁸

[a] The right to seek asylum

Seeking asylum is a universal human right and has been enshrined as such since 1948 in the Universal Declaration of Human Rights following the atrocities of World War Two.⁹ The 1951 Refugee Convention (the Refugee Convention) and its 1967 Protocol are the key legal documents that protect the rights of refugees. Aotearoa New Zealand acceded to the Refugee Convention in 1960 and the 1967 Protocol in 1973 and the Immigration Act incorporates the Refugee Convention into its schedule. Article 1 of the Refugee Convention defines a refugee as “any person who is outside his/her country of nationality or habitual residence; has a well-founded fear of persecution because of his/her race, religion, nationality, membership to a particular social group or political opinion; and is unable or unwilling to avail himself/herself of the protection of that country, or to return there, for fear of persecution”.

“The position of asylum seekers may differ fundamentally from that of ordinary migrants in that they may not be in a position to comply with the legal formalities for entry. They may, for example, be unable to obtain the necessary documentation in advance of their flight because of their fear of persecution and/or the urgency of their departure. These factors, as well as the fact that asylum seekers have often experienced traumatic experiences, need to be taken into account in determining any restrictions on freedom of movement based on illegal entry or presence.”

UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum Seekers and Alternatives to Detention, para. 11.

7. The New Zealand Bill of Rights Act 1990 aims to affirm, protect, and promote human rights and fundamental freedoms in New Zealand—and to affirm New Zealand’s commitment to the ICCPR. The Immigration Act 2009 also includes the text of the Refugee Convention in its schedule.

8. See Article 14 of the Universal Declaration of Human Rights (UDHR); the Convention relating to the Status of Refugees; and the Protocol relating to the Status of Refugees.

9. Article 31 of the 1951 Convention relating to the Status of Refugees.

Asylum seekers are also entitled to certain protections under the Refugee Convention. All refugees declared as such, were once an asylum seeker. The Refugee Convention recognises that by virtue of fleeing persecution, often in urgent circumstances, people seeking a safe haven may be forced to enter a country without the required documentation or without prior legal authorisation.¹⁰ Accordingly, asylum seekers should not be penalised for doing so, provided they present themselves without delay to the authorities and show good cause for their irregular entry or presence.¹¹

[b] The right to liberty and security of the person

International and domestic law establish that everyone, regardless of nationality, citizenship or migration status, has the right to liberty, including protection from arbitrary arrest and detention and the enjoyment of their personal security.¹³ The right to liberty should always be the default condition for all people and can only be restricted in specific and the most exceptional of circumstances. In order not to be arbitrary, any form of detention, including immigration detention, must strictly adhere to the requirements of legality, necessity, proportionality, and non-discrimination.¹³

Domestic and international human rights standards pertaining to the absolute prohibition of arbitrary detention are also applicable to asylum seekers and other individuals in immigration detention.¹⁴ Forms of administrative detention, (ie. detention without a trial) can be at times prolonged, and may also be used by states to circumvent fair trial proceedings in the criminal justice system.

Whilst immigration detention (detention for the only purpose of migration management) is not completely prohibited under international law, it is only permissible as a last resort for the shortest possible time.¹⁵ If immigration detention is used, people seeking asylum like anyone else, must still benefit from the legal presumption of liberty. Liberty “is a substantive guarantee against unlawful and arbitrary detention.”¹⁶

10. See also the UNHCR Detention Guidelines.

11. Article 9(1) of the ICCPR. The right to liberty is also echoed in section 22 of the New Zealand Bill of Rights Act 1990.

12. See also Amnesty International, *Migration-Related Detention* (POL 33/005/2007) p. 6; Amnesty International, *Irregular Migrants and Asylum-Seekers: Alternatives to Immigration Detention* (POL 33/001/2009) pp. 4, 6, 7; Amnesty International, *Observations on the Revised Draft General Comment 35 on Article 9 of the International Covenant on Civil and Political Rights* (IOR 41/013/2014) p. 15.

13. See also Amnesty International, *Migration-Related Detention* (POL 33/005/2007) p. 6; Amnesty International, *Irregular Migrants and Asylum-Seekers: Alternatives to Immigration Detention* (POL 33/001/2009) pp. 4, 6, 7; Amnesty International, *Observations on the Revised Draft General Comment 35 on Article 9 of the International Covenant on Civil and Political Rights* (IOR 41/013/2014) p. 15.

14. Articles 9 and 14 of the Universal Declaration of Human Rights (hereinafter: UDHR); Article 31 of the Convention Relating to the Status of Refugees (Refugee Convention); Articles 2 and 9(1) of the ICCPR; UN Human Rights Committee General Comment 35, [UN Doc. CCPR/C/GC/35](#), 16 December 2014; UN Committee on the Elimination of Racial Discrimination General Recommendation 30 on Discrimination against Non-Citizens; Guidelines 1, 2 and 3 of the UNHCR Detention Guidelines.

15. *Report of the Special Rapporteur on the human rights of migrants*, François Crépeau, UN Doc. A/HRC/20/24, 2 April 2012, para. 22; Annex II, Principle 7 of the Commission on Human Rights, *Report of the Working Group on Arbitrary Detention*, UN Doc. E/CN.4/2000/4, 28 December 1999; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families: Mexico*, UN Doc. CMW/C/MEX/CO/2, 3 May 2011, para. 36; UN Human Rights Committee, *Concluding observations on the sixth periodic report of Canada*, UN Doc. CCPR/C/CAN/CO/6, 13 August 2015, para. 12; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Concluding observations of the Committee on the second periodic report of Bosnia and Herzegovina*, UN Doc. CMW/C/BIH/CO/2, 26 September 2012, para. 26(a); UN Committee against Torture, *Concluding observations of the Committee against Torture: Australia*, UN Doc. CAT/C/AUS/CO/3, 22 May 2008, para. 11; Guideline 6 of the UNHCR Detention Guidelines; WGAD 2018, paras 25-27.

16. Under section 316 of the Immigration Act 2009, an immigration officer may apply to a District Court Judge for a warrant of commitment (or a further warrant of commitment) authorising a person’s detention for up to 28 days in any case where it becomes apparent, in the case of a person detained in custody under this Part, that before the expiry of the period for which detention is authorised—

(a) there will not be, or there is unlikely to be, a craft available to take the person from New Zealand; or

(b) the person will not, or is unlikely to, supply satisfactory evidence of his or her identity; or

(c) the Minister has not made, or is not likely to make, a decision as to whether to certify that the person constitutes a threat or risk to security; or

(d) for any other reason, the person is unable to leave New Zealand.



ASYLUM SEEKERS, DETENTION AND HUMAN RIGHTS

In Aotearoa New Zealand, Immigration Law and practice enables the arrest and detention of asylum seekers, including in criminal justice facilities, for the purpose of carrying out a potential turnaround or deportation order “just in case” their claim fails, pending satisfactory establishment of their identity, or on “threat to security” grounds.¹⁷

[c] Rights in detention

People arrested or detained under any law, including immigration law, are entitled, at a minimum, to the rights for all persons deprived of their liberty.¹⁸ This includes freedom from torture or cruel, inhuman or degrading treatment or punishment,¹⁹ to be treated with humanity and with respect for the inherent dignity of the person,²⁰ and the right to healthcare in detention. Aotearoa New Zealand domestic law also specifies a number of minimum entitlements under the Corrections Act 2004 which are influenced by the United Nations Standard Minimum Rules for the Treatment of Prisoners (“the Mandela Rules”).²¹

Detention of asylum seekers in criminal justice facilities

“The detention of asylum seekers or other irregular migrants must not take place in facilities such as police stations, remand institutions, prisons and other facilities since these are designed for those within the realm of the criminal justice system. The mixing of migrants and other detainees who are held under the remit of the criminal justice system must not take place”

Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018, para. 44.

Detaining asylum seekers specifically in criminal justice facilities is contrary to the standards set by international human rights bodies, including the United Nations Working Group on Arbitrary Detention in 2018.²² These bodies have repeatedly noted the inappropriateness of and harm from the use of police stations and prisons to detain asylum seekers and other immigration detainees.²³ People detained under immigration grounds have not been charged with a criminal offence in Aotearoa New Zealand.

17. Sections 310 and 316 of the Immigration Act 2009.
18. Section 23 of the Bill of Rights Act 1990; Articles 7 and 10 of the ICCPR; UN Standard Minimum Rules for the Treatment of Prisoners; Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Guideline 8 of the UNHCR Detention Guidelines; Principle 6 of the General Assembly Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN Doc. A/RES/43/173.
19. Article 7 of the ICCPR.
20. Article 10 of the ICCPR.
21. Corrections Act 2004.
22. The Working Group on Arbitrary Detention is a body of independent human rights experts and was established by resolution 1991/42 of the former Commission on Human Rights. Its mandate was clarified and extended by Commission’s resolution 1997/50. The mandate was most recently extended by Human Rights Council resolution 42/22 of 26 September 2019 for a further three year period.
23. See UNHCR Detention Guidelines; WGAD 2018; UNHCR Executive Committee, *Conclusion No. 44 (XXXVII) – 1986, Detention of Refugees and Asylum Seekers*, UN Doc. 12A A/41/12/Add.1.

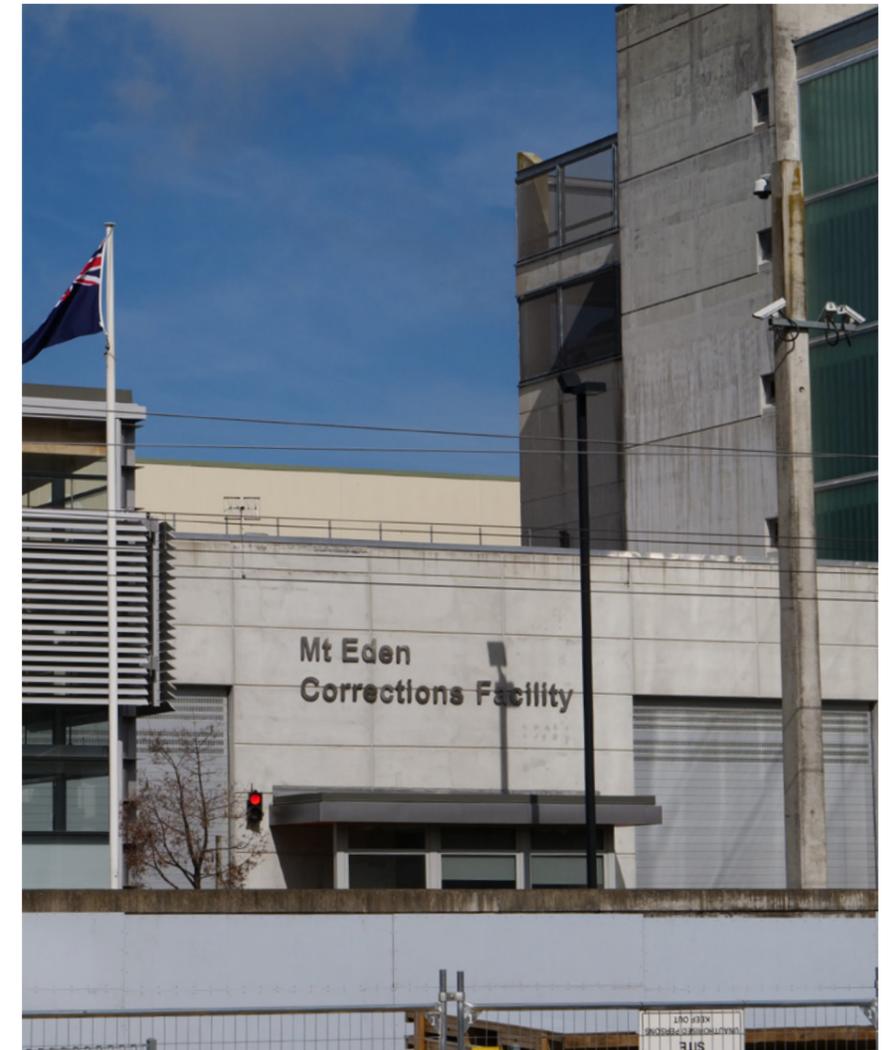
The imprisonment of asylum seekers in Aotearoa New Zealand

“Immigration Act 2009: detainees subject to same regime as accused prisoners – Prisoners who are detained under the Immigration Act 2009 are subject to the same regime and have the same entitlements as accused prisoners except as provided under regulation 70 and regulation 188.”

Regulation 184 of the Corrections Regulations 2005.

Whilst the majority of asylum seekers are not detained, Aotearoa New Zealand legislation and practice still allow for the detention of some asylum seekers in criminal justice facilities, and they are subject to essentially the same regime as remand accused prisoners.²⁴ As such there is no distinct policy for immigration detainees, including asylum seekers, in prison.²⁵

24. Regulation 184 of the Corrections Regulations 2005. There is one narrow exception to this, which is that an immigration detainee may keep their own hairstyle.
25. Department of Corrections, Official Information Act response to Amnesty International Aotearoa New Zealand, 17 July 2020.



“It is of concern to the Working Group that New Zealand is using the prison system to detain irregular migrants and asylum seekers. They are being held in Waikeria Prison, Arohata Prison for Women and Mt. Eden Corrections Facility. These prisons, and police stations, do not provide separate facilities for immigrants in an irregular situation or asylum seekers.”

Report of the Working Group on Arbitrary Detention: Mission to New Zealand, UN Doc. A/HRC/30/36/Add.2, 6 July 2015, para. 71.

THE CONVEYER BELT TO PRISON

Under current law and practice in Aotearoa New Zealand, some asylum seekers may be arrested and detained under two primary routes. They may arrive at the airport border in Aotearoa New Zealand and be refused entry, for example if they don't have a valid visa or have false identity documents and are considered liable for "turnaround" or deportation. Alternatively, a person may be arrested and detained when they are living in the community without a valid visa, are arrested for deportation, and apply for asylum at this point in time. The Immigration Act 2009 stipulates that the purpose for which arrest and detention powers may be exercised generally relate to questions of detaining due to the immediate inability to carry out a deportation order or "turnaround", on "threat to security" grounds, or pending satisfactory establishment of the person's identity.²⁶

When an asylum seeker is considered liable to arrest and detention, they may then be:²⁷

- 1) Detained by an immigration officer for four hours (often where an interview takes place to establish next steps).
- 2) Arrested and detained without warrant in a police station for a period not exceeding 96 hours.
- 3) Released into the community on conditions, or to a specific place of residence with reporting requirements (such as the Asylum Seeker Support Trust Hostel in Auckland).
- 4) Detained under a "warrant of commitment" by a District Court Judge to prison, or to Aotearoa New Zealand's Refugee Resettlement Centre.



26. Sections 310 and 316 of the Immigration Act 2009.

27. Section 311 of the Immigration Act.

Section 23 of the New Zealand Bill of Rights Act 1990: Rights of persons arrested or detained

- (1) Everyone who is arrested or who is detained under any enactment—
 - (a) shall be informed at the time of the arrest or detention of the reason for it; and
 - (b) shall have the right to consult and instruct a lawyer without delay and to be informed of that right; and
 - (c) shall have the right to have the validity of the arrest or detention determined without delay by way of habeas corpus and to be released if the arrest or detention is not lawful.
- (2) Everyone who is arrested for an offence has the right to be charged promptly or to be released.
- (3) Everyone who is arrested for an offence and is not released shall be brought as soon as possible before a court or competent tribunal.
- (4) Everyone who is—
 - (a) arrested; or
 - (b) detained under any enactment—
for any offence or suspected offence shall have the right to refrain from making any statement and to be informed of that right.
- (5) Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person.

Both domestic law and international human rights standards require that a detainee, including an immigration detainee, is entitled to basic procedural standards to protect against arbitrary detention and ill treatment.

This includes the right to be informed, in writing and in a language which they understand, of the nature of and grounds for the decision to detain, the duration of detention, as well as of the possibility to challenge the legality and arbitrariness of such decision (habeas corpus).²⁸ They must be informed of their right to contact a lawyer and for authorities to take reasonable steps to enable a legal visit in private.²⁹ International human rights standards makes clear that people seeking asylum who are detained must also retain the ability to communicate with the outside world, including by telephone or email, to file an asylum application, and to not be detained in criminal justice facilities such as police stations or prisons.³⁰

For those who were arrested and detained, at every stage, Amnesty International found failures to ensure rights to due process during the course of their immigration detention proceedings.

28. See section 23 of the New Zealand Bill of Rights Act 1990; *Report of the Working Group on Arbitrary Detention United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, UN Doc. A/HRC/30/37, 6 July 2015, para. 42. See also *Report on the visit of the Working Group on Arbitrary Detention to the United Kingdom on the issue of immigrants and asylum seekers*, UN Doc. E/CN.4/1999/63/Add.3, paras 27-28; *Report of the Working Group on Arbitrary Detention: Visit to Romania*, UN Doc. E/CN.4/1999/63/Add.4, paras 49-50; *Report of the Working Group on Arbitrary Detention - Addendum - Mission to Greece*, UN Doc. A/HRC/27/48/Add.2, 30 June 2014, paras 118 (d) (i) and 119 (b); *Report of the Working Group on Arbitrary Detention - Addendum - Mission to Italy*, UN Doc. A/HRC/10/21/Add.5, 26 January 2009, para. 76.

29. Section 23(1)(b) of the New Zealand Bill of Rights Act 1990.

30. WGAD 2018, paras VI and IX.

THE CONVEYER BELT TO PRISON

“THE WILD WEST”

Arrival at the Border

At this stage in the process asylum seekers can legally be detained by Immigration New Zealand for up to four hours,³¹ which is usually when the initial interview with an immigration officer from Border Operations takes place in a separate room at the airport. Interpretation services are available over the phone or in person. Immigration New Zealand does not consider the initial interview with asylum seekers at the airport as an official form of “detention” and therefore does not consider that it has an obligation to ensure access to legal representation.

However, under international human rights standards, this could still be considered a form of immigration detention.³² A brief period of immigration detention (such as for several hours) can be legitimate if it is considered necessary for legitimate purposes, such as for determining a person’s identity, but must be for the shortest possible time and still comply with human rights standards.

Strip Searches at the Border

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. – Article 10 of the International Covenant on Civil and Political Rights.

Everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, or correspondence or otherwise. – Section 21 of the New Zealand Bill of Rights Act 1990.

The Customs and Excise Act 2018 allows “personal searches” at the border, which can include a partial or full strip search, where there is reasonable cause to suspect or believe in certain set of facts or circumstances. According to an Official Information Act response to Amnesty International, between 2015 and 2020, Customs carried out “personal searches” on five asylum seekers. One asylum seeker alleged that he was strip-searched naked by a border official on arrival and without an interpreter’s explanation as to why.

All of the above taking place in this way is especially problematic in the context of someone who has just arrived in the country, potentially after a long and complex journey, is unlikely to speak English, does not have access to legal advice, may have a history of trauma and potentially even torture, a fear of authorities, and does not know the systems of Aotearoa New Zealand.

A refugee and human rights lawyer described the process at the airport as the “Wild West”, particularly given there is no way for lawyers to know whether someone has claimed asylum, is being detained at the airport and requires legal representation.³³ This is particularly problematic as crucial information regarding both the grounds for future detention and a person’s asylum claim are gathered at this first interview. Another refugee lawyer, in describing the influence of this interview, commented on how the information gathered by an immigration official could “come back to bite” clients when Immigration New Zealand continued to apply for their detention, including in prison under a warrant of commitment.³⁴



Armin [real name withheld]
interviewed by Amnesty International, Auckland,
3 November 2020

Armin (not his real name) is a refugee from a Middle Eastern country where he said he faced persecution. He sought asylum in Aotearoa New Zealand on arrival at Auckland Airport. Because he did not have valid identity or travel documents, he was considered liable for detention. He was detained at Mt Eden Corrections Facility for a nearly a month.

Armin was interviewed at the airport by Immigration New Zealand through an interpreter who spoke his language but reportedly a different dialect to him, which caused some misunderstanding, including that he had served a prison sentence in his home country, which wasn’t true. Armin was transferred in a police car by police officers to a police station where he spent four days in custody:

“On the way taking me to the prison, there was a guy, I don’t know if he was an officer, and then they said, ‘Don’t worry, we’re going to take you to a safe place for four days and then they will send you back, or deport you back to your country.’ Then they were laughing at me and I didn’t like it. I didn’t like the feeling how I was being treated in the car... when I entered the unit, they made a lot of fun of me – the prisoners. They know somebody new is coming and they make a lot of noise and a lot of funny talking.”

Before arriving in Aotearoa New Zealand, Armin had managed to get a message to a relative who got in touch with a refugee lawyer. She agreed to represent him and provided comprehensive evidence of his identity and an address where he could be released to within the first 10 days of his arrival.

However, Immigration New Zealand still continued ahead with their application for a warrant of commitment to detain him in prison. Armin was transferred to Mt Eden Corrections Facility where he was double bunked with criminal remand prisoners. He described being deeply distressed in prison and how difficult it was to be in prison and not speak English:

“There wasn’t any translator. Even if you wanted something there was nobody to translate, and then that makes the process harder. For example, I didn’t know that I had to buy cards to contact [a member of] my extended family here in New Zealand. And I had some money in my backpack and then my backpack wasn’t with me. After two weeks, I had to sign and then my bag would come. I couldn’t buy anything. There was like a process if you wanted to call somebody. I didn’t know the process at all. The biggest problem I had was the language. There wasn’t any help for those second language people.

A lot of times I used to cry. I couldn’t speak and everything is within you. There was nobody to talk to. I was feeling destroyed. There was nothing that I could communicate easily.”

Armin was released from Mt Eden Corrections Facility to the Asylum Seekers Support Trust Hostel on conditions after his lawyer continued to push for his release. He was recognised as a refugee several months later. His lawyer still has no idea why he wasn’t released to the address of a family member that had been provided to Immigration New Zealand.

31. Sections 311 and 312 of the Immigration Act 2009.

32. Detention refers to any form of deprivation of liberty or confinement of the physical body ordered by public authorities. Article 9(1) of the ICCPR applies to all deprivations of liberty (not just in the context of criminal law), including confinement to a restricted area in an airport, being involuntarily transported, and other forms of administrative detention of migrants and asylum-seekers. Whether a person is “detained” depends on the fact of whether he/she has been deprived of liberty by the state, not on the place or circumstances of the confinement.

33. Amnesty International interview with refugee lawyer 4 [name withheld], via videoconference, 9 February 2021.

34. Amnesty International interview with refugee lawyer 3 [name withheld], via videoconference, 9 February 2021.

THE CONVEYER BELT TO PRISON

“That is the most ridiculous set up question...If they say no it is used against them to show they are an absconding risk and can’t be deported, if they say yes, they can’t claim asylum.”

Refugee lawyer 6 [name withheld], interviewed by Amnesty International via video conference, 8 March 2021.

For example, asylum seekers are asked “whether they would leave New Zealand voluntarily if their asylum claim is declined” as standard practice in airport interviews. When they respond in the negative (with a “no”), this may be used against them as one of the cumulative reasons justifying detention in prison under future warrant of commitment applications by Immigration New Zealand.³⁵

“Risk of absconding” is a prevalent ground used under the Immigration Act 2009 to detain asylum seekers in prison.³⁶ A “just in case” approach, of ensuring compliance with a “potential” deportation order is increasingly not recognised as a legitimate standalone ground for detaining asylum seekers under international law.³⁷ Amnesty International believes that the “risk of absconding” must be assessed in relation to a deportation procedure that has been initiated, is in progress, and has a reasonable prospect of being executed. International law prohibits deportation before a person’s asylum claim has been finally determined. States are therefore prohibited from detaining asylum-seekers for the purpose of expelling them before the final decision on their asylum application has been made.³⁸

Whilst asylum seekers are told they will not be removed from Aotearoa New Zealand until their claim is decided, some were also given a “message” at the outset of the interview:

“If you are not granted entry permission you will not be removed from New Zealand until your claim for refugee or protection status has been decided. This process can take many months or even years. Depending on the information gained during this interview you may be granted a visa or held in a form of detention whilst your claim is being processed.”³⁹

Telling asylum seekers how long their claim could take, combined with the reference to detention could be interpreted or construed (particularly for someone in a state of post-traumatic stress) as seeking to deter or dissuade them in their right to pursue their asylum claim. This initial interview is also not carried out by a Refugee Status Determination Officer or someone with expertise in refugee law. This was particularly evident in the experiences of some asylum seekers interviewed by Amnesty International who referred to immigration officers in this interview having no rudimentary knowledge of the large-scale conflicts in the country they were fleeing, or knowledge that countries they had passed through in their journey were not signatories to the Refugee Convention so could not offer protection.



Li [real name withheld] interviewed by Amnesty International, Auckland, 23 November 2020

Li is an asylum seeker from China who, after being in limbo in a country that is known for the forced return of refugees, claimed asylum on arrival to Aotearoa New Zealand at Auckland Airport. He spent several months, at times double bunked with remand prisoners, at Mt Eden Corrections Facility.

Li arrived with a regular passport and travel documents and was initially admitted access through the border. Li spoke no English so as soon as he was admitted through the border, he looked around for an official who could speak his language. As soon as he did, he told them he wanted to seek asylum. Li was interviewed, had his visa cancelled, detained at the airport and had his belongings taken off him, including his passport.

“The immigration officer didn’t really give me any accurate reason why I needed to go to the police station, although they have a translator there, they only ask the few questions. I already explained I have the passport, it’s all valid, it’s true and the visa is also valid too, but [it felt like they] just ignored this information.... I think that’s what they thought actually, like they think I would be like a risk.”



After being interviewed at the airport, Li was taken by a police officer to a local police station where he spent three nights, reportedly without access to a lawyer.

“At the beginning I was really scared, I had no idea whether here in NZ if the police is kind of working with Chinese Government, so I was worried about maybe being harmed again, yeah... No offer of information that I can contact a lawyer in the police station, because also everything was taken away, like the cell phone, the wallet, so I cannot make a call to the family members too. Until I got to prison, I don’t know how long, so then I was offered to have a [refugee] lawyer there.”

At court for his warrant of commitment appearance, Immigration applied for Li to be detained in prison but he only had a minute to speak with a duty lawyer:

“The lawyer just come to tell me what’s going on, and that the result is you’re going to prison and the next minute I went to see the Judge and I stand there for one or two minutes, the Judge read the results to me and then the lawyer told me [I was indeed going to prison].”

At Mt Eden Corrections Facility Li was double bunked with a remand prisoner and allegedly threatened by his cellmate. His mental health deteriorated in prison but he didn’t know who he could talk to.

Li was released on conditions to a specified address, after he was appointed a legal aid refugee lawyer who advocated for his release. Li described his shock that Aotearoa New Zealand used prisons to detain asylum seekers and his hopes that the Government will consider changing its practice:

“If I had the chance to talk to the government, I would like to suggest if they are going to have to put them in prison at least put them in somewhere like with only asylum seekers there, not with others, like the real criminals because it’s really not safe. Also it’s bad for the country too... when I was in prison there was lots of people who want to sell drugs or ask me to join the group to sell drugs with them. So I would like the government to set up somewhere to keep the asylum seekers, if they really consider it’s a risk for the country. Also I hope they can get the chance to use the cell phone; this is really, really hard for them not to be able to communicate with family when they arrive to a new country; someone disappeared, the family they are very worried about if they are safe.”

35. In the 30 warrants of commitments from 2019 reviewed by Amnesty International, 16 included some form of indication or statement of refusal to go home or leave New Zealand if their claim was declined as one of the cumulative reasons immigration used to justify a “risk of absconding ground” in order to detain the asylum seeker.

36. This is reflected in the legal grounds for detention under a warrant of commitment, which primarily relate to questions of detaining in order to carrying out a future deportation order or “turnaround”, pending “satisfactory” establishment of the person’s identity, or on “threat to security” grounds.

37. WGAD 2018 noted two possible “legitimate aims” to detain migrants: (a) for the purpose of documenting entry and recording claims or initial verification of identity if in doubt; and (b) where there is a risk of absconding when presence is necessary for further proceedings (paras 12, 22, 27). Previous deliberations by the Working Group on Arbitrary Detention in 2010 recognised “ensuring compliance with a deportation order” as a third legitimate ground for migration-related detention (para. 28). This was omitted as a standalone ground in the WGAD’s 2018 deliberation.

38. See *R.U. v. Greece* (2237/08), European Court of Human Rights (7 June 2011) para. 94; See also *S.D. v. Greece* (53541/07), European Court of Human Rights (11 June 2009) para. 62.

39. Statement present in border file notes of Immigration Officials at the first interview carried out.

THE CONVEYER BELT TO PRISON

DETENTION AT A POLICE STATION

After an asylum seeker has had their initial interview at the airport, and the immigration officer considers they should be detained further under the Immigration Act, they are then able to be arrested without warrant and detained in police custody for up to 96 hours.⁴⁰ This usually involves being taken from the airport by police to the nearest police station and detained in a police cell for three to four nights.

“Those police stations are hellholes to send a refugee claimant.”

Refugee lawyer 6 [name withheld], interviewed by Amnesty International, via videoconference, 8 March 2021.

“I was locked in a very small cell, which there was no privacy for the toilet and shower, and everyone was looking, and the camera was there. I was very emotional I was crying. I told them I wanted to go to my family ... They waited until about 11 o’clock. They didn’t let me call, but then I gave them a card of one of my friends overseas... and they contacted them and said they could call back, and she did call back and I spoke with her, and I told her what’s happened to me, “I am actually in a very small cell, and I will die here, I am not feeling well.” She arranged the lawyer for me, for the next morning. She arranged Islam food for me, and the Police Station didn’t let me eat it, they refused, and they gave me a burger, which I’m Muslim, and I don’t eat pork. The burger was a hamburger. I told them, “I don’t eat this” And I was advised to take the slice off, and you can eat the rest of it, and they said, “Our supervisor doesn’t allow it, we can’t give you any food from outside.”

Peter [real name withheld], interviewed by Amnesty International, Auckland, 18 September 2020.

Arresting police officers are usually given a letter from Immigration New Zealand notifying them of their obligations with regards to informing the detained asylum seeker in their custody of the right to contact and have a visit from a lawyer in private, the maximum period of detention at this stage (96 hours), and the reason for arrest including that it is not a criminal matter, unless it is “in all the circumstances impracticable to do so”.⁴¹

Police operational policy instructs police to “apply the same standard of care to any person detained by police under any enactment, whether they have been arrested or not; this includes immigration detainees in police custody. Police duty of care exists alongside other obligations police have to people in their custody. This includes provisions that protect basic human rights and freedoms contained in the New Zealand Bill of Rights Act 1990.”

Police are also required to ensure that all detainees understand their rights in custody. Police have stated that “the notice of detainee’s rights is available in a number of different languages, and if necessary, an interpreter can be engaged. Police utilise the government service, Ezispeak, which delivers telephone and video interpreting.”

Official Information Act request response from the New Zealand Police to Amnesty International, 8 March 2021.

40. Section 313 of the Immigration Act 2009.

41. Letter present in files examined by Amnesty International, addressed to the arresting police officer when Immigration New Zealand is instructing police to take an immigration detainee into police custody.



It is deeply concerning to Amnesty International that most asylum seekers interviewed reported not having access to a lawyer or an interpreter for their nights at the police station, not knowing why they were detained or who to ask for help from. This would amount to a breach of Aotearoa New Zealand’s obligations to ensure due process rights in arrest and detention proceedings. Asylum seekers also described feeling terrified, exhausted, overwhelmed and not knowing that they had a right to challenge their detention.

“It was really difficult. It was my first time in custody, or in prison. My first time ever. I didn’t know. I didn’t want to do it. It was really difficult. I was thinking like I will die inside there. At that time I was 20 years [old]. It was my first time in a police cell and I didn’t know what was going on. I came here for the safety; not to be in a difficult situation or to be punished... The first time I told them to bring the interpreter, but they told me they could not find a [an appropriate] interpreter at that time; so they decided to talk to me directly.”

Aaden [real name withheld], interviewed by Amnesty International, Auckland, 3 November 2020.

THE CONVEYER BELT TO PRISON

“RUBBER STAMPING”

The District Court

After spending several nights in a police station, asylum seekers whom Immigration New Zealand are seeking to detain further under a warrant of commitment are then taken to the District Court cells before appearing before a judge. This is then repeated every month for as long as Immigration seeks to detain them under repeated 28-day warrants of commitment.

Warrant of commitment hearings in the District Court were described by lawyers as a strange “hybrid” of a refugee immigration matter and a criminal bail hearing. Despite not being charged with any criminal offence, it is not uncommon for asylum seekers to be represented by a “duty lawyer” at their court appearance for their warrant of commitment. The object of the duty lawyer service “is to ensure that a sufficient number of lawyers are available at each District Court for the purpose of assisting, advising, and representing unrepresented defendants **charged with a criminal offence.**”⁴² Duty lawyers are therefore by background generally criminal lawyers as opposed to civil lawyers, and generally won’t have the specialised knowledge of immigration or refugee law.

“We [as refugee lawyers] generally don’t receive that first call during that first 96 hours of detention as no-one has usually spoken to the asylum seeker about having a lawyer. The person who is detained doesn’t know how to access lawyers who specialise in this area so they turn up to the first warrant of commitment hearing at court not knowing what is going on. The Duty lawyers are saying ‘we don’t know anything about this because we are criminal lawyers. I don’t know how to best assist this person who has an asylum claim’ but the Judge is roping them into it because this person needs representation...

It’s window dressing. They meet [a lawyer] two minutes before the court appearance. It’s not until they are detained, sent off to Mt Eden and are in prison for a couple of weeks and start talking to others in the same position as them that they start to find out names of the very few specialist refugee lawyers who are around...

One District Judge we talked to about the problems with this process [the warrant of commitment hearings] described it as a ‘rubber-stamping exercise.’”

Refugee lawyer 4 [name withheld], interviewed by Amnesty International, via videoconference, 9 February 2021.

Time with a duty lawyer and an interpreter prior to their court appearance is by its nature, very short. If a refugee lawyer can represent asylum seekers at a warrant of commitment hearing, the civil legal aid hours available to prepare for this are extremely limited.⁴³ This makes it very difficult to obtain documentary evidence, affidavits and other materials needed to meaningfully oppose a warrant of Commitment for detention and propose alternatives to detention. There are also a very small number of lawyers in Aotearoa New Zealand who have the appropriate expertise in refugee and immigration law. Several refugee lawyers who have been involved in representing asylum seekers detained under a warrant of commitment have sought to make human rights arguments challenging the detention in the District Court with very mixed results. One lawyer made submissions that

if a judge is ‘seeking to maximise compliance with the Immigration Act’”, then this should also include the Refugee Convention and other international human rights obligations, given that the Refugee Convention is incorporated into the Act as a Schedule.⁴⁴ The District Court Judge’s response to him in court was allegedly, **“This is the District Court, we don’t do human rights here.”**

Another lawyer, in describing his experiences with Ministry of Business, Innovation and Employment (MBIE) lawyers (representing Immigration New Zealand) said: “They don’t understand the need to have judicial oversight of their decision making to detain and are resistant to this. I’ve been mocked for presenting arguments challenging detention based on the Refugee Convention and had MBIE counsel yell at me for bringing these arguments”.

“[Court] happens very fast, and I only had a few seconds to appear before I’m taken back again, and walked out of the door. After a few times coming to court [every 28 days], I raised my hand to ask the Judge this question actually, and the reason why I am being kept there, and why I can’t be put in a better environment where there are no people like the folks in prison, and the Judge said, ‘This is an Immigration matter, and that can only happen once your case is finalised by Immigration, but until then you are going to be in prison.’”

Zahi [real name withheld], interviewed by Amnesty International, Auckland, 26 November 2020.

This continues to the court appearance itself, which, depending on the size of the court list that day and pressures on judges and duty lawyers, may take only minutes. Asylum seekers recounting their experience of court to Amnesty International were overwhelmed by the speed and unfamiliarity of the process and did not feel that they could meaningfully defend or even understand the claims made against them by Immigration New Zealand to justify their imprisonment.

“There is no meaningful access to justice in warrant of commitment hearings for refugee claimants in New Zealand.

The Judiciary has a role to speak up. We have tried to engage with them without success. I’m sorry, but I see it as akin to Family Court judges signing off the uplift of children in New Zealand as a matter of routine. [District Court judges] shouldn’t be allowed to be a fig leaf in a process which is denying refugee claimants basic access to justice.”

Refugee lawyer 6 [name withheld], interviewed by Amnesty International, via videoconference, 8 March 2021.

42. Ministry of Justice, *Duty Lawyer Service Operational Policy*, February 2021, <https://www.justice.govt.nz/assets/Documents/Publications/Duty-Lawyer-Policy-v-2.8.pdf>

43. Three hours of civil legal aid are available for defending a warrant of commitment.

44. Amnesty International interview with Refugee lawyer 4 [name withheld], via videoconference, 9 February 2021.

45. Amnesty International interview with Refugee lawyer 5 [name withheld], via videoconference, 8 March 2021.

BEHIND BARS: THE PRISON EXPERIENCE

EXCESSIVE PERIODS IN PRISON

International human rights standards have made clear that excessive or indefinite detention in immigration proceedings is arbitrary.⁴⁶ Some asylum seekers are spending excessive periods of time in prison. Aotearoa New Zealand law requires that immigration detention, including of asylum seekers in prison is periodically reviewed by a judge every 28 days and a warrant of commitment, and therefore the detention will legally expire at this point. However, there is no maximum limit to how long Immigration New Zealand can continue to apply for warrants every month to continue to detain a person when the warrant is about to expire. In practice, this can be endless if treated as “roll-over” warrants from one month to the next.⁴⁷ This is further compounded by punitive provisions that effectively reverse the presumption of liberty, contrary to international human rights standards, and require that only “exceptional circumstances” can justify release on conditions in the following circumstances:⁴⁸

- The identity of the person is unknown; or,
- the person’s identity has not been established to the satisfaction of the court; or
- a direct or indirect reason for the person being unable to leave Aotearoa New Zealand is, or was, some action or inaction by the person occurring after the person was
 - Served with a deportation liability notice; or
 - arrested and detained for the purpose of deportation or turnaround; or
- the person claimed refugee or protection status only after the person was—
 - served with a deportation liability notice or deportation order or with a removal order under the former Act; or
 - arrested and detained for the purposes of deportation or turnaround.

The combination of the above has resulted in periods of indefinite, excessive or prolonged detention in the last five years which could therefore be considered arbitrary, including four cases of asylum seekers who were held in prison over 18 months, and one asylum seeker who was held in prison for over three years.

Duration of days asylum claimants have been held in Correctional facilities between 2014-2019:

Table source: Immigration New Zealand

Duration detained in a Correctional facility (in days)	Number of asylum seekers
0 – 100	41
101 – 200	17
201 – 300	8
301 – 400	3
401 – 500	4
501+	7



Carlos [real name withheld], interviewed by Amnesty International, Auckland, 17 September 2020

Carlos is a man from South America who now has successfully claimed protected person status in Aotearoa New Zealand. He fled here in 2006 after escaping lethal gang violence. He was arrested at home for irregular migration status in 2017 and applied for asylum after being served with a deportation order. Carlos says that he was taken to a police station by several police officers and that was where “the nightmare started”. Carlos described the several nights that he was detained at a local police station before appearing in court and being transferred handcuffed in a van to Waikeria prison.

“Okay, I speak English, not that good, but at that time it was worse. I was so freaked with all the situation because my first night there was so noisy, and people screaming. That environment was not normal for me, and I saw lots of blood on the floor. It was a nightmare, it was like a horror movie; listening to noise all night, and then you see in the day, in the morning, like blood everywhere in some cells. It was terrible.”

Carlos was detained in prison for over three years. In Waikeria prison he was double bunked with remand prisoners and describes an altercation with a cellmate which resulted in a hand fracture. He described becoming suicidal and the poor conditions at the prison including in the small and unsafe exercise yard:

“The situation in prison was bad for my mental health, the things that happened to me; the violence and everything that happened to me there. I thank God I didn’t get raped, but I got threats...”

“In [exercise yard] space they used to put maybe 13 people to 20 people, and sometimes more. They would leave us there for two or three hours, and then we have a shower where I see lots of fights and lots of blood. There was just so much wrong stuff you know?”

Carlos alleged that in prison he also received verbal abuse from some prison guards during his time in detention.

“They provoke you and say - sorry about the words but that’s what they say - ‘Oh you’re a fn refugee, what the fuck are you doing here.’ ‘You’re a f**n criminal you deserve to be here.’ I even had my complaint ripped up in front of me, and some documents that I was going to send to Immigration...”**

Carlos appeared in court every 28 days where Immigration New Zealand continued to apply for his continued imprisonment under the Immigration Act. Carlos spoke of how difficult he found it to gather evidence for his case in prison as he was unable to access the internet or properly access international phone calls.

Carlos was represented by a lawyer who fought repeatedly to secure his release in court but was unsuccessful. Carlos was finally released from prison during the COVID-19 pandemic in 2020 and when his lawyer contacted Amnesty International about his detention. Out of prison Carlos found it much easier to gather evidence for his claim, and in September 2020, on his third appeal, he was recognised with protected person status by the Immigration and Protection Tribunal.

46. WGAD 2018, paras 25-27. The UNHCR has also stated that insufficient guarantees in law to protect against arbitrary detention, such as no limits on the maximum period of detention or no access to an effective remedy to contest it, could also call into question the legal validity of any detention.

47. Warrants of commitments examined by Amnesty International demonstrated a “copy and paste” approach, where there would be very little difference in the content and grounds of the warrants from month to month for those detained in prison. Case law in New Zealand law has also ruled that “the fact of detention does not prevent pursuit of a refugee status claim, and an outstanding refugee status claim cannot be considered as an “exceptional circumstance”, see *Maritz v District Court at Auckland* [2018] NZHC 828, para. 43. Section 323 (10)(a) of the Immigration Act also does not in some circumstances recognise a lengthy period of time as an exceptional circumstance. This approach is vastly out of step with international human rights standards, including WGAD 2018.

48. Section 317(5) of the Immigration Act 2009.

BEHIND BARS: THE PRISON EXPERIENCE

PRISON AND THE RIGHT TO SEEK ASYLUM

The New Zealand Government, under its international human rights obligations, has a duty to ensure the fair assessment of refugee claims to ensure that people seeking asylum get the safety and protection they need and are not returned to places where they are in danger.⁴⁹

A refugee lawyer with over 20 years of experience representing detained asylum seekers explained how imprisoned asylum seekers are particularly “high stakes” cases, as they can be caught in the turnaround or deportation provisions of the Immigration Act. If their claim fails, they can be immediately deported if an appeal is not lodged in time.⁵⁰ Immigration New Zealand also knows that if the person claiming asylum is kept in the “turnaround” provisions of the law, the airline, rather than the Government, has to meet the cost of any deportation under civil aviation rules. The lawyer described how these cases can be “as close to death row cases as you can get in New Zealand”.⁵¹

According to refugee lawyers, the ability for an asylum seeker to meaningfully pursue their asylum claim can be severely constrained by prison. This includes the lack of an asylum seeker’s ability to gather their own evidence, such as via the internet, significant mental health impacts, practical constraints on the ability to communicate regularly with legal counsel and the outside world, and to facilitate communication between their lawyer and crucial overseas witnesses. This can be compounded by the fact that there is less time for claims to be pursued in prison as detention is recognised as a factor in expediting the consideration of a person’s claim by the Refugee Status Determination Authority. Whilst the latter is intended to limit the time in detention which has good intentions, the unintended consequences of trying to pursue claims at speed for someone at risk of deportation within the difficult constraints of prison were described by the same lawyer as “Orwellian”. This in effect penalises a group of people who, until their claims are processed, are presumptive refugees.

If they are detained in a prison, asylum seekers in Aotearoa New Zealand are entitled, at a minimum, to the rights for all persons deprived of their liberty, including freedom from torture or cruel, inhuman or degrading treatment or punishment,⁵² to be treated with humanity and with respect for the inherent dignity of the person,⁵³ the right to healthcare in detention, and procedural guarantees, such as access to a lawyer. Aotearoa New Zealand domestic law also specifies a number of minimum entitlements under the Corrections Act 2004 which are influenced by the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules).⁵⁴ Criminal detention facilities such as prisons and police cells in Aotearoa New Zealand are subject to regular monitoring and inspections by independent bodies under the United Nations Optional Protocol to the Convention Against Torture (OPCAT) to prevent torture and other cruel, inhuman or degrading treatment and punishment.⁵⁵

Asylum seekers in detention are also entitled to appropriate medical treatment, including psychological counselling, the ability to have regular contact with relatives, friends, religious and non-governmental organisations and access to the UNHCR. They’re entitled to physical exercise and natural light, access to reading materials and timely information, vocational/educational training, non-discriminatory complaints mechanisms, and to staff that have received training in relation to asylum and sexual based violence.⁵⁶

“WE WANT TO BE RECOGNISED AS HUMAN BEINGS”

Rights in Prison

49. New Zealand’s obligations to prevent non-refoulement are also recognised in its commitment to the Refugee Convention, the ICCPR and the Convention Against Torture.

50. For those detained in a prison, the appeal must be made within five working days of the decision, while in all other instances the deadline is 10 working days.

51. Amnesty International interview with refugee lawyer 6 [name withheld], via videoconference, 8 March 2021.

52. Article 7 of the ICCPR.

53. Article 10 of the ICCPR.

54. Corrections Act 2004.

55. The Crimes of Torture Act 1989 created National Preventive Mechanisms (NPMs), that examine the conditions of detention and treatment of detainees, and make recommendations for improvement. The Ombudsman is responsible for examining and monitoring the treatment and conditions of people detained in prisons, court cells, and immigration detention facilities.

56. UNHCR Detention Guidelines.

MENTAL AND PHYSICAL HEALTH

Prisoners and all detained persons have the right to the highest attainable standard of physical and mental health

Article 25 of the Universal Declaration of Human Rights; Article 12 of the International Covenant on Economic, Social and Cultural Rights.

All asylum seekers spoke of the impact of their imprisonment on their wellbeing, especially their mental health, both whilst they were in prison and how it has impacted them following their release. We found harm being caused by detention and our findings are consistent with a long-standing, widely researched and widely acknowledged pattern.⁵⁷

“Most of the time I felt like mentally unwell because I don’t know why I was there [in the prison], and I don’t know when I will be out and also the environment is not friendly people around me. They are aggressive like they ask me for food and ask for whatever they saw anything I have, they will want it. So if I didn’t give it to them they will just threaten me or be orally aggressive.

So I feel really bad, just have no idea how long I was going to stay there and there is no sign like when I can get out... I had no cell phone to get in touch with other people, so I just feel mentally unwell...

Basically I kept all this to myself; I didn’t really talk to anyone actually. I didn’t think there would be anyone who can listen to me, because I approached the officers several a few times and no-one really responds to my needs.”

Li [real name withheld], interviewed by Amnesty International, Auckland, 23 November 2020.

When asked about the mental and physical impacts she has seen on the asylum seekers she has supported who have been detained in prison, a social worker said the following:

“It is wide and long lasting”.

She described how clients have told her that they came close to suicide in prison, that was the worst experience of their lives, and that it’s something they deal with to this day.

“I think it doesn’t really go away, that experience.” - Hostel Manager and Social Worker at the Asylum Seekers Support Trust.

57. Mary Bosworth, *The Impact of Immigration Detention on Mental Health: A Literature Review*, 2016, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2732892; *Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility*, UN Doc. A/HRC/35/25, 28 April 2017, para. 60; European Parliament Committee on Civil Liberties, Justice and Home Affairs, *The conditions in centres for third country national (detention camps, open centres as well as transit centres and transit zones) with a particular focus on provisions and facilities for persons with special needs in the 25 EU member states*, 2007, [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2007/393275/IPOL-LIBE_ET\(2007\)393275_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2007/393275/IPOL-LIBE_ET(2007)393275_EN.pdf).

BEHIND BARS: THE PRISON EXPERIENCE

SPECIFIC NEEDS OF PEOPLE SEEKING ASYLUM

UNHCR notes that because of the nature of the asylum experience, and the often highly traumatic events people have survived in the process of being forced to leave, people seeking asylum in a host country may arrive with significant mental health challenges and specific needs.⁵⁸ This necessitates the factoring of this context into the decision regarding the necessity and proportionality of detention, especially detention in a criminal justice facility. This is especially cogent when there is knowledge that a criminal detention facility will not be able to provide the specialist support required. For example, in 2018, a Prison Inspectorate report of Mt Eden Corrections Facility, the main prison used to detain asylum seekers in the 2015-2020 period, made several findings of concern relating to the inadequate provision of mental health support to the general prison population, which would include immigration detainees.⁵⁹ This included a lack of specific training for staff in the At-Risk Unit and a high demand for forensic in-patient beds, which resulted in delays in a patient being admitted.⁶⁰

IMPRISONING TRAUMA SURVIVORS

“Migrants, asylum seekers and refugees worldwide face grave human rights violations during the migration process. Physical violence, threats and abductions by smugglers, traffickers and organised criminal groups are common. Women and girls are particularly vulnerable to sexual violence, exploitation and slavery along migration routes. Such abuses can amount to torture and ill-treatment and States’ failure to properly screen migrants and refugees, identify victims of torture and provide appropriate care and support can retraumatize victims and inflict additional mistreatment.”

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/31/57, 2016, para. 31.

Immigration detention of people in situations of vulnerability or at risk, such as children, pregnant women, breastfeeding mothers, elderly people, people with disabilities, LGBTQIA+ people, and survivors of trafficking, torture and other serious physical, psychological or sexual violence is prohibited under international human rights standards, given the immigration detention of vulnerable groups of people cannot be deemed as a last resort.⁶¹ To prevent the immigration detention of vulnerable groups and prevent ill-treatment, Aotearoa New Zealand is obligated to properly screen migrants and asylum seekers as part of an individualised assessment when considering detention.

Immigration New Zealand does not carry out any specialist or appropriate vulnerability screening (such as for physical or mental health needs, a history of torture and/or physical, psychological mistreatment or sexual or gender-based violence) prior to determining whether or not an asylum seeker should be detained. Immigration New Zealand instead places the burden on the asylum seeker or their lawyer, stating that “all persons have the opportunity at any stage of their detention to inform the immigration officer of any personal circumstances or reasons as to why they should not be detained”.

58. UNHCR Detention Guidelines.

59. Office of the Inspectorate, *Mt Eden Corrections Facility Inspection*, January 2018, https://inspectorate.corrections.govt.nz/_data/assets/pdf_file/0005/37715/MECF_Inspection_Report_Jan_2018.pdf

60. Office of the Inspectorate, *Mt Eden Corrections Facility Inspection*, January 2018, p. 33, https://inspectorate.corrections.govt.nz/_data/assets/pdf_file/0005/37715/MECF_Inspection_Report_Jan_2018.pdf

61. WGAD 2018, para. 41; Human Rights Council, *Report of the Working Group on Arbitrary Detention*, UN Doc. A/HRC/13/30/Add.2, 15 January 2010, para. 79 (f); *Report of the Working Group on Arbitrary Detention*, UN Doc. A/HRC/16/47/Add.2, 19 January 2011, para. 119.

PASSING THE BUCK

Immigration New Zealand vs the Department of Corrections

Immigration New Zealand has stated that they have imprisoned several people in the last five years (later recognised as refugees) “who had credible claims of past experiences of torture and/or physical, psychological mistreatment or sexual or gender-based violence”.⁶² Any form of detention of these particular individuals in a criminal justice facility is strictly prohibited under international human rights standards.

Once immigration detainees are detained under a warrant of commitment to a prison, including asylum seekers, they are subject to the same regime as criminal remand prisoners, and as such there is no distinct policy for asylum seekers in prison.⁶³ Aotearoa New Zealand law also strictly limits when it can be disclosed that someone is an asylum claimant, refugee, or a protected person.⁶⁴ Whilst this is not without good intentions (including for safety and confidentiality reasons) in practice this has meant that prison authorities will generally not know if a detainee is an asylum seeker, and there can be limited information sharing between Immigration New Zealand and the Department of Corrections. The combination of the above culminates in a variety of situations that put asylum seekers at risk and result in a deferral of responsibility from both departments. Immigration New Zealand has stated that it “can’t direct Corrections (i.e. prescribe accommodation arrangements, food, leisure activities, clothing) on how to manage an individual who is detained under an immigration warrant at a Corrections facility, and that “Corrections sets the rules”.⁶⁵

“Whenever INZ is advised by a claimant or their lawyer regarding any issues relating to their detention in a Corrections Facility, INZ would advise them to contact Corrections and to follow the complaints procedure. INZ continuously reviews all relevant information regarding the personal circumstances of migrants who are being detained under immigration Warrants of Commitment in order to adjust levels of detention if required”

The adequate provision of appropriate and specialist asylum facilities and services in prison, whether mental health or otherwise, is therefore made very difficult in practice. In 2020, Immigration New Zealand appointed a Senior Civil Detention and Welfare Advisor “to provide welfare support for asylum seekers in detention and in the community” with the role primarily focused on Mt Eden Corrections Facility. They provide an option to visit an asylum seeker in prison within two weeks of their asylum claim being submitted.⁶⁶ Whilst this focus on the welfare of asylum seekers is very welcome, the advisor is working within the context of an administrative detention process sitting within a criminal detention regime. The advisor is unable to discuss reasons as to why they are being held in detention with an asylum seeker. Activity to support the welfare of asylum seekers in prison is also highly limited if the form of detention itself is inherently harmful.

This deflected agency responsibility is also disturbingly present in government agencies’ recording and tracking of crucial data in relation to preventing and tracking ill-treatment or harm experienced by asylum seekers in prison. Following allegations of incidents including hospitalisations and suicide attempts, Amnesty International made an Official Information Act request to Immigration New Zealand regarding the number of instances of self-harm, transfers to hospital, use of mechanical restraints and use of segregation cells specifically for asylum seekers in prison between the years 2015 and 2020. This part of the request was transferred from Immigration New Zealand to the Department of Corrections, as it was considered to “relate more closely to the functions of Corrections”.⁶⁷ The Department of Corrections then refused the request because they did not have the data on asylum seekers or any immigration detainees as a specific category of detainees.

62. Immigration New Zealand, Official Information Act response to Amnesty International Aotearoa New Zealand, 8 December 2020. This information included a statement that from “2015 to present, less than five people detained in a correctional facility and subsequently recognised as refugees were found by the Refugee Status Branch to have credible claims of having experienced torture and/or physical, psychological mistreatment or sexual or gender-based violence”. Immigration withheld the exact number of persons on the basis that this information combined with additional information is likely to identify these persons. This data does not include detained persons subsequently recognised as protected persons under the ICCPR or Convention Against Torture.

63. Regulation 184 of the Corrections Regulations 2005; Correspondence between the Department of Corrections and Amnesty International Aotearoa New Zealand, 17 July 2020.

64. See section 151 of the Immigration Act 2009.

65. Email correspondence between Immigration New Zealand and Amnesty International Aotearoa New Zealand, 14 August 2020.

66. Correspondence between Amnesty International Aotearoa New Zealand and Immigration New Zealand, 9 April 2021.

67. Immigration New Zealand, Official Information Act response to Amnesty International Aotearoa New Zealand, 17 July 2020.

BEHIND BARS: THE PRISON EXPERIENCE

“The Committee has consistently recommended that States parties provide data disaggregated by age, gender and other key factors in their reports to enable the Committee to adequately evaluate the implementation of the Convention. Disaggregated data permits the States parties and the Committee to identify, compare and take steps to remedy discriminatory treatment that may otherwise go unnoticed and unaddressed. States parties are requested to describe, as far as possible, factors affecting the incidence and prevention of torture or ill-treatment, as well as the difficulties experienced in preventing torture or ill-treatment against specific relevant sectors of the population, such as minorities, victims of torture, children and women, taking into account the general and particular forms that such torture and ill-treatment may take.”

UN Committee Against Torture General Comment 2, UN Doc. CAT/C/GC/2, 24 January 2008, para. 23.

The protection of certain minority or marginalised individuals or populations especially at risk is a part of the obligation to prevent torture or ill-treatment.⁶⁸ The shared responsibility between Immigration New Zealand and the Department of Corrections leaves refugees and asylum seekers exposed to prison conditions that cannot cater for their particular needs and also puts them at risk of punitive measures and practices.⁶⁹

DOUBLE BUNKING

Double bunking, the practice of placing two people in a cell designed for one, is especially common in criminal justice facilities. It has significant human rights implications, including on the right to privacy, dignity, safety and security. This is especially profound for asylum seekers who may have significant language barriers amongst other challenges, which can impact on their ability to understand the systems in an Aotearoa New Zealand prison including their rights in detention, complaint processes and knowing how, or who, to ask for help.

“I couldn’t sleep at times. I would just be awake the entire night, because you have somebody that is just doing whatever they want, and you can’t tell them, “Hey, don’t do that, I’m just gonna sleep.” Or whatever! Otherwise, that’s going to create a situation where you might have a confrontation, and I was just avoiding that, but at the same time because I was worried, I would just be awake all night.”

Zahi [real name withheld], interviewed by Amnesty International, Auckland, 26 November 2020.

68. UN Committee Against Torture General Comment 2, UN Doc. CAT/C/GC/2, 24 January 2008.

69. For example, criminal justice facilities have different guidelines on use of force and forms of restraint than if an asylum seeker is detained under a warrant of commitment to the Māngere Refugee Resettlement Centre. This is also apparent in the services available to asylum seekers in prison. In prison files examined by Amnesty International, asylum seekers were referred to as criminal remand prisoners. This meant that they could only be considered for programmes in prison focused on criminal offending.

All of asylum seekers and refugees interviewed by Amnesty International reported being double bunked with remand prisoners at some point during their time in prison. This is not unexpected, given that there is no distinct policy for asylum seekers in prison and they are classified and treated as “accused remand” prisoners by the Department of Corrections. Double bunking is also a widespread practice in several of Aotearoa New Zealand’s prisons. In 2019, as a response to significant increases to the prison population over a number of years, particularly the remand population, the Corrections Amendment Bill removed the reference in the regulations that individual cells were preferred, and prisoners assessed as unsuited must be accommodated in an individual cell.⁷⁰

“The share cell is quite small, the size of a cabin, and there is two beds; it is a bunk bed so I was on the upper bed, and whenever I move so there will be noise and the cellmate will say, ‘If you make any noise again, I will beat you up’ and so somehow I have to keep still again for a long time, and then when I want to move, just [the same] again.”

Li [real name withheld], interviewed by Amnesty International, Auckland, 23 November 2020.

As of June 2020, 69% of prisoners experienced cell-sharing in Mt Eden Corrections Facility,⁷¹ which is the prison most commonly used to detain asylum seekers given its proximity to Auckland International Airport and to the majority of Aotearoa New Zealand’s small bar of refugee lawyers.

Appendix Two - breakdown by prison of the number of double-bunked cells and the number of prisoners, as at June 30 2020

Table Source: Department of Corrections

Site	Number of double-bunk cells	Number of prisoners sharing	Total prisoners	Percent sharing
Arohata Prison	6	12	113	11%
Auckland Region Women’s Corrections Facility	123	246	393	63%
Auckland South Corrections Facility	202	404	894	45%
Auckland Prison	0	0	486	0%
Christchurch Men’s Prison	144	288	839	34%
Christchurch Women’s Prison	0	0	100	0%
Hawkes Bay Regional Prison	76	152	605	25%
Invercargill Prison	18	36	165	22%
Manawatu Prison	24	48	226	21%
Mt Eden Corrections Facility	352	704	1,019	69%
Northland Region Corrections Facility	241	482	599	81%
Otago Corrections Facility	123	246	431	57%
Rimutaka Prison	81	162	867	19%
Rolleston Prison	0	0	253	0%
Spring Hill Corrections Facility	220	440	792	56%
Tongariro Prison	0	0	283	0%
Waikeria Prison	111	222	752	30%
Whanganui Prison	28	56	529	11%

70. Collette Delvin, *Legal loophole sees double bunking in prisons remain*, 22 October 2019, <https://www.stuff.co.nz/national/politics/116791877/legal-loophole-sees-double-bunking-in-prisons-remain>

71. Department of Corrections, Official Information Act response to Amnesty International Aotearoa New Zealand, 21 December 2020.

BEHIND BARS: THE PRISON EXPERIENCE

The Department of Corrections has an assessment tool called Shared Accommodation Cell Risk Assessment (SACRA) to establish prisoner compatibility when double bunking is used, including specific vulnerabilities. However, given asylum seekers are under the same regime as remand prisoners, and the Department of Corrections does not always know when a detainee is an asylum seeker, the ability to make an informed assessment is highly limited.

Because asylum seekers are subject to the same regime as remand prisoners, they are also subject to the same “unlock” regimes in Aotearoa New Zealand prisons. Under Aotearoa New Zealand law, this can mean exposure to being locked in a cell, including a double bunked cell, for up to 23 hours a day depending on the particular unlock regime of the prison and prison unit.⁷² For example, findings from a Mount Eden Corrections Facility inspection in 2018 by the Office of the Inspectorate found that the restricted unlock times in some of the units (including an unlock regime of between only one and three hours in six different units), meant “prisoners had limited opportunities to engage in constructive out-of-cell activities. Prisoners had limited access to rehabilitation or treatment programmes, work experience, education programmes or the gym”.⁷³

“When you’re in prison, unless you’re doing something obviously; you’re spending 23 hours in your cell, and you only have one hour for recreational activities, and for somebody who hasn’t committed any criminal act... and their only “crime” is seeking a safe haven, to be kept in detention for 23 hours of the day; I think it’s a bit harsh.”

Zahi [real name withheld], interviewed by Amnesty International, Auckland, 26 November 2020.

Exposing asylum seekers to prison standards and double bunking with remand prisoners is contrary to international human rights standards and guidelines.⁷⁴ In instances which have resulted in abuse or violence from a cellmate, these could constitute a failure to prevent ill-treatment under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

72. Section 70 of the Corrections Act 2004 stipulates that every prisoner (other than a prisoner who is engaged in outdoor work) may, on a daily basis, take at least 1 hour of physical exercise as a minimum entitlement.

73. Office of the Inspectorate, *Mt Eden Corrections Facility Inspection*, January 2018, p. 28, https://inspectorate.corrections.govt.nz/_data/assets/pdf_file/0005/37715/MECF_Inspection_Report_Jan_2018.pdf

74. Rule 12 of the United Nations Standard Minimum Rules for the Treatment of Prisoners. The UNHCR Guidelines on Detention also stipulate that “the use of prisons, jails, and facilities designed or operated as prisons or jails, should be avoided. If asylum-seekers are held in such facilities, they should be separated from the general prison population. Criminal standards (such as wearing prisoner uniforms or shackling) are not appropriate.”



Vinay [real name withheld]
interviewed by Amnesty
International, Auckland, 25
November 2020

Vinay is a refugee and reportedly a torture survivor from a country in South Asia. He applied for asylum when he arrived at Auckland Airport after a broker brought him to Aotearoa New Zealand on false documents.

Vinay was detained under a warrant of commitment at Mt Eden Corrections Facility for approximately three months and was double bunked with a remand prisoner. In Mt Eden, he was allegedly raped, beaten and threatened by his cellmate. He was taken to hospital but a forensic examination was not carried out because a translator was not available. He was returned to Mt Eden to a single cell and a police investigation began into the alleged rape. This investigation is still ongoing.

Immigration New Zealand were informed by police a day after the assault took place, but continued to maintain his detention in prison. Vinay’s lawyer only found out that her client had been allegedly raped in prison 18 days later, when she received a letter in the post from Vinay that a fellow prisoner had written for him in English. The letter told her about the assault, that he didn’t feel safe and asked her to “please come see me”.

Vinay’s lawyer urgently advocated to Immigration for his immediate release to the Māngere Refugee Resettlement Centre and asked why she hadn’t been informed earlier. A string of emails between Vinay’s lawyer and Immigration show that Immigration defended not disclosing the assault to Vinay’s lawyer as “they were not at liberty to disclose the information as it risked breaching his privacy” and Vinay had been “advised” to tell her, and that they hadn’t been given enough information by police or the Department of Corrections relating to the assault to make a decision about his detention. Vinay described not being able to access phone calls at the prison and not knowing who to ask for help:

“I didn’t complain or didn’t ask for help because I didn’t know that I could ask. I was so scared because I was beaten up by my cell mate and therefore I was very scared. I didn’t know where to go or whom to ask; whom to trust; and so, I didn’t ask specifically for any help. I didn’t know anything.”

Eighteen days after the assault, Immigration confirmed to Vinay’s lawyer they were “reviewing” Vinay’s detention status but needed to wait until he had a prison interview with a Refugee Status Officer, “in order to determine if a change in detention is warranted”. This interview had been meant to take place a month earlier but had been delayed due to staff sickness.

Vinay’s distress and fear in prison grew and he disclosed to his lawyer at his legal visit that he had attempted suicide. He was transferred to an “at risk” cell. He said he didn’t want to eat due to his mental state.

Vinay’s detention was downgraded to Māngere Refugee Resettlement Centre nearly a month after he was assaulted where he was able to receive appropriate and specialist psychiatric care. He was recognised as a refugee on appeal several months later. When asked what he would say to the Government if he could, Vinay said:

“Not to put asylum seekers in the prison, and to put them in the Māngere camp with other refugees.”

BEHIND BARS: THE PRISON EXPERIENCE

Amnesty International considers that Vinay's case constitutes a failure by the state to prevent further ill-treatment and provide adequate remedies. The Department of Corrections failed to prevent inter-prisoner violence including by placing him in a double-bunked cell with a person detained for a criminal matter. Once the allegation was made, both the Department of Corrections and Immigration New Zealand had an obligation to provide adequate remedies, including access to adequate medical care, immediate transfer to a more appropriate facility and compensation.

“Yeah, I can’t forget it, and I was taken to the Mount Eden Correction facility. They open my clothes, and make me naked, and the three officers told me to bend over, and they did a strip search, and when I turned around to face them they were smiling. I feel I have no dignity anymore.”

Peter [real name withheld], interviewed by Amnesty International, Auckland, 18 September 2020.

STRIP SEARCHED



Bani [real name withheld]
interviewed by Amnesty International, Auckland, 25 November 2020

The Corrections Amendment Act 2013 authorised mandatory strip-searching of prisoners in a broader range of circumstances, in a more invasive manner and with fewer safeguards than previously provided for.⁷⁵ It is currently mandated that every prisoner “must” be required to undergo a strip search on first being admitted to a prison, on transfer to another prison, and also each time the prisoner enters an at-risk cell, until an at-risk management plan is established.⁷⁶

Bani is a human rights activist from a South Asian country. He sought asylum in Aotearoa New Zealand and on arrival at Auckland Airport was allegedly strip searched, transferred to a police cell and ultimately to prison for several months.

“They stripped me naked, and that’s a very embarrassing thing; I am feeling very bad about it. They checked all my baggage, and checked the body. When coming from [home country] my arms were hurting because I was beaten, and I couldn’t even put on my shirt. I was suffering from pain in my shoulders.”

“I was not treated like a human, and that’s hurting me very much. They never looked at me like a human. I have worked in [home country], and worked with people who have disappeared, and the same for the families of employees disappearing, and those who are tortured in the prisons. There are lots of human rights activities here undertaken in [home country]. The treatment here has hurt me a lot.”

The indignity of the strip searches continued on arrival to the prison and reportedly every 28 days when he had to go to back and forth from court.

“I was stripped naked in the prison. And there were two or three officers witnessing it. Although it happened in the room there would be two of the officers witnessing it, and I’m no longer young. I felt really humiliated by that, and even before going to court and coming back from court, they stripped me naked, and that’s a very humiliating thing.”

Bani’s experience of imprisonment profoundly impacted him. It also completely changed his view of Aotearoa New Zealand as a place of safe refuge.

“I always had the impression that New Zealand was a very good country. Its human rights record is very good, excellent, and they’re helping refugees who have been arriving in Australia, as boat refugees from Indonesia. And that is not so.”

The subjection of asylum seekers to the same regime as remand prisoners means that they must be strip searched on admission to the prison, which may in some cases be in addition to already being searched at the airport. This can also expose some asylum seekers to strip searching every month, given that under the Corrections Act, prison officers “may” also conduct strip searches before a prisoner appears before a court, which occurs every 28 days for Immigration’s warrant of commitments. This will also happen again if they enter an At-Risk cell.

Several asylum seekers interviewed by Amnesty International spoke of the deep indignity and distress they felt in being strip searched, and the cumulative impacts of it happening repeatedly when they were transferred to and from court.

Amnesty International considers that the cumulative factors exposing detained asylum seekers to repeated strip searches in the criminal justice system could not be considered a legitimate limit on the right to be treated with humanity and with respect for the inherent dignity of the human person in detention⁷⁷ and may well result in degrading treatment in breach the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

75. New Zealand Law Society, *United Nations Convention against Torture: New Zealand’s sixth periodic review, 2015 – shadow report*, para. 10, https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/NZL/INT_CAT_CSS_NZL_20013_E.pdf

76. Section 98 of the Corrections Act 2004.

77. Section 23(5) of the Bill of Rights Act; Article 10 of the ICCPR.

BEHIND BARS: THE PRISON EXPERIENCE

ACCESS TO FAMILY, FRIENDS OR OUTSIDE SUPPORT

“Asylum-seekers in detention should be able to make regular contact (including through telephone or internet, where possible) and receive visits from relatives, friends, as well as religious, international and/or non-governmental organisations, if they so desire. Access to and by UNHCR must be assured. Facilities should be made available to enable such visits. Such visits should normally take place in private unless there are compelling reasons relevant to safety and security to warrant otherwise.”

UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention , p. 30.

In prison, various tools for accessing the outside world are prohibited, such as cell phones being considered “contraband” items, and prisons in Aotearoa New Zealand do not have computers that have access to the internet.⁷⁸ To make phone calls, prisoners have to buy a topped-up phone card at the prison canteen, or have one sent to them from the outside.⁷⁹ They then are required to know who to call, their contact details and must apply to have the number “approved” by staff.

Many asylum seekers, by virtue of their status and being new to the country will not necessarily have any family or established community connections in Aotearoa New Zealand. The above barriers, combined with often not being able to speak English or having inconsistent access to interpreters in prison, can make it very difficult for some to have contact with, or ask for help and support from the outside world, apart from through their legal representative, or rare visits from Immigration.

“That was really awful because I still don’t know the system how it works. My friends from outside they were trying to see me. But, they can’t because I have declare first that these people will see me. I don’t have their information to see me. Some of them even I don’t know their surnames, because I’ve never met them face-to-face. So, we couldn’t. I couldn’t use a phone or anything. That whole system takes too long. I bought phone cards to use. They let me have my family’s phone numbers, but not my friends. I don’t know. You have to confirm the phone number first. They check it. I was never able to do that. I told them I want to call these people and they said, “Okay, we’ll check that,” [but] that was it.”

Yusef [real name withheld], interviewed by Amnesty International, Auckland, 18 September 2020.

78. Department of Corrections, *Working with Offenders: In prison: Internet, Email and Mail*, <https://www.corrections.govt.nz/working-with-offenders/prison-sentences/being-in-prison/internet-and-mail>. Mt Eden Corrections Facility does have a limited one-way E prisoner “email” system where people outside prison can email a generic email address. However replies to emails will be via regular mail as there is no access to computers with internet connection in prison. The person in prison must also “invite” people to email them using a form, which has to be sent via normal mail and returned with multiple details. Emails are never private as they are printed and screened for any inappropriate, illegal or objectionable material, before they’re passed on, which highly limits the ability for its use for confidential asylum claim material.

79. Department of Corrections, *Working with Offenders: In prison: Phone Calls*, <https://www.corrections.govt.nz/working-with-offenders/prison-sentences/staying-connected-with-friends-and-family/phone-calls#:~:text=Cellphones%20are%20not%20allowed%20in%20prison%20as%20they%20are%20contraband%20items>

The UNHCR is notified of detained asylum seekers if the person applied for asylum at the airport, however they are not informed if the person applies for asylum after living in the community. The UNHCR does not currently have an office in Aotearoa New Zealand. Due to the strict privacy restrictions, it is also very difficult for support agencies, religious, international, and non-governmental organisations to know when and where an asylum seeker is in prison and may require support.

“It is haphazard at best... There’s no system for us to know who is there, so we can only advocate for people to be released to us if we know they are in there... Our advocacy is limited in who we can help.”

“When they get arrested obviously their phone, all their contacts are taken away, so they have no way of making any sort of contact with anyone on the outside. Red Cross aren’t notified to be able to notify their family. Nobody is.”

General Manager of the Asylum Seekers Support Trust, interview with Amnesty International, via videoconference, 22 January 2021.

CLOTHING AND BEDDING

Clothing and bedding

17. (1) Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.
 - (2) All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.
 - (3) In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.
18. If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.
19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules).

BEHIND BARS: THE PRISON EXPERIENCE

In Aotearoa New Zealand, “remand accused” prisoners, which asylum seekers are categorised as once they are detained in prison, “may” be permitted to wear their own clothes but must be issued “standard remand prisoner clothing” if it is insufficient or unfit.⁸⁰ This means that asylum seekers are faced with wearing prison uniforms or their own clothes, potentially the ones they have arrived in off the plane that are often entirely unsuitable for the climate. Several asylum seekers detained at Mt Eden Corrections Facility whom Amnesty International spoke to referenced how cold they got in the police cells and prison, especially if they were in an “At Risk” cell.⁸¹ One asylum seeker was put in an At-Risk cell under observation after being considered “at risk” due to his inability to speak English.⁸²

Image: an “At Risk cell” in a New Zealand prison⁸³



One lawyer described having to give their client their coat at the refugee status unit interview at the prison because he was shivering from the cold,⁸⁴ and another lawyer in an email to Immigration New Zealand, described her horror that her client allegedly had to wear another prisoner’s dirty clothing because of a uniform shortage.⁸⁵ An inspection carried out at Mt Eden Corrections Facility in 2018 by the Office of the Inspectorate, noted that staff advised of a “prison-wide clothing shortage” and how this particularly impacted “foreign national prisoners”.⁸⁶

“Prisoners were expected to wear prison clothing until they received approved clothing from their family. However, foreign national prisoners lacked outside support to provide additional clothing. We interviewed one foreign national prisoner in Charlie Unit who told us he had only one pair of pants and one t-shirt. He said he had no family to bring him additional clothing as his lack of English meant he could not complete the family visits application.”

LANGUAGE, CULTURE AND RELIGION

“Everyone has the right to freedom of thought, conscience and religion and persons belonging to ethnic, religious or linguistic minorities have the right to their own culture, religion and language.”

Article 18 of the Universal Declaration of Human Rights; Articles 18 and 27 of the International Covenant on Civil and Political Rights.

Several Muslim asylum seekers spoke of their distress at not being able to practise their Muslim religion properly, particularly in police cells or at mealtimes with inconsistent access to halal food, or being given pork to eat which is forbidden in Islam. Whilst the Corrections Act 2004 in Aotearoa New Zealand stipulates that allowance “must be made for the various religious, spiritual and cultural needs of prisoners” when providing food and drink to prisoners, it is only required as far “as practicable in the circumstances”.⁸⁷ This opens the door to inconsistent practice and does not sufficiently give effect to the obligation of non-discrimination by taking account of the individual needs of prisoners,⁸⁸ nor does it sufficiently uphold their right to manifest their religion or beliefs.⁸⁹

“At Mt Eden prison I didn’t know what to do. I was crying for the past three days. I didn’t know anyone. Even my language at that time was not good. So, I was really suffering in silence. I cannot really express my problem. Even people are taking my food. There’s days that they give chicken, so there would be big, big people, criminals and they say, “Give us your chicken.” He was doing what he wanted. I cannot sleep during the night. He was listening to the TV and the volume was very high inside the cell. I could not sleep. He’s sleeping day time, but I cannot sleep there at night when I want to sleep. So, I will report to the immigration officers. He is even in my case. I put it in the confirmation of claim form. I told them I am not safe here in the prison. I am not getting my food, or praying and worshipping daily. I asked if they could please put me in a safe place that I can pray and I can sleep in peace. They never do that, because I stayed in that prison cell a month.”

- Aaden [real name withheld], interviewed by Amnesty International, Auckland, 3 November 2020.

80. Prison Operations Manual, P.04 Standard prison issue property, https://www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Property/P.04-Standard-prison-issueproperty

81. Independent reports commissioned by the Human rights Commission have repeatedly expressed concern at the regimes and conditions of “segregation” cells in New Zealand prisons, including that “the appearance, conditions and regime in most of the At Risk units we visited were as impoverished and stark as those in punitive segregation units and units for the management of difficult prisoners. Dr Sharon Shalev, *Thinking Outside the Box: A Review of Seclusion and Restraint Practices in New Zealand*, 2017, https://www.seclusionandrestraint.co.nz/seclusion_and_restraint_in_new_zealand_findings_from_the_data_and_visits

82. Amnesty International interview with Adam [real name withheld], Auckland, 3 November 2020.

83. Dr Sharon Shalev, *Thinking Outside the Box: A Review of Seclusion and Restraint Practices in New Zealand*, 2017, p. 31, <https://www.seclusionandrestraint.co.nz/>

84. Amnesty International interview with refugee lawyer 3 [name withheld], via videoconference, 9 February 2021.

85. Amnesty International interview with refugee lawyer 1 [name withheld], via videoconference, 18 November 2020.

86. Office of the Inspectorate, *Mt Eden Corrections Facility Inspection*, January 2018, https://inspectorate.corrections.govt.nz/_data/assets/pdf_file/0005/37715/MECF_Inspection_Report_Jan_2018.pdf

87. Section 72(2) of the Corrections Act 2004.

88. Rule 2 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules).

89. Article 18 of the UDHR; Articles 18 and 27 of the ICCPR. The Human Rights Committee in General Comment 2 have also noted that: “Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint. States parties’ reports should provide information on the full scope and effects of limitations under article 18.3, both as a matter of law and of their application in specific circumstances”, para. 8.

BEHIND BARS: THE PRISON EXPERIENCE



Adam [real name withheld]
interviewed by Amnesty
International, Auckland,
3 November 2020

Language barriers were significant for asylum seekers with no or limited English in prison. Whilst asylum seekers have access to a professional interpreter for meetings with their lawyer or an official in prison, limited access on a day-to-day basis meant that some asylum seekers would often have no idea what was going on, how to complain or who to ask for help.⁹⁰ Prison authorities would at times resort to finding a prison officer or other prisoner who spoke a “similar” language. This language barrier was particularly devastating for asylum seekers who were subject to harassment, violence or various forms of seclusion and restraint, such as in the case of Adam, below.

Adam is an asylum seeker from an African country and claimed asylum at Auckland Airport after arriving on a false passport. He spent six months in Mt Eden Corrections Facility where he faced double bunking and harassment from remand prisoners, seclusion and restraint and significant language barriers. Adam was interviewed by Immigration New Zealand at Auckland Airport after being refused entry for a false passport. During this interview he disclosed his real identity and said that he had faced torture in his home country. He was arrested by a policeman and told that he would be detained for three or four days and then taken to a refugee centre. After several nights in the police station he was transferred to the District Court cells when he thought his detention would end:

“In my mind I said to myself, ‘because it’s the third day maybe they are going to take me to the refugee centre.’”

Instead, he was told by a lawyer that he was going to be detained in prison rather than the refugee centre:

“They said the centre is far, it’s not close to here, and we don’t have a big number of police, to stay, to check the safety of that centre, and the family who stay in that centre, it’s safe for families, with no problems at all, and we don’t know who you are. If we send you there something can happen, and because we don’t know who you are we have to be careful. That’s why we can’t send you to that refugee centre.”

The warrant of commitment court documents outlining the reasons for his detention were not in his language, and he reports that his lawyer told him he didn’t have enough time to explain them with the interpreter before appearing before a judge in court. It wasn’t until he was reunited with his small translation dictionary weeks later in prison that he started to decipher the accusations that had been made against him. On arrival at Mt Eden Corrections Facility, to his shock, he was taken without explanation to the At-Risk Unit and was allegedly placed in a restraint jacket:

“My first day in prison was horrible. The first thing they did is they gave me a prison uniform, and they gave me a tee-shirt and track pants, and they put me in a basement where they were detaining sick people. When got there they took off all my clothes, and they put me in something tight, like a sack where they put you inside and you can’t move your arms and everything. I couldn’t move because my arms my legs, it was tight in the back, which is very tight.”

Adam was allegedly in a restraint jacket for approximately half an hour, until a Prison Officer who could speak a language close to a language that Adam could speak came to help and he was able to communicate.

“[She asked me] ‘So what are your accusations?’ I said to her, ‘I don’t know.’ She said, ‘What did you do?’ I said, ‘I don’t know, the only thing I know I did is I asked for asylum here.’ She said, ‘That is not a crime.’ So, I didn’t do any crime; and so, [she told the other officers] to release this person and take the restraints off. And they gave me a prison uniform. I didn’t understand English, but I think the way they were talking it’s like they were apologising to me.”

Adam was kept in a segregation cell in an At-Risk Unit for four days due to being considered “at risk” because of his language barriers. He was then transferred to another unit where he was double bunked with remand prisoners and harassed. Adam described how making complaints was extremely difficult for him due to his language barriers:

“He [the cellmate] was in charge of everything, and I couldn’t say a word. To talk to someone I had to wait for [the Spanish officer] to come, and to see her, who was working in another department, it was very hard. It could be two weeks to a month without her coming to where I was. It was very hard to raise all the issues I had.”

After six months in prison Adam was released to the Asylum Seekers Support Trust hostel. He reported to Amnesty International facing ongoing migraines and being on medication from his time at Mt Eden Corrections Facility. The unnecessary use of a restraint jacket in a case such as this is likely to amount to ill-treatment under international law and is prohibited by the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.



90. “EziSpeak” is the telephone and video interpreting service that can be used by Government agencies including the Police and Corrections. However this is not always possible if devices are not available and some languages require advance booking. See also an unannounced inspection by the Office of the Ombudsman into Waikeria prison, which can be used to detain immigration detainees, which noted that “there was little information available for those tāne [men] who did not speak English... Arrangements for the reception, induction, and ongoing supervision, of foreign nationals were insufficient with an over-reliance on on-line translation services.” Office of the Ombudsman, *Final report on an unannounced inspection of Waikeria Prison under the Crimes of Torture Act 1989*, August 2020, p. 19, <https://www.ombudsman.parliament.nz/resources/final-report-unannounced-inspection-waikeria-prison-under-crimes-torture-act-1989>

BEHIND BARS: THE PRISON EXPERIENCE

EXPERIENCES OF VIOLENCE IN DETENTION

Most asylum seekers who are imprisoned are detained at Mt Eden Corrections Facility Between 2015 and 2020. Mt Eden had the highest rates of prisoner on prisoner “non serious assaults” (physical injuries that may require medical treatment and overnight hospitalisation) in the country, and some of the highest numbers of “serious assaults” (bodily harm requiring extended periods of ongoing medical intervention or sexual assault where police charges are laid).⁹¹ In places of detention, states have a heightened duty of protection when they significantly restrict a person’s freedom of movement and capacity for self-defence. The Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment has stated that inter-prisoner violence may amount to torture or other ill-treatment if a state fails to act with due diligence to prevent it.⁹²

Appendix One - Assaults in Prison 2015/16 to 2019/20, as at May 2020

Table source: Department of Corrections

Facility	Prisoner on Prisoner Assault - No Injury					Prisoner on Prisoner Assault - Non-Serious					Prisoner on Prisoner Assault - Serious				
	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020
Arohata Prison	3	9	9	18	20	7	14	12	12	14	0	0	0	0	0
Auckland Region Women’s Corrections Facility	19	24	39	39	40	33	49	47	63	45	1	0	1	0	1
Auckland South Corrections Facility	16	35	45	69	64	67	53	25	13	8	3	1	2	4	3
Auckland Prison	9	11	23	15	6	34	23	34	24	16	4	4	14	5	2
Christchurch Men’s Prison	40	49	41	71	59	49	59	76	74	69	8	3	11	7	5
Christchurch Women’s Prison	14	12	6	12	12	22	11	10	16	11	1	0	0	0	0
Hawkes Bay Regional Prison	27	39	37	51	32	44	56	52	48	47	5	2	1	7	2
Invercargill Prison	15	5	10	14	20	13	9	15	13	20	1				2
Manawatu Prison	17	10	18	8	15	27	30	30	30	58	1	3	2	4	3
Mt Eden Corrections Facility	54	60	43	72	121	172	173	125	123	129	6	5	4	2	2
New Plymouth Remand Centre	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northland Region Corrections Facility	6	9	15	22	32	27	29	22	15	31	0	1	0	1	0
Otago Prison	13	19	27	29	38	24	24	26	33	33	1	0	1	2	5
Rimutaka Prison	35	49	59	48	49	76	71	88	65	73	8	1	1	9	6
Rolleston Prison	5	2	0	3	1	4	3	9	1	4	0	0	0	0	0
Spring Hill Corrections Facility	17	19	25	23	18	37	80	75	75	45	1	3	1	1	4
Tongariro Prison	5	6	4	6	6	8	3	10	9	2	1	0	0	0	1
Waikeria Prison	11	17	28	16	16	33	54	47	48	42	1	2	2	2	2
Whanganui Prison	23	14	15	24	24	31	29	30	30	30	3	0	2	2	1

Amnesty International has documented three cases of asylum seekers being seriously physically and sexually assaulted (by other prisoners) whilst in prison in the last five years. These include instances of a hand fracture, alleged rape and being forced to take part in notorious prison “fight clubs” on a regular basis. These cases constitute violations of their rights to security of the person and a failure to prevent ill-treatment under the Convention Against Torture and other Cruel, Inhuman or Degrading treatment.

91. Department of Corrections, C122893 Official Information on assaults and use of force in prison, Appendix One, pp. 1-3.

92. Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Mission to Kazakhstan, UN Doc. A/HRC/13/39/Add.3, 16 December 2009, p. 48.



John [real name withheld] interviewed by Amnesty International, Auckland, 18 November 2020

John is an asylum seeker from an African country and sought asylum in Aotearoa New Zealand on arrival at Auckland Airport. He was detained for two months at Mt Eden Corrections Facility, which was at that point in time run by private prison company Serco. Already traumatised on arrival, in Mt Eden he reports being double bunked with remand prisoners and being forced to participate in the now notorious “fight clubs” where he experienced and witnessed grave violence. The “fight clubs” at Mt Eden has since been subject to an official inquiry which found failures on a large scale and led to the Department of Corrections taking over control of the prison from private prison company Serco.

John’s nightmare began at Auckland airport, where he describes his fear when being approached by officials when he declared he was seeking asylum.

“I heard them saying, ‘He’s from this plane.’ When they were questioning me one of the lady’s really threatened me; coming up to me very closely and shouting, ‘Hey, where do you come from, who are you?’ Stuff like that, ‘We know who you are; we get people like you here.’ It was harsh.”

After his interview with Immigration at the airport, John reported being taken handcuffed to a police station in Manukau:

“The police handcuffed me, and the police was sitting beside me like I was a criminal, or something. They were there on my back; they make sure that they look after me, and I see another criminal they’re bringing, with the police, when I was arriving. So I knew, ‘this is like a criminal now’. Now they take me to Manukau, and the counter police takes my name, ‘Where are you from?’ [home country]. ‘Why are you here?’ I say, ‘I’m an asylum seeker.’ The policeman didn’t know what an asylum seeker is.”

John describes his three days at the police station as some of the worst days of his life. He alleged he was verbally abused by a guard about his Muslim faith, given a pork sandwich (which is forbidden in Islam) and felt freezing cold without proper clothes or blankets. He became so desperate that he said tried to take his life and drown himself in the cell toilet:

“So me knowing where I come from, and who I am, and the hardships I’ve been through, and where they’re putting me now I have no idea, if two three days if I’m there. I’m begging and no-one is listening to me, no-one cares about me; no-one has an answer, no-one even knows. So now I think, ‘okay, fine, it’s not worth living’. You’re just like a dog, and now they’ve taken my clothes. Maybe after seven or eight hours, in the afternoon, they give me my clothes back. I begged them, “Give me my clothes now.” I was dying with the cold; I’m very cold, I am cold, but they don’t care.”

John’s nightmare continued when he was detained under a warrant of commitment at Mt Eden Corrections Facility and double bunked with remand prisoners. He was reportedly forced to regularly participate in the “fight clubs” at the prison. John describes being shown knives by his cellmate to protect himself and realising the extent of what was going to happen to him:

BEHIND BARS: THE PRISON EXPERIENCE

“There was a lot of things happening at that time in Mount Eden, and now this guy he shows me, and I think, ‘wow, I’m in danger’, and new in there... This is a country I came to for safety but they’re harming me, and I come from trauma. I come from being a refugee living in camps...”

In the fight clubs John said he witnessed and experienced significant violence:

“So, in the prison this is what I was having, and the moment of my last days; I have injuries, head injuries. One guy, the last fight I had two days before I came out and got really get smashed in the head. He was a big guy, he just would fight, and he overpowered me. So I was down, and he was just smacking me. I had to defend myself. I got injured; I’m on medicine now.”

After being released, a lawyer helped him take a case against the Department of Corrections and Immigration under the Bill of Rights Act about his time at Mt Eden. John accepted legal settlement as he desperately needed the money including to support his family who are resettled refugees in other countries.

“What’s horrible is they compensate me, and they compensate me a very small thing, and at that time I have to take it, because my mum was sick, and because my mum sick I sent all the money to my mum.”

John continues to struggle to make ends meet due to being not being able to work or access the full benefit whilst he awaits determination of his claim. He still suffers from PTSD from the violence he experienced and witnessed in Mt Eden Corrections Facility.



NON CUSTODIAL MEASURES

As the detaining agency, Immigration New Zealand has the knowledge that if they decide to progress a warrant to detain an asylum seeker in prison (as opposed to non-custodial measures) they will be subject to essentially the same regime as remand accused prisoners in Aotearoa New Zealand, and all this encompasses. Amnesty International believes this is likely to fail the proportionality test required by international law for any restrictions on the right to liberty for immigration detainees.

The enjoyment of personal liberty should be any individual’s default condition. If restrictions to the rights to liberty or freedom of movement are necessary, non-custodial measures should be the preferred solution and should always be considered before resorting to detention.⁹³

Under international law, “considering” or “exploring” non-custodial measures is not a matter of goodwill on the part of a government.^{94,95} They must be available not only in law, but also in practice. Whilst Aotearoa New Zealand law and operational policy does stipulate “tiers” of less restrictive to more restrictive options,⁹⁶ in practice, Amnesty International found a reluctance to use or provide alternatives in the cases it examined, as explored below.

Māngere Refugee Resettlement Centre is primarily used for Aotearoa New Zealand’s refugee quota resettlement programme.⁹⁷ It is an “open air” center with specialist refugee mental and medical/physical health support, a school and other facilities to integrate “Quota” refugees for their first six weeks in Aotearoa New Zealand.

“In my view they don’t use [prison] as a last resort”

General Manager of the Asylum Seekers Support Trust.

Māngere Refugee Resettlement Centre is can also accommodate up to 28 asylum seekers detained under a warrant of commitment, and they are accommodated separately from refugees under the Quota programme. They are detained under a form of administrative detention, where they must reside at the facility and are subject to conditions including needing to be granted permission to leave and return at stipulated times. If they break their conditions, their warrant of commitment can be varied, including to detention in a prison.

Lawyers, support workers and asylum seekers themselves spoke of instances where they had been told that Immigration didn’t want to detain some asylum seekers at Māngere Refugee Resettlement Centre rather than in prison, because they were considered “too risky” and the centre was for “legitimate” refugee families, including “women and children” and there were not enough police officers to be present. Whilst there may be limited circumstances where Māngere Refugee Resettlement Centre is not considered suitable or appropriate detention, cases examined by Amnesty International did not always demonstrate why prison was the necessary or proportionate form of detention, as opposed to less restrictive or punitive alternatives.

93. Non-custodial measures – sometimes called “alternatives to detention” – are measures short of detention that can nevertheless be restricting rights of migrants and asylum-seekers other than the right to liberty (often the rights to freedom of movement or the right to privacy). They vary in levels of intrusiveness and can range from registration requirements, bond/bail, designated residence, community release/supervision, reporting conditions, electronic tagging, or home curfew.

94. Report of the Working Group on Arbitrary Detention, UN Doc. A/ HRC/7/4, 10 January 2008, para. 76.

95. Guideline 4.3 of the UNHCR Detention Guidelines, para. 35.

96. Section 311 of the Immigration Act 2009.

97. New Zealand’s Seventh Periodic Report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Draft Report for Public Consultation, May 2019, para. 35.

NON CUSTODIAL MEASURES

RELEASE ON CONDITIONS IN THE COMMUNITY

Despite some asylum seekers having to face some of the severest aspects of the criminal justice system (police cells, a District Court, criminal prison) on immigration grounds, they are not necessarily afforded all the same protections, such as liberty as a presumption, or utilising non-custodial measures, such as an electronic monitoring bracelet. Whilst asylum seekers can be released into the community on conditions, or to a specific place of residence with reporting requirements, this is very difficult in practice.

Since 2013, the New Zealand Government has not consistently funded the only community-based Asylum Seeker Support Hostel in Aotearoa New Zealand, where asylum seekers can be released to on reporting conditions. “Lack of family or community ties” is also used consistently by Immigration New Zealand as one of the cumulative reasons justifying “absconding risk” in Warrants of Commitments seeking detention in prison. This inherently disadvantages asylum seekers who will not necessarily have family ties or financial means in Aotearoa New Zealand. Even in some cases where a lawyer has provided extensive evidence of that person’s identity or a community that wants to offer them a place of residence and be the legal guarantor for their movements, Immigration New Zealand has still progressed a warrant of commitment for prison or detention.⁹⁸

The failure of the New Zealand Government to both provide and utilize adequate non-custodial measures in practice is a significant contribution to the use of prison as a form of immigration detention for asylum seekers. All of the above, combined with the presumption of liberty being reversed by the legislation in many cases, due process issues, and the challenges of the prison environment, makes it highly difficult in practice for asylum seekers and their lawyers to displace the burden of proof and challenge detention, once a decision has been made to detain by Immigration New Zealand.



98. In at least five cases investigated by Amnesty International, alternatives to detention in prison had been explicitly proposed by their lawyer or support person, such as transfer to Māngere Refugee Resettlement Centre, release on conditions to a family member, cultural or diaspora community address or to a support hostel.

LIVING IN THE SHADOW OF PRISON

The cases of asylum seekers in prison which Amnesty International examined tended to only be released from prison when their asylum claim was approved or when their lawyer or an external agency successfully fought for their transfer to Māngere Refugee Resettlement Centre or their release on conditions to a specified address. Several asylum seekers were also released in early 2020 when Aotearoa New Zealand entered a nationwide “lockdown” due to the COVID-19 global pandemic. When asylum seekers are released, they are not prepared with specific post-release support by the Government. They may be found and supported or housed by the Asylum Seekers Support Trust, which primarily relies on philanthropic support.

Asylum seekers in Aotearoa New Zealand can also face significant barriers to their economic, social and cultural rights after detention.⁹⁹ This is especially cogent for asylum seekers who do not have refugee status determinations finalised and face legal and bureaucratic barriers due to their precarious migration status. Implications of this include not being allowed to work or not being entitled to mainstream social security benefits.¹⁰⁰ These challenges combined with some of the other lasting impacts and harms of the prison experience have made life extremely difficult for asylum seekers who have experienced detention.



Zahi [real name withheld]
interviewed by Amnesty International, Auckland,
26 November 2020

Zahi is from Somalia and has been recognised as a refugee in Aotearoa New Zealand. He claimed asylum on arrival at Auckland Airport. He was detained at Mt Eden Corrections Facility for six months until his asylum claim was accepted.

“When I first arrived here; I arrived at the Auckland International airport, and the Immigration officials detained me there. I just told them my story; that I am somebody who is seeking refuge, and fleeing from persecution and violence. I just told them my story.”

Zahi was shocked when he was told by an immigration officer after his interview at Auckland Airport that he was going into police custody because he arrived on false travel and identification documents and they could not ascertain his identity to their satisfaction:

“To be honest I wasn’t expecting I would end up in a prison. The reason for that is again, the main reason why I came to this country is because I’m looking to better my life, and I’m just seeking refuge, and just a better future, and a prison is for criminals; people who have done wrong, and I’m not a criminal.”

Zahi was taken to the police station where he was detained for three nights, where he said he did not know that he had any rights, including to speak to a lawyer. Despite telling police officers that he was Muslim, he was allegedly given sandwiches with pork and he was told to avoid it and “eat the rest”. Zahi had a short appearance at court with a duty lawyer, and reported being taken in handcuffs in a police van to Mt Eden. There he alleges being harassed and double bunked several times with remand prisoners, including a cell-mate on a murder charge.

“When you’re in prison, unless you’re doing something obviously; you’re spending 23 hours in your cell, and you only have one hour for recreational activities, and for somebody who hasn’t committed any criminal act... and their only “crime” is seeking a safe haven, to be kept in detention for 23 hours of the day; I think it’s a bit harsh.”

99. New Zealand Human Rights Commission, *Discussion Paper: Treating asylum seekers with dignity and respect: The economic, social and cultural rights of those seeking protection in New Zealand*, June 2017, https://www.hrc.co.nz/files/5715/0060/6797/ESC_Rights_Discussion_ONLINE.pdf

100. Asylum seekers in the community are provided with an “allowance” decided by Immigration New Zealand.

LIVING IN THE SHADOW OF PRISON

Zahi was eventually transferred to a unit where he worked in the laundry and then the kitchen from 6am to 4pm. He also sought to keep busy in prison by using his skills as a barber and offering haircuts to other prisoners. This helped him make a small amount of money to buy items from the canteen that he couldn't otherwise access, because he knew no-one in Aotearoa New Zealand who could support him from the outside.

After six months in prison, Zahi was finally released with very little notice, but wasn't prepared for a release or given any support by the Department of Corrections or Immigration.

"I picked up my stuff, and they opened the gate for me, and they said 'You're free, see you later.' I told them, 'I have nobody here. I don't know anyone. I have no idea where I'm going.' Like zero knowledge. I mean, where am I going to go."

With very limited English, Zahi tried to explain to the office outside the prison that he didn't know what to do, he had no phone and nowhere to go. Eventually they gave him the small amount of money that he had earned working at the prison, Googled local Islamic Centres, and put him in a taxi which he paid for out of his earnings. The local Mosque helped him find the Asylum Seekers Support Trust, who picked him up and took him to their hostel.

Zahi is now studying and has big hopes for his future to use his barber skills and open his own business. He said he saw a lot of people suffering and crying in the prison, and hopes that the New Zealand Government will stop the practice of putting some asylum seekers in prison, but if detention is used, to instead use a "safer place."



HOW THEY SEE AOTEAROA NEW ZEALAND

Amnesty International asked those that they interviewed what they wanted to say to the Aotearoa New Zealand Government if they had the chance, and how they viewed Aotearoa New Zealand after their experience. These are some of their responses:

"To be honest I wasn't expecting I would end up in a prison. The reason for that is again, the main reason why I came to this country is because I'm looking to better my life, and I'm just seeking refuge, and just a better future, and a prison is for criminals; people who have done wrong, and I'm not a criminal."

"When I saw the Christchurch attack, and all the sympathy for people and Jacinda Ardern, I thought that seems to be a good country; if there is a terrorist attack with the politicians and the people of the country they support. So, that was my only knowledge about New Zealand. It was quite shocking when they told me I was going to prison."

"I always had the impression that New Zealand was a very good country. It's human rights record is very good, excellent, and they're helping refugees who have been arriving in Australia, as boat refugees from Indonesia; and that is not so."

"You see we have arrived here as refugees, and we want to be treated well; to be treated as human beings, and we want to be recognised as human beings. We have thrown away everything we had, and have run here to New Zealand because we were persecuted in [home country]; and the world sees the protection you are offering immigrants. We want to be treated well, and as refugees, when we arrive here; to treat them well, and not to put them in prison. New Zealand is well recognised around the globe as a country that observes and respects human rights; and so, they should treat us well."

"People here [at the hostel] are all [have] mental health issues. The person with me is leaving, and seven years of continual fighting, and he knows when he goes back he will be killed straightaway.... They refused him yesterday after seven years. All refugee people here are on medicine. You see them happy sometimes, and suddenly they're crying. They all are finished. We are treated like the enemy, but we don't deserve what they're doing, because we know that the United Nations has given us the right here to claim asylum...I know there's some countries will not help you, because they do not have an agreement with the United Nations. New Zealand have an agreement with them, but they breaching this one, and no-ones speaking against them."

CONCLUSION AND RECOMMENDATIONS

AMNESTY INTERNATIONAL URGES THE GOVERNMENT OF AOTEAROA NEW ZEALAND TO:

The Government of Aotearoa New Zealand has committed to actively protecting the human rights of people seeking safety here and to prevent and refrain from actions that violate their rights. As one asylum seeker noted, “New Zealand is well recognised around the globe as a country that observes and respects human rights; and so, they should treat us well”. Our findings demonstrate there have been failures to do so, resulting in significant harm to the people subjected to these policies and practices. The people at the centre of these policies and practices just want to be “recognised as human beings”. In the words of another asylum seeker, they are just seeking “a better future” and “a better life.” To bring about the institutional change required to end the harmful use of the criminal justice system to detain people in these situations, urgent concrete steps, including legislative reform, are required.

RECOMMENDATION 1:

End the use of criminal justice facilities such as police stations and prisons to detain asylum seekers or irregular migrants, since these are designed for those within the realm of the criminal justice system.

RECOMMENDATION 2:

Reform the Immigration Act 2009 to ensure that it is consistent with international human rights standards, including the following amendments:

- a) Explicitly protect in law the presumption against immigration detention in all circumstances.
- b) Introduce international human rights standards on the use of immigration detention in Part 9 of the Immigration Act, including a statutory obligation to adhere to the requirements of detention only as a last resort and comply with legality, necessity, proportionality and non-discrimination.
- c) Any decision to detain is based on an individualised assessment and not the circumstances of arrival or asylum claim.
- d) Introduce a prohibition in law on the immigration detention of people at increased risk of human rights violations who have sought asylum, including: torture survivors, children under 18 and their families or guardians, pregnant or lactating women, those with serious medical conditions, people with disabilities and older persons.
- e) Introduce a total maximum duration for detention provided by law which should be reasonable in its length. Once this period has expired the individual concerned should automatically be released.
- f) For cases where restrictions to the rights to liberty or freedom of movement are necessary, introduce an obligation in law to consider non-custodial measures before resorting to detention.

RECOMMENDATION 3:

Ensure that community alternatives to detention are available, funded adequately and accessible to asylum seekers and irregular migrants in policy and practice, without discrimination.

RECOMMENDATION 4:

Immediately review cross-agency failures to ensure due process rights at all stages of the immigration detention process, in co-operation with rights holders, lawyers, the UNHCR and civil society organisations. This should include, but not be limited to:

- a) Access to and funding of civil legal aid representation at all stages of detention that meaningfully ensures the right to challenge immigration detention and pursue asylum claims.
- b) Access to interpreters at all stages of detention and provision of relevant documentation in their own language. The interpretation or translation provided should be of a standard which enables the detainee to understand fully the proceedings around their case;
- c) Immigration detainees are handed information as soon as possible about the reasons for a detention decision and details on their rights in a language they understand, preferably at the airport.
- d) Immigration detainees are given access to a qualified immigration lawyer before their court appearance and ideally at the first interview stage.
- e) Judicial review of immigration detention is not only of a procedural nature, but must also allow for substantive consideration of the case at each hearing
- f) Search practices, including strip searches for immigration detainees are reviewed.
- g) Adequate time for proper health checks and screening prior to transfer to any detention facility, including appropriate assessment, diagnoses, and treatment of any illnesses, injuries or disabilities and that immigration detainees are not transferred to a facility where these health needs cannot be addressed or under circumstances in which their health would be adversely affected.
- h) Human rights and asylum-specific training of Immigration New Zealand Officers and legal counsel, Police Officers and the Judiciary.

RECOMMENDATION 5:

If immigration detention is used as a last resort and is legal, necessary and proportionate, ensure that any restrictions on movement or detention conditions comply with relevant international human rights standards, including:

- a) Ensure that all immigration detainees can communicate freely and in full confidentiality with visitors and that they have adequate opportunity to communicate with the outside world.
- b) Ensure that all immigration detainees can exercise their right to access to legal counsel, interpreters, doctors, refugee and migrant assisting organizations, members of their families, friends, religious and social assistance and the UNHCR, and that this right is not impeded in practice.
- c) Ensure that all immigration detainees are afforded regular and sufficient periods to make telephone calls at times that are appropriate for the part of the world they are calling.
- d) Ensure that all immigration detainees are given regular and sufficient periods of time to send and receive email and to receive information.

CONCLUSION AND RECOMMENDATIONS

- e) Ensure that there are no limits on the number of letters that can be sent and received by immigration detainees. Legal mail should not be opened or otherwise read by prison or detention centre staff.
- f) Allow any immigration detainee to have reasonable access to radio, television and or internet.
- g) Take steps to ensure that immigration detainees have access to a library that is adequately stocked with recreational and instructional books.
- h) Ensure that immigration detainees have appropriate food in line with their culture and religious beliefs whilst detained.
- i) Ensure that detention centre/prison rules are provided in a language detainees understand, in particular that information on accessing a medical professional, a lawyer, making a complaint and access to phone calls/outside world should all be provided in a language that is understood.
- j) Ensure the right to the highest attainable standard of health, including access to adequate mental health care.
- k) Ensure free and full access for independent agencies such as faith and community interest groups; local, national, and international governmental organisations; and non governmental organisations, and permit them to monitor detention conditions.

RECOMMENDATION 6:

Individuals who have been subjected to human rights violations in custody must have accessible and effective remedies. In particular, the Government of Aotearoa New Zealand must ensure that allegations are promptly, impartially, independently and thoroughly investigated, that victims have access to an effective remedy and receive reparation, and that those responsible are brought to justice in accordance with international human rights law and fair trial standards.

GLOSSARY OF TERMS

ASYLUM SEEKER

A person outside their country of origin (or, for stateless people, outside their country of habitual residence), who is seeking protection from persecution but has not yet been formally recognized as a refugee.

REFUGEE

Refugees are defined in the Convention Relating to the Status of Refugees as people who cannot return to their own country because they have a well-founded fear of human rights abuses or persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion. Their own government cannot or will not protect them and so they are forced to seek international protection.

IRREGULAR MIGRANT

Migrants are people who move from one country to another, either temporarily or permanently, usually to find work, although there may be other reasons, such as to study or to join family. Many move for a combination of reasons. People can migrate “regularly,” with legal permission to work and live in a country, or “irregularly,” without permission from the country they wish to live and work in. They may also arrive in a country with legal permission, but this expires or is cancelled. They may be referred to as “irregular migrants”.

DETENTION

Detention refers to any form of deprivation of liberty or confinement of the physical body ordered by public authorities.¹⁰¹ Article 9(1) of the ICCPR applies to all deprivations of liberty (not just in the context of criminal law), including confinement to a restricted area in an airport, being involuntarily transported, and other forms of administrative detention of migrants and asylum-seekers.¹⁰² Whether a person is “detained” depends on the fact of whether he/she has been deprived of liberty by the state, not on the place or circumstances of the confinement. E.g., Individuals held in Australia’s refugee “processing centres” on Nauru or Manus Island, or certain “reception centres” in Europe are in detention, regardless of the name the facility is given by the government.

IMMIGRATION DETENTION

Immigration detention or migration-related detention refers to “the deprivation of an individual’s liberty, usually of an administrative character, for an alleged breach of the conditions of entry, stay, or residence in the receiving country.”¹⁰³ Detention for migration-related purposes can take many forms, including detaining people in penal institutions, specialized detention centres, restricted movement arrangements, as well as in closed camp settings.

101. UN Human Rights Committee General Comment 35, UN Doc. CCPR/C/GC/35, 16 December 2014, para. 3.

102. UN Human Rights Committee General Comment 35, UN Doc. CCPR/C/GC/35, 16 December 2014, paras 3 and 5.

103. UNHCR, Association for the prevention of torture, and International Detention Coalition, *Monitoring Immigration Detention: Practical Manual*, 2014, p. 27.

GLOSSARY OF TERMS

NON-CUSTODIAL MEASURES

Sometimes called alternatives to detention, these are non-custodial measures restricting the rights of migrants and asylum-seekers (often the rights to freedom of movement or the right to privacy). They vary in levels of intrusiveness and can range from registration requirements, to bond/bail, designated residence, community release/supervision, reporting conditions, electronic tagging, or home curfew.

REMAND PRISONER

The Department of Corrections defines a remand prisoner as “someone is held in custody while they wait for their trial or sentencing... A remand prisoner could be held in police cells, court cells, psychiatric facilities or in prison.”¹⁰⁴ A “remand accused” prisoner refers specifically to someone held in pre-trial detention where they have been charged with but not convicted of a criminal offence.

DOUBLE BUNKING

“Double bunking” means that there are two prisoners who share the same cell. The Department of Corrections refers to this arrangement as “cell-sharing” or a “shared accommodation cell.”

STRIP SEARCHING

Section 3 of the Search and Surveillance Act 2012 defines strip search as “a search where the person conducting the search may require the person being searched to undress, or to remove, raise, lower, or open any item or items of clothing so that the genitals, buttocks, or (in the case of a female) breasts are— (a) uncovered; or (b) covered only by underclothing”.

WARRANT OF COMMITMENT

A warrant of commitment is a court order issued under the Immigration Act 2009 to detain an individual or group. As section 316(1) explains “An immigration officer may apply to a District Court Judge for a warrant of commitment (or a further warrant of commitment) authorising a person’s detention for up to 28 days in any case where it becomes apparent, in the case of a person detained in custody under this Part, that before the expiry of the period for which detention is authorised.”

¹⁰⁴. Department of Corrections, *Working with offenders: Remand*, https://www.corrections.govt.nz/working_with_offenders/courts_and_pre-sentencing/remand

AMNESTY INTERNATIONAL IS A GLOBAL MOVEMENT FOR HUMAN RIGHTS. WHEN INJUSTICE HAPPENS TO ONE PERSON, IT MATTERS TO US ALL

CONTACT US

 INFO@AMNESTY.ORG.NZ

 0800 AMNESTY (266 3789)

JOIN THE CONVERSATION

 AMNESTYNZ

 AMNESTYNZ

Index: ACT 50/3760/2021
Original language: English

[amnesty.org.nz](https://www.amnesty.org.nz)

