

# UNFAIR AND DISCRIMINATORY

## which regions does New Zealand take refugees from and why?

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### Abstract

This article considers changes to the regional composition of New Zealand's annual refugee resettlement quota under the fifth National government. The method is based on an analysis of material collected across four years of Official Information Act requests and further research conducted in the course of the Doing Our Bit campaign to double New Zealand's refugee resettlement quota. The article outlines changes to the regional composition, the stated rationale behind them, and the effect of these changes. It concludes with an argument that these changes be reversed by the new Labour-led government.

**Keywords** refugees, racism, New Zealand, religion, Africa, Middle East

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**I**n this article I consider changes to the regional composition of New Zealand's annual refugee resettlement quota under the fifth National government. The article draws from research conducted in the course of the successful Doing Our Bit campaign to double New Zealand's refugee resettlement quota. I outline these changes, the stated rationale behind them

and the effect of the changes, and provide an argument for them to be reversed.

### Approach

I draw primary material from a range of Ministry of Business, Innovation and Employment (MBIE), Ministry of Foreign Affairs and Trade and Office of Ethnic Affairs documents released under the

Official Information Act. I have analysed this approach in Stephens (2014), which gives some insights into changes in the refugee quota under the fifth National government. The present article forms the most in-depth analysis of the regional changes yet. It adds to already published Twitter threads, press releases, interviews and editorials discussing these policies. Whereas previous discussion had aimed at highlighting concerns with the policy in an attempt to embarrass the government into a change, the current article takes a different approach. Here I seek to bolster the arguments against the policy which have already been made by a range of government departments.

### What is the refugee quota and why is it important?

The refugee quota is an annual intake of refugees, the number and regional make-up of which is decided by New Zealand, which then works with the United Nations High Commissioner for Refugees (UNHCR) to fill those places. The people who become quota refugees are assessed, interviewed and ultimately selected in their first country of protection. For example, Syrian refugees from our

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most recent intakes have been assessed in Lebanon, their first country of protection, before being flown to New Zealand as part of our annual quota.

The refugee quota is one of three main ways that a refugee can gain protection in New Zealand, alongside making a successful claim for asylum, which requires them to be in New Zealand, or being welcomed as part of a family reunification programme. Internationally, the vast majority of refugees who gain a new residency receive protection as asylum seekers: this was the case for the refugees who sought protection in Europe during the peak of the refugee crisis of 2015. Whereas asylum seekers are assessed, and either accepted or rejected, once they're in the country from which they seek protection, quota refugees have already gone through that process before they arrive. To think of it another way: some people use the term onshore to describe asylum seekers, as they are granted protection only once they have already arrived; *offshore* is used to describe quota refugees and those coming under the family reunification programme, as they are recognised as refugees before arriving.

The refugee quota is important as it provides a vehicle for the most vulnerable, as selected by the UNHCR, to receive protection. While asylum is more often claimed by those with the skills, resources or will to get to a country that may accept them, the refugee quota protects those who are least likely to survive prolonged displacement and who have the least prospects for either voluntary repatriation or local integration (UNHCR, 2017a). The quota tends to be used most by countries that are a long way from conflict zones where large numbers of refugees originate (UNHCR, 2017b). Resettlement through the refugee quota is particularly strong in North America and Australasia, with some nascent programmes in Europe.

We might think of the quota as the way for countries who don't receive a large number of refugees applying for asylum to do their bit for refugee protection. In that sense, while the quota is technically a limit on the number of people who can come, it places no limit on the number of asylum seeker places. A better way of thinking of the quota is as an artificial minimum – like a minimum wage – which ensures that a

certain number of people gain protection. The Doing Our Bit campaign was occasionally confronted with people who wanted to abolish the refugee quota, thinking this was the equivalent of opening our borders to all people seeking protection. By way of comparison, that would be like hoping the abolition of a minimum wage would lead to higher wages.

#### **What is New Zealand's regional refugee ban and what is its effect?**

In 2009 the incoming National-led government worked with MBIE's predecessor, the Department of Labour, to streamline the assessment of refugees in Immigration New Zealand offshore

journey by boat to Australia from Indonesia. By resettling people from South East Asia, the government hoped that this would create hope that the refugee quota system might be the best avenue for registered refugees to find protection in a resettlement country like New Zealand.

The final reason behind a restructure was described as 'broad security concerns'. I will give attention here to this reason as it is the one that focuses on the characteristics of those not from the Asia-Pacific rather than the characteristics of those who are. One might also be inclined to devote more attention to this reason because it is the most sensitive of the three, as indicated by the persistent redaction of

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interviews. This led a year later to a three-year planning and implementation stage for selecting who would arrive under the refugee quota. In the first analysis of what that three-year quota would look like the new government sought to refocus New Zealand's refugee quota on the Asia-Pacific region.<sup>1</sup> The initial proposal suggested moving the entirety of New Zealand's refugee intake to this region as a response to 'regional pressures'.<sup>2</sup>

Three core reasons emerged for this refocus. The first reason was cost: it was both cheaper to fly people in from South East Asia, where the majority of these people would arrive from, and to focus just on this area would allow economies of scale in the process where New Zealand immigration officials interview potential quota refugees referred to us by the UNHCR. The second reason expands on the notion of regional pressures: specifically, the aim was to stem the number of people who might attempt to make the dangerous

discussion of it in OIA responses. Similarly, scholars have devoted considerable attention to the 'securitisation' of forced migration, which focuses on the threat of refugees to the country accepting them, rather than on the risk to refugees (for example, see Hammerstadt, 2014 for a critical reading). Those risks are twofold: those posed by the circumstances of forced migration, such as the original war and persecution, and then the dangers associated with displacement, such as smuggling, disappearances and the lure of dangerous journeys to claim asylum.

From the texts available, it appears 'broad security concerns' are threefold. First, there may be a 'risk to New Zealand's international reputation'. This concern focuses on the potential for New Zealand to accept refugees whom we may one day find were not eligible to be refugees. This concern also speaks to a broad description of people who may pose a risk to New Zealand. The second concern is over

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credibility issues with the statements and claims made by prospective refugees. The final concern is based on the difficulties potential refugees might have resettling in New Zealand, which one document describes as 'insurmountable'. Of the three, the final two are elaborated upon in the documents – with no specific mention of African and Middle Eastern refugees. Almost all of the elaboration on security concerns has been redacted, which, despite some persistence, was not overturned in a lengthy appeals process with the ombudsman.

Legal advice suggested, however, that only taking refugees from the Asia-Pacific region may result in a breach of the New Zealand Bill of Rights, as it may restrict the ability of already resettled refugees to use the quota as one avenue for family reunification. An alternative to the 100% Asia-Pacific intake was suggested, agreed to and put into practice: 50% of quota refugees were to come from the Asia-Pacific, 15% from the Middle East, 17% from Africa and 18% from the Americas.<sup>3</sup> This alternative, it was argued, would also help assuage 'likely concerns' from the UNHCR, which, it was noted, has a global objective to focus resettlement on those refugees in the greatest

need, 'the majority of which are in Africa and the Middle East'. Prior to the Asia-Pacific focus, the regional intake was split at around 30% each for Africa, the Middle East and the Asia-Pacific.<sup>4</sup>

### The family link criterion as restriction

If the new regional quotas were the extent of the rearrangement of New Zealand's refugee quota they might escape scrutiny. However, a proviso was also placed on refugees from the Middle East and Africa that they would only be accepted if they already had family in New Zealand. This proviso was not extended to refugees from the Americas, so we might deduce that what became known as the 'family link criterion' is less a function of cost or helping with pressures in the Asia-Pacific and more about the broad security concerns identified earlier. A rosier interpretation might be that as it was only in 2007 that the Americas was introduced as a resettlement region, the exemption from the 'family link criterion' for the Americas might be intended to build a sustainable community among this recent intake.

Regardless of the reason for placing a family link criterion on refugees from Africa and the Middle East and not the Americas,

the agreement on the composition of the refugee quota explicitly stated that the ministers of immigration and foreign affairs would decide on the new allocations. Without fail they redirected the percentage of refugees originally allocated to Africa and the Middle East to the Asia-Pacific region when insufficient family-linked places were found. Over the years, a lack of people qualifying for the family link criterion became the norm, with intakes from both Africa and the Middle East dwindling to single figures. This was not due to a lack of possible family to bring to New Zealand, but because these potential quota refugees needed to be outside their country of origin and registered with the UNHCR, which did not have the facilities or resources to specifically seek out these cases.

One way around these restrictions was found when 100 Syrian refugees were welcomed in 2014–16 in an emergency category from within the quota. This intake preceded the 600 extra places granted at the height of the refugee crisis. These Syrians bolstered the numbers coming from the Middle East; without it, the number of refugees from the Middle East would be almost as low as of those from Africa.

So, while we have proposed intakes from the Middle East and Africa in the double digits, our actual intakes are much smaller. Consider the 2014/15 intake<sup>5</sup> in Figure 1, which shows both the actual, in contrast to the proposed, intake.<sup>6</sup>

Thanks to the enthusiasm for blocking out large amounts of text in OIA releases, researchers are forced to speculate as to what the middle column in this table might represent. Given that the reason cited is to do with information having been entrusted to the government by an international organisation, and that the UNHCR in Canberra was the only group asked about our quota composition, it is fair to guess that the missing column is a recommended intake from them. From my dealings with the UNHCR in Canberra I would expect these recommendations to have a much more even split between regions.

While New Zealand has not explicitly banned refugees from the Middle East and Africa, the policies implemented by the National-led government have effectively led to that outcome for refugees from

Figure 1: 2014/15 agreed and actual intake

the world agreed by Cabinet in 2013 was 22 per cent to the Americas, 14 per cent to the Middle East and 14 per cent to the African region<sup>4</sup> Table Three compares the Cabinet-agreed allocations with the actual percentage resettled from each region in 2014/15

Table Three: Proposed reconfirmed regional allocations (compared with the actual percentage resettled in 2014/15)

Region	Actual percentage resettled in 2014/15 %	§ 6(b)(ii)	Cabinet-agreed in 2013 and proposed reconfirmed in 2016 %
Asia-Pacific	74		50
Americas	13		22
Middle East	12		14
Africa	1		14

28. In 2010, Cabinet established a requirement that refugees resettled from the Middle East and African regions would only be considered for resettlement in New Zealand if they have a pre-existing family link (that is, refugee family members already in New Zealand). This requirement was reconfirmed in 2013.

Africa, and to a significant decrease for Middle Eastern refugees, augmented by the emergency places for Syrians. If American president Donald Trump's rejection of Middle Eastern and African refugees has been evidenced by a series of smoking gun tweets, New Zealand's move away from the same regions is a purposeful, but difficult-to-prove death by a thousand cuts.

#### **Resistance to the ban from government departments and political opposition**

This policy has not gone without comment from the relevant government departments. From 2013, MBIE has noted their inability to fill the African percentage of the quota and suggested that the minister of immigration approach Cabinet about removing the family link criterion so that the full percentage of the quota from Africa might be welcomed. Ignoring the advice from MBIE, as well as advice that the current situation means New Zealand will not meet its proposed regional goals, Cabinet has retained the family link criteria.

The only successful challenge to the restrictions was made in 2013 when the Ministry of Foreign Affairs and Trade and MBIE, contrary to earlier claims of pressure in the Asia-Pacific region, noted that they were likely to struggle to find enough refugees in the Asia-Pacific to fill a regional intake that had become more than two thirds of the quota. They successfully argued for allowing Afghan refugees who were living in Pakistan to be classified as part of the Asia-Pacific region. The Afghan refugees are predominantly from the Hazara group, a minority group in Afghanistan persecuted for their Shia faith. Hazara have had a long connection with New Zealand, with a large number of the *Tampa* refugees being Hazara. They also have connections forged with the New Zealand Defence Force's provisional reconstruction team in Bamiyan, the heartland of the Hazara people.

During the 2016 triennial review of the refugee quota, the Office of Ethnic Affairs responded to a request for comment by noting that 'some of our community stakeholders from former refugee backgrounds perceive the current family link criterion is unfair and discriminatory'. Despite these concerns, the family link criterion – the effective ban on new

refugees from the Middle East and Africa, with a few small exceptions – was retained. Even though the minister was by now fully aware that the proposed percentages would not be met, no suggestion was made to remove the family link criterion or make the proposed percentage more reflective of the difficulty of filling these family-linked places. If the community concerns about the unfair and discriminatory aspect of the family link criterion were included in the final aide-memoire that went to Cabinet, they are in the redacted portion of the document.

There are four significant problems with the family link criterion that has banned new refugees from Africa and the Middle East from being settled in New Zealand, with the three exceptions of an emergency intake, family link or if they have been able to escape the region.

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At the 2017 election, the restrictions became the subject of parliamentary discussion when the Greens took a stand against the family link criterion, campaigning to remove it (Green Party of Aotearoa New Zealand, 2017). When James Shaw questioned the then prime minister, Bill English, about the criterion, English referred to the Syrian emergency intake as a way to suggest that the restrictions do not exist:

James Shaw: Can he confirm that his Government cut the number of refugees New Zealand takes from Africa and the Middle East when it is precisely those people who are in the most precarious and needy situation?

Rt Hon BILL ENGLISH: There will be a range of opinions about the relative need among refugees, but the Government did respond to the very large number of refugees from Syria by opting to take several hundred more of them over the next few years. (Hansard, 2017)

This denial was indicative of what I speculate to be embarrassment felt by the government about the policy, as evidenced by their OIA redactions, obfuscation in the House of Representatives, and inflated proposals for regional intakes that they had repeatedly been told would not be met.

#### **What is the problem with the ban?**

There are four significant problems with the family link criterion that has banned new refugees from Africa and the Middle East from being settled in New Zealand, with the three exceptions of an emergency intake,

family link or if they have been able to escape the region. These problems have all been touched on already, but I want to focus on each one in more depth. The problems are how the changes (1) undermine the UNHCR focus on the most vulnerable; (2) compromise the universalism of human rights that underwrites accepting refugees; (3) discriminate against existing communities; and (4) represent a debasement of the political process.

First, the ban on these new refugees undermines the UNHCR's focus on using the scant resettlement places for those most at risk. While New Zealand has maintained a commitment to resettling women at risk, one of these core categories, it is clear that the greatest regional need has been in Africa and the Middle East, where conflicts – including but not limited to those in Syria, Iraq and South Sudan – have created substantial crises. While the recent escalation of displacement of Rohingya from Myanmar has created a new need for resettlement from the Asia-Pacific region, it would still be difficult to justify taking more than 50%

of our quota from this region. Similarly, the level of need in the Asia–Pacific has no relation to the policy of only taking family-linked refugees from Africa and the Middle East, while accepting those from the Americas regardless of a family link.

The second problem with the ban is more philosophical, but is no less important. By placing caveats on who we will or won't take based on generalised concerns about potential security risks, the universalism of human rights is undermined. If human rights only apply to people outside the regions where the

struggle to maintain members in the face of larger communities in Australia and elsewhere abroad. The message from the government that these refugees are not seen as capable of resettlement success creates a self-fulfilling prophecy for those communities already resettled.

Finally, there is something fundamentally dishonest in the descriptions and reasons employed by the previous government in their restrictions of refugees from these two regions. Where Trump was very direct about banning people from certain countries from entering the United

Commentators who take positions opposed to the refugee quota tend to either focus on opposition to certain kinds of refugees and on their likelihood of integrating into New Zealand society, or erroneously assume that New Zealand's refugee resettlement programme is the same as the asylum seeker movements across Europe that they have seen on the six o'clock news. See, for example, Cameron Slater on his blog *Whale Oil*, who says, 'I have no problem with the concept of refugees, or even the doubling of a quota' (Slater, 2016). Similarly, Karl Du Fresne focuses on Islamic asylum seekers, the inclination of liberals to welcome them, and the need to avoid giving asylum in case this leads to an 'ugly Far Right' resistance in New Zealand (Du Fresne, 2016).

Pro-refugee advocates tend to focus their attention on the latest conflict that has received media attention, from Syria through to the more recent focus on Rohingya refugees. While this focus on those most in danger is important, it also fuels a short-term focus on emergency intakes that struggles to lead to long-term or systemic solutions. This approach also rarely discusses systemic racism (or even mention race at all, except to denounce those like Slater and Du Fresne), accepting the premises by which particular refugee situations lead to media coverage, while others do not.

The kind of plain talking about race and refugees that would offer truly liberal outcomes – that is, outcomes not determined by race, religion or anything other than immediate need – is rare. Ann Beaglehole, in both *Refuge New Zealand* (2013) and in interviews, provides a striking example of acknowledging the role of race in refugee resettlement. In a discussion with myself and Wallace Chapman on RNZ's Sunday Morning programme, she noted the ease of her own experience as a refugee arriving in New Zealand in the 1950s: 'Hungarians on the whole had a very good reception because we were white and I had blue eyes'. Speaking of newer refugees, she notes, plainly 'there would have been some prejudice against them because they didn't have white skin' (RNZ, 2016).

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greatest needs and challenges are, a state of exception is created that undermines the very basis of human rights.<sup>7</sup> Persecuted groups are rarely made refugees in a one-off act; first, their status as deserving of human rights is undermined and their very being debased.<sup>8</sup> When New Zealand buys into this generalised debasement and penalises all potential refugees from both Africa and the Middle East under the rubric of security concerns, then we are buying into the process of persecution.

The third problem is that raised by the criticism made by the Office of Ethnic Affairs, and is an extension of that originally used as a justification against taking the full quota from the Asia–Pacific region: discrimination against potential refugees based on their region discriminates against existing resettled communities. The small size of New Zealand's refugee quota has meant that resettled communities already

States, giving the rationale for it as religion, our government was not so clear. The tendency to describe this policy as providing 'opportunities' for family reunification might strike the uninitiated reader as positive. But these opportunities are merely the reuniting of families from previous intakes while slamming the door on any new resettlement from those regions. This kind of doublespeak does nothing to endear politicians or the democratic process to the general public, leading to cynicism and disengagement from the political process.

### Speaking of race, refugees and migration

Assumptions and stereotypes based on race and religion contribute to how people view New Zealand's refugee resettlement programme. Opposition to refugees as a whole has not been coherently expressed in the mainstream media in New Zealand.

overt talk of skin colour, this does not mean that racism has gone away. Commentators like Slater generalise terrorism to all 1.3 billion of the world's Muslims; Du Fresne expresses specific concern about Muslims from North Africa and the Middle East. At the softer end of the spectrum, a spokesperson for New Zealand Customs explains why returning Syrian New Zealanders are being regularly submitted to extensive post-travel screening: 'A range of indicators are considered when deciding to interact with passengers – from nationality (to determine if a passenger has originated travel in, or passed through, a region of risk), through to body language and general demeanour. Customs does not profile passengers based on religion or belief' (Vance, 2017). Where Slater and Du Fresne are clear and precise about who they are opposed to coming to New Zealand, New Zealand Customs and the National-led government have obscured the basis of the securitisation which has taken precedence over humanitarian concerns and universal human rights in their work.

### Conclusions and recommendation

While a surface reading of the official documents might not show the kind

of profiling based on religion or belief that the world has come to expect in an age of Trump, which has rarely been the New Zealand way, a close reading of the multiple documents, across nine years of the previous government, shows that this government systematically used the logic and language of risk and security to minimise the number of African and Middle Eastern refugees accorded protection in New Zealand. It ignored the advice of its departments and turned the protection of refugees into a question of *our* security, with little consideration for *theirs*.

But this is not the whole story. Given the overwhelming opposition to the family link criterion in advice on the refugee quota from MBIE and other government departments, there is reason to hope the new government will reject the regional allocations and restrictions of its predecessors. Just as Nicky Hager concluded his *Other People's Wars* (2011) with praise for the New Zealand Defence Force soldiers who confiscated a rifle from an Afghan farmer rather than simply shooting him, I am heartened by the commitment to the universalism of human rights underwriting their consistent advice to reject the family link criterion. I hope

that, even prior to the 2019 refugee quota review, the new government will accept the advice of MBIE (or whatever new ministry it becomes) and remove the family link criterion. Doing so is the only way for our refugee quota to truly play our little part in meeting the world's humanitarian needs.

- 1 While the quota is planned to cover a three-year block (e.g. July 2010–June 2013), it is also planned and implemented on a year by year basis, hence the annual quota is the block of time most commonly referred to.
- 2 As the documents referred to here are spread across many OIA responses, each consisting of multiple papers and working papers, I won't reference specific papers. Instead I would point interested parties to two ways of seeing the original documents: first, all of the OIA responses have been collected at [https://fyi.org.nz/user/m\\_stephens](https://fyi.org.nz/user/m_stephens); second, a Twitter thread shows the original selections of documents here: <https://twitter.com/DoingOurBitNZ/status/825554122938081281>.
- 3 Note that these regional allocations were not for the regions refugees originated from, but where they had applied for protection. For example, a Somali making a claim in Malaysia would be considered under the Asia-Pacific quota.
- 4 The last ten years of refugee quota arrivals are recorded by Immigration New Zealand at <https://www.immigration.govt.nz/documents/statistics/rqbarrivalsstatpak.pdf>. However, for a longer term view see the useful archive at <http://www.refugee.org.nz/stats.htm>.
- 5 Intakes run from 1 July–30 June, so overlap two calendar years.
- 6 I have left in the sections redacted from this OIA release to give some sense of the difficulty knowing the exact reasons for these restrictions on African and Middle Eastern refugees.
- 7 Giorgio Agamben has offered a rich critique of this circumention of rights in his *State of Exception* (2005).
- 8 For an excellent contemporary documentation and analysis of this process see Steffen Krüger's 'Barbarous hordes, brutal elites' (Krüger, 2017).

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