

**New Zealand's sixth periodic report under the  
International Covenant on Civil and Political Rights**

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## Introduction

1. This is the Sixth Report of the New Zealand Government (the Report), submitted under Article 40 paragraph 1(b) of the International Covenant on Civil and Political Rights (the Covenant).
2. The Report responds, in sequential order, to the Human Rights Committee's (the Committee) list of issues prepared prior to the submission of the sixth periodic report dated 15 April 2014. The Report should be read with reference to the core document of New Zealand (HRI/CORE/1/Add.33).
3. The Report covers the period from January 2008 to March 2015 and has been prepared in accordance with the guidelines regarding the form and content of periodic reports from States Parties (CCPR/C/66/GUI/Rev.2). Some key developments since our last periodic report to the Committee include:
  - the introduction of the Marriage (Definition of Marriage) Amendment Act 2013 to allow marriages between people regardless of their sex, sexual orientation, or gender identity
  - reforms to the Family Court process
  - the establishment of cross-government initiatives to combat family violence
  - the Independent Police Conduct Authority investigation into complaints about Police actions during Operation Eight
  - the introduction of the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act 2014 to ensure fair standards for all fishing crews working in our waters
  - the introduction of the Turning of the Tide: A Whānau Ora Crime and Crash Prevention Strategy which commits Police and Māori to work together to achieve common goals
  - the development of the 2013 Youth Crime Action Plan to reduce youth reoffending rates, and
  - new measures to protect children, including the enactment of Vulnerable Children Act 2014.
4. Information about Parliament, the courts, and Government activity is readily available at [www.govt.nz](http://www.govt.nz). Legislation referred to in this report can be found at [www.legislation.govt.nz](http://www.legislation.govt.nz).
5. A draft of the Report was circulated for public comment on 19 December 2014, resulting in the receipt of 20 submissions that were considered in the preparation of the Report. The following NGOs commented on the draft version of the Report: the Human Rights Commission, Multicultural New Zealand, OMEP Waikato Bay of Plenty Chapter, New Zealand Council of Trade Unions, National Council of Women of New Zealand, New Zealand Public Service Association, Human Rights Lawyers Association of Aotearoa New Zealand, Hui E! Community Aotearoa, the Federation of Business and Professional Women New Zealand, and the New Zealand Law Society. A number of individual submitters also provided comments.
6. Some submitters raised issues that were not raised in the list of issues prior to reporting, and therefore have not been included in the Report. Some of these included the

Employment Relations (Film Production Work) Amendment Bill 2010, the right of prisoners to vote, the system for government contracting with non-government organisations (NGOs), and the application of the Charities Act 2005.

### **General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant (Issues one to three)**

7. New Zealand is strongly committed to the protection and promotion of international human rights, as embodied in the Universal Declaration of Human Rights, and in other core human rights treaties of which we are a Party, such as the Covenant.
8. The period from January 2008 to March 2015 has seen significant developments giving further effect to the Covenant rights. These are also addressed in the Report.

### **Key judgments on Covenant rights**

9. The New Zealand courts regularly consider the application of the New Zealand Bill of Rights Act 1990 (NZBORA) and the Covenant. A selection of key judgements made during the reporting period, addressing a range of rights, is set out below.
10. In *Atkinson v Ministry of Health*<sup>1</sup> the Court of Appeal recognised that “[O]ne of the purposes of NZBORA is to affirm New Zealand's commitment to the International Covenant on Civil and Political Rights”. The respondents were adult disabled children and their parents who were affected by a Ministry of Health policy excluding family members from payment for providing disability support services. They claimed the policy discriminated on the basis of family status. The Court of Appeal held the policy breached section 19 of NZBORA, which provides for freedom from discrimination.
11. Parliament addressed the *Atkinson* decision by introducing the New Zealand Public Health and Disability Amendment Bill (No 2) 2013. This amendment permits and regulates public funding for the provision of health and disability services for family members. It gave the Crown discretion to deny funding on some prohibited grounds of discrimination. The Bill was the subject of a report under section 7 of NZBORA. The Bill was passed in 2014.
12. Another important decision relating to freedom from discrimination is *Child Poverty Action Group v Attorney General*.<sup>2</sup> The Working for Families package provided a tax credit for certain working families with dependent children. The tax benefit was not available to those who earned their incomes through a state benefit; this was known as the ‘off-benefit’ rule. The Child Poverty Action Group sought a declaration that this rule violates section 19 of NZBORA on the basis that it discriminates against beneficiaries on the ground of employment status. The Court of Appeal accepted that all beneficiaries suffered a material disadvantage as a result of the rule but said that some leeway needed to be given to Parliament in matters involving “the allocation of spending”. The Court concluded that the rule was a reasonable and justified limit on the right to be free from discrimination.

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<sup>1</sup> *Atkinson v Ministry of Health* [2012] NZCA 184, [2012] 3 NZLR 456, (2012) 9 HRNZ 572

<sup>2</sup> *Child Poverty Action Group v Attorney-General* [2013] NZCA 402

13. In *Attorney-General v Chapman*<sup>3</sup> the Supreme Court considered whether public law damages were available for a breach of NZBORA by the judiciary. The Court held damages were unavailable as to do so would be inconsistent with public interest considerations, such as maintaining judicial independence and the desirability of finality in litigation.
14. On a similar topic to *Chapman*, in *Currie & Ors v Clayton & Ors* [2014] NZCA 511, the Court of Appeal considered whether public law damages were available for breach of the fair trial rights in NZBORA. A Crown prosecutor had not disclosed the entirety of the information relating to a prosecution witness. The claimants' convictions had already been quashed and acquittals had been entered. The Court of Appeal held that this cause of action should not be struck out. Whether public law compensation should be awarded to remedy an unfair trial process, in particular where a stay of proceedings was granted to the claimants, was not a matter previously settled in New Zealand. The Court held that the claim was arguable and whether compensation will be appropriate in this case is a matter for trial.
15. In *Miller v Attorney-General*<sup>4</sup> the Court of Appeal considered and dismissed claims that New Zealand's parole system, policies, and the Parole Act 2002 breached NZBORA and the Covenant on the basis, inter alia, that the Parole Board is not sufficiently independent. The evidence did not support the contention of lack of independence.
16. In *Petryszick v R*<sup>5</sup> the Supreme Court upheld the right under section 25(h) of NZBORA "to appeal according to law to a higher court". Section 25(h) is based on article 14(5) of the Covenant, which provides that "[e]veryone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law". Mr Petryszick, who had been convicted on indictment of assault using a vehicle as a weapon, appealed against his conviction to the Court of Appeal. His appeal was dismissed. The appeal had been "dogged by delay", which was attributed to Mr Petryszick. The Supreme Court held that Mr Petryszick had been denied his appeal and sent it back for rehearing.
17. In *Combined Beneficiaries Union v Auckland City COGS Commission*<sup>6</sup> the Court of Appeal upheld rights to natural justice in regards to the procedure adopted for funding rounds by a local council. The Court of Appeal made it clear that the right to natural justice in section 27 of NZBORA is to be given a wide interpretation. Although damages were not awarded it was recognised that rare circumstances may give rise to damages being awarded.
18. The requirements of natural justice were considered further in *A v Attorney-General*<sup>7</sup> following issues arising out of a report to the State Services Commissioner over the potentially unauthorised disclosure of Cabinet papers which enabled an Opposition Member of Parliament to put certain questions in the House. The Court of Appeal considered the requirement to provide a person against whom an allegation is made an adequate opportunity to respond to the allegation. The Court concluded the provision of the full copies of all documents is not a necessary component of the obligation. The key is that the person is told of the evidence against them so they can respond.

<sup>3</sup> *Attorney-General v Chapman* [2011] NZSC 110, [2012] 1 NZLR 462, (2011) 9 HRNZ 257

<sup>4</sup> *Miller v Attorney-General* [2010] NZCA 600

<sup>5</sup> *Petryszick v R*, [2010] NZSC 105, [2011] 1 NZLR 153, (2010) 25 CRNZ 75, (2010) 9 HRNZ 35

<sup>6</sup> *Combined Beneficiaries Union v Auckland City COGS Commission* [2008] NZAR 546

<sup>7</sup> *A v Attorney-General* [2013] NZCA 289, [2013] 3 NZLR 630

19. *Taylor & Ors v Attorney-General*<sup>8</sup> concerned the right of prisoners to vote. An amendment to the Electoral Act 1993 disenfranchised all who are in prison on the day of elections. Previously only those serving a sentence of imprisonment for three years or more were unable to vote. Section 12 of NZBORA provides that every New Zealand citizen who is 18 years or over has the right to vote. This affirms Article 25 of the Covenant. The High Court held that although the amendment is “constitutionally objectionable” parliament is supreme so “[T]he court is unable to intervene.”<sup>9</sup> Other proceedings have been brought that relate to prisoner voting rights and consistency with section 12 of NZBORA. Judgments are awaited.
20. *Terranova Homes and Care Ltd v Service and Foodworkers Union Nga Ringa Tota Inc*<sup>10</sup> concerned the Equal Pay Act 1972. The case was brought by the Service and Foodworkers Union Nga Ringa Tota Inc on behalf of Kristine Bartlett, a caregiver in the aged care sector. Caregivers claimed they received lower pay than they would if aged care was not predominantly performed by women. It was argued in order to establish the appropriate rate of pay it would be acceptable to look to other industries outside of aged care. The Employment Court agreed and this was upheld by the Court of Appeal. The Court of Appeal decision recommended it be returned to the Employment Court, to state principles for implementation of equal pay before embarking on the hearing of Ms Bartlett's substantive claim. This has not yet occurred.
21. The availability and quantum of public law damages was comprehensively discussed by the Court of Appeal in *Attorney-General v Van Essen & Ors*.<sup>11</sup> The Attorney-General had accepted that search warrants executed at the homes of the two complainants were significantly flawed and that they were entitled to a declaration of a breach of section 21 NZBORA, which is the right to be free from unreasonable search and seizure. In terms of remedy, the Court of Appeal emphasised that there must be an effective package of relief for breaches of rights, focusing on vindication of the right concerned. The Court should first assess whether any non-monetary relief is enough to redress the breach and only if the breach requires something more to vindicate it will an award of damages be considered necessary. The quantum of those damages does not necessarily proceed on the basis of any equivalence with quantum of awards in tort. In this case, the Court quashed the \$10,000 damages award in favour of one complainant and refused to award public law damages in relation to the other.
22. The *Quake Outcasts and Fowler v Minister for Canterbury Earthquake Recovery*<sup>12</sup> was a judicial review of decisions made by the Minister for Canterbury Earthquake Recovery and the Canterbury Earthquake Recovery Authority (CERA). Quake Outcasts is an unincorporated group of some 46 individual or joint-owners of uninsured improved properties, commercial properties, or vacant land in the red zone. They challenged the Minister's decision to declare land as residential red zone arguing it was unlawful under the Canterbury Earthquake Recovery Act. They also challenged the decision of the Minister and the Chief Executive of CERA to make offers to purchase uninsured residential properties, commercial properties, and vacant land in the residential red zone

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<sup>8</sup> *Taylor & Ors v Attorney-General* [2014] NZHC 2225

<sup>9</sup> The Court made this determination in the context of an application for interim orders. The substantive judicial review hearing will be heard in late 2015.

<sup>10</sup> *Terranova Homes and Care Ltd v Service and Foodworkers Union Nga Ringa Tota Inc* [2014] NZCA 516

<sup>11</sup> *Attorney-General v Van Essen & Ors* [2015] NZCA 22

<sup>12</sup> *Quake Outcasts and Fowler v Minister for Canterbury Earthquake Recovery* [2015] NZSC 27

for 50 percent of their 2007 rateable land value, in particular that an offeree's insurance status could lawfully be taken into account in making any substitute offers. The Supreme Court did not make a declaration as to the lawfulness of the red zone but did declare that the decisions relating to uninsured and uninsurable land owners in the red zones were not lawfully made. The Minister and the chief executive were directed to reconsider the decisions in light of the judgment. CERA is reviewing the decision and considering its implications.

23. On a wider note, New Zealand's Supreme Court has confirmed the importance of international obligations in domestic law. In *Ye v Minister of Immigration*,<sup>13</sup> New Zealand's Immigration Act 1987 was interpreted in light of the United Nations Convention on the Rights of the Child.

## Privacy

24. New Zealand has comprehensive legislation in place to protect the rights of individuals. The Privacy Act 1993 applies to almost every person, business, or public organisation in New Zealand. The Privacy Act sets out 12 privacy principles that govern how personal information may be collected, used, stored, accessed, and disclosed. The principles both protect personal privacy and provide for circumstances where the public interest can prevail, such as maintaining the law or ensuring safety. New Zealand recognises the need to ensure an appropriate balance between national security and the right to privacy. Privacy Act decisions are available at <http://www.justice.govt.nz/publications/global-publications/r/reforming-the-privacy-act-1993>.
25. The Privacy Act gives the Privacy Commissioner the power to issue codes of practice that become part of the law. These codes may modify the operation of the Act for specific industries, agencies, activities, or types of personal information. For example, the Civil Defence National Emergencies (Information Sharing) Code 2013 provides agencies with broader discretion to collect, use and disclose personal information in the rare event of a major disaster that has triggered a state of national emergency. In particular, the code will facilitate the disclosure of personal information to public sector agencies to assist in the government response to a national emergency.
26. The Privacy Act has been substantially amended twice in recent years. In September 2010, part 11A was inserted into the Act to prohibit the transfer of personal information outside New Zealand. This amendment was required before New Zealand could be granted EU adequacy status, which was done in December 2012.
27. On 19 December 2012 the European Commission issued a decision formally declaring that New Zealand law provides a standard of data protection that is adequate for the purposes of EU law. The decision was taken after many years of study and positive recommendations by two specialist EU Committees. EU law imposes a prohibition on the flow of data unless certain stringent requirements are met. The effect of the decision is that personal data can flow from EU member states to New Zealand for processing without any further safeguards being necessary.
28. In February 2013 Part 9A was inserted into the Privacy Act to introduce Approved Information Sharing Agreements (AISAs). AISAs enable sharing between agencies to facilitate public services.

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<sup>13</sup> *Ye v Minister of Immigration* [2009] NZSC 76



29. The Law Commission has reviewed the law relating to privacy and issued a number of reports, including reviewing the Privacy Act. This report was released in June 2011. The Government in its initial and supplementary Government responses accepted the majority of the Law Commission's recommendations. The Minister of Justice is currently considering her preferred timing and approach to issues in the wider privacy landscape.
30. New Zealand is represented on the governance committees of both the APEC Cooperation Arrangement for Cross-Border Privacy Enforcement (CPEA) and Global Privacy Enforcement Network (the GPEN). The GPEN was created to strengthen personal privacy protections in the global context by assisting public authorities with responsibilities for enforcing domestic privacy laws strengthen their capacities for cross-border cooperation. New Zealand has published its enforcement jurisdiction and policies as a participant in the CPEA.

### **Marriage equality**

31. On April 2013 New Zealand became the 13<sup>th</sup> country to legislate for marriage equality enabling marriages between people "regardless of their sex, sexual orientation, or gender identity".
32. The amendment achieves a balance between the right of everyone to marry and be free from discrimination, whilst also protecting the right to freedom of religion. In particular, the Marriage (Definition of Marriage) Amendment Act 2013 makes it clear that marriage celebrants are not obliged to solemnise a marriage if it would contravene the religious or philosophical beliefs of the organisation of which they were nominated or appointed.
33. The question of marriage equality is directly linked to the law on adoption. The effect of the Marriage (Definition of Marriage) Amendment Act 2013 has been that married same-sex couples are recognised as 'spouses' under the Adoption Act 1955 and therefore are eligible to jointly adopt a child. Under the Adoption Act joint adoption is limited to 'spouses', generally accepted as married couples.

### **Constitutional Advisory Panel**

34. An independent Constitutional Advisory Panel (the Panel) was appointed in 2010 to consider constitutional issues, including the status of NZBORA. The Panel independently designed and managed the engagement process, giving all New Zealanders the opportunity to participate. The Panel reported to Government in December 2013. The report is available: <http://www.ourconstitution.org.nz/The-Report>.
35. The report's key recommendation is for the Government to actively support a continuing conversation about the constitution. The report also recommends developing a national strategy for civics and citizenship education in schools and in the community, including the unique role of the Treaty of Waitangi, te Tiriti o Waitangi, and assigning responsibility for the implementation of the strategy. Government has not yet formally responded as the response was released at the beginning of an election year.

### **Promotion of rights under the Covenant**

36. The Ministry of Justice's website includes a comprehensive section on human rights. This section includes information on all core United Nations (UN) human rights

instruments, NZBORA advice to the Attorney-General, Attorney-General reports on apparent inconsistencies between Bills and NZBORA, opportunities for consultation, and current projects.

37. The New Zealand Institute of Judicial Studies (the Institute) is the professional development arm of the New Zealand judiciary. It provides education programmes and resources to support judges in the ongoing development of their judicial careers. It promotes judicial excellence, and fosters an awareness of developments in the law, social context, and judicial administration. The Institute organises orientation for new judges and provides seminars. Seminar topics include NZBORA, the Constitutional Role of a Judge, and a Judicial Intensive programme for new judges.

#### *Human Rights Commission*

38. The Human Rights Commission is New Zealand's national human rights institution. The Commission is accredited with an A status under the Paris Principles.
39. One of the roles of the Human Rights Commission is to advocate and promote respect for human rights in New Zealand. The Commission encourages NGOs and civil society groups to participate in the drafting of Government reports, shadow reports, examinations, and follow-up reports.
40. The Human Rights Amendment Bill makes changes to strengthen the role and structure of the Human Rights Commission. It revises the structure of the Commission to:
  - provide that dedicated commissioners be appointed to lead work in the priority areas of race relations, equal employment opportunities and disability rights
  - enable the Chief Commissioner to formally designate commissioners to lead work in other areas after consultation with the Minister of Justice and the other commissioners, and
  - increase flexibility to appoint more full-time commissioners, while retaining the ability to appoint suitably part-time qualified candidates who are not available to work full-time.
41. The Human Rights Amendment Bill also revises the Human Rights Commission's functions to reflect and preserve activities it already undertakes, such as promoting New Zealand's compliance with international human rights obligations, and expressing opinions on any situation where human rights may be infringed.

#### *Non-Government Organisations*

42. NGOs are active in New Zealand and regularly engage in UN and the select committee processes. For example, the New Zealand Law Society has a Human Rights and Privacy Committee, which prepares submissions to Parliament on bills and shadow reports for UN Committees.

## **Constitutional and legal framework within which the Covenant is implemented (Issues four to seven)**

### **Reservations to the Covenant**

#### *Reservation to article 10(2)(b) and article 10(3)*

43. New Zealand reserves the right not to apply article 10(2)(b) or article 10(3) in circumstances where the shortage of suitable facilities makes the mixing of juveniles and adults unavoidable. New Zealand further reserves the right not to apply article 10(3) where the interests of other juveniles in an establishment require the removal of a particular juvenile offender or where mixing is considered to be of benefit to the persons concerned, for example, a 16 year old was held at Rimutaka Prison because the alternative would have been to detain him in a maximum security unit.
44. The Department of Corrections has dedicated Youth Units for male prisoners under the age of 18 years. Male prisoners 18 and 19 years may also be housed in these units if this is in their best interests.
45. Currently there is no separate unit for female prisoners under the age of 18 because there are consistently fewer than five at any time. They can be separated easily from the mainstream population where appropriate.
46. New Zealand continues to review its practice relating to the separation of young people and adults, and continues to review its reservations to article 10 (2) (b) and article 10 (3).

#### *Reservation to article 14*

47. New Zealand has a reservation to article 14 to ensure that payments of compensation remain *ex gratia*, meaning there is no legal obligation to make payments. The *ex gratia* nature of the scheme in New Zealand means it might not meet the Covenant's requirement for compensation according to law.
48. To ensure consistency and fairness in the *ex gratia* scheme the Government has guidelines for determining eligibility for, and the quantum of payment of compensation. When adopting the guidelines Cabinet also reserved a residual discretion to consider claims falling outside the guidelines in extraordinary circumstances.
49. There is a high degree of transparency in the *ex gratia* system. Claims falling within the guidelines and under the residual discretion are referred to independent Queen's Counsel or a retired judge by the Minister of Justice. They will undertake an assessment of whether the claimant is innocent on the balance of probabilities. If innocence is established, the Queen's Counsel or retired judge will ordinarily go on to recommend an appropriate amount of compensation.

#### *Reservation to article 20*

50. New Zealand has entered a reservation to Article 20 to reserve the right not to introduce further legislation, as New Zealand considers current legislation is sufficient in this area and in particular has duly balanced the right to freedom of expression. New Zealand has

legislation against the advocacy of national and racial hatred, and the inciting of hostility or ill will against any group of persons.

*Reservation to article 22*

51. New Zealand entered its reservations to Article 22 because of similarities with ILO Convention 87. New Zealand reserves the right not to apply Article 22 as it relates to trade unions to the extent that existing legislation, enacted to ensure effective trade union representation and encourage orderly industrial relations, may not be fully compatible with Article 22. New Zealand will continue to monitor ILO jurisprudence.

**National Plan of Action for Human Rights**

52. Under the Human Rights Act 1993 the Human Rights Commission is responsible for preparing a National Plan of Action for Human Rights. The first Action Plan covered the period from 2005 to 2010. In 2008, the Commission conducted a “mid-term” progress review. The Commission noted that significant challenges remain but it also identified several achievements, including:

- actions to reduce violence against children and young people, including the repeal and replacement of section 59 of the Crimes Act 1961 which allowed the use of reasonable force for the purposes of correction
- actions to reduce poverty, including increases in the minimum wage
- introduction of paid parental leave
- ratification of the Convention on the Rights of Persons with Disabilities
- recognition of New Zealand Sign Language as an official language
- ratification of the Optional Protocol to the Convention against Torture providing for preventive visits to all places of detention, and
- greater recognition of the right to equality of gay, lesbian, bisexual, and transgender people, including through the Civil Union Act 2005.

53. The Commission sought an independent review of the first Action Plan on its expiry. The review was completed in September 2010. It identified matters to be considered when developing a new Action Plan including:

- engaging earlier with the Government to identify priorities for government action (including recommendations from the Universal Periodic Review)
- establishing a framework for implementation and monitoring progress, and
- setting fewer priorities for action.

54. The independent review has informed the Commission’s approach to the second Action Plan.

55. In 2014, New Zealand underwent its second Universal Periodic Review. One hundred and fifty five recommendations were made to New Zealand. The Government accepted 121 recommendations.

56. By accepting these recommendations, the Government has committed to take action to improve the realisation of rights across a number of areas. The actions to be taken by Government as a result of these commitments will be set out in New Zealand’s second

National Plan of Action for the Promotion and Protection of Human Rights in New Zealand. The National Plan of Action will be completed by June 2015.

### **New Zealand Bill of Rights Act 1990**

57. New Zealand does not have a written constitution. Our constitution is instead comprised of ordinary legislation and constitutional conventions. Some core provisions of the Constitution Act 1986 and the Electoral Act 1993 are entrenched, such as sections relating to the method of voting and the term of parliament. These provisions require a 75 percent majority in parliament to be repealed or amended.
58. More information about our constitution and Parliament's powers can be found in the core document of New Zealand.
59. The New Zealand Bill of Rights Act 1990 (NZBORA) affirms, protects, and promotes human rights and fundamental freedoms in New Zealand. NZBORA also affirms New Zealand's commitment to the Covenant.
60. Section 7 of NZBORA requires the Attorney-General to inform the House of Representatives about any provision in a bill that appears to be inconsistent with any of the rights and freedoms affirmed in NZBORA. Parliament may form a different view about whether a particular right or freedom is limited or whether the limitation is justified. However, that decision is informed by the opinion of the Attorney-General. From January 2008 to September 2014, 21 section 7 reports have been tabled. All section 7 reports are available on the Parliament website and the Ministry of Justice website.
61. The Ministry of Justice and the Crown Law Office (in the case of Bills developed by the Ministry of Justice) advise the Attorney-General on the consistency of all Bills with NZBORA.
62. The Attorney-General has waived legal privilege so advice provided to the Attorney-General since 1 January 2003, with the exception of advice on Bills that have been discussed in a section 7 report of the Attorney-General, is available on the Ministry of Justice website.
63. A review of Standing Orders in 2014 led to an amendment requiring all section 7 reports to be referred to a select committee for consideration. During this review the establishment of a Human Rights select committee was considered. This suggestion was not supported by the Standing Orders Committee, as consideration of Bill of Rights matters is the responsibility of all subject select committees.
64. Section 5 of NZBORA provides that the rights and freedoms contained in NZBORA may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
65. Section 6 of NZBORA requires the courts to prefer possible interpretations of enactments that are consistent with NZBORA over interpretations that are not consistent. However, no provision in any enactment is invalidated or inapplicable by reason of its being inconsistent with a NZBORA provision (section 4).
66. Section 28 of NZBORA provides that, just because a right or freedom is not expressly provided for in NZBORA that does not mean that the right or freedom does not exist or

is otherwise restricted. Other legislation, such as the Privacy Act 1993 and the Human Rights Act 1993, affirms other Covenant rights.

67. The Ministry of Justice is working with other Government agencies to mainstream human rights into the civil service and ensure NZBORA is considered when designing policy. Examples of mainstreaming include presentations on NZBORA to agencies and working with agencies on major policy projects to ensure consistency with fundamental human rights.

### **First Optional Protocol**

68. New Zealand has previously provided a detailed response about the matter of *communication No. 1368/2005, E.B. v. New Zealand*, which concerned denial of access to children after prolonged parental access proceedings. This response was reiterated in the Replies to List of Issues (CCPR/C/NZL/Q/5) (the Replies) to be taken up in connection with the consideration of the Fifth Periodic Report of New Zealand. The Family Court case was resolved promptly after the issue of the Committee's views and the author has not sought reparation or raised any further issues.
69. In the Replies it was noted that the Ministry of Justice was undertaking an analysis of case-flow in the Family Court to address delays. The case-flow analysis was used to measure the impact of an Early Intervention Programme (EIP). The EIP was introduced as a judicial initiative to address delays in processing applications under the Care of Children Act 2004. The EIP has been superseded by more recent reforms to the Family Court. The case-flow analysis also helped identify areas for improvement informing the Family Court Review.
70. In April 2011, the Government initiated a review of the Family Court in response to concerns about sustainability of the Family Court. While expenditure on Family Court proceedings had increased significantly, there was little evidence to show this expenditure had led to improved outcomes. Court users, the judiciary, non-government organisations, government agencies, and professionals were consulted during this review.
71. The review identified that court processes were complex, uncertain, and too slow, there was a lack of focus on children and vulnerable people, and there was insufficient support for resolving parenting issues out of court.
72. Based on the findings of the review, the Government introduced reforms to enable a modern and accessible family justice system that is efficient, effective, and more responsive to the needs of children and vulnerable people. A key aspect of the reforms is to support people to resolve disputes out of court where appropriate. This change enables the court to focus on vulnerable parties and more serious matters requiring judicial expertise.
73. Most parents contemplating court proceedings are now required to attend the new out of court Family Dispute Resolution (FDR) service. FDR helps people reach lasting agreements about care arrangements for their children. Where FDR is inappropriate, such as where there are safety risks, parties are able to proceed directly to the Family Court. For cases that do go to court, new case tracks will ensure matters are resolved more quickly and efficiently.

74. Early results suggest that the reforms are having a positive effect on the process, such as more people resolving their parenting disputes without going to court and a decrease in the number of parenting applications to the Family Court.
75. The majority of the reforms came into force in March 2014. The Government continues to monitor the impact of the reforms. A post-implementation evaluation began in late 2014.

## **Counter-terrorism measures and respect for the rights guaranteed in the Covenant (Issues eight to ten)**

### **Counter-terrorism measures**

76. The Terrorism Suppression Act 2002 (TSA) implements, among other things, New Zealand's obligations under United Nations Security Council Resolution 1267 and 1373, and provides the framework for New Zealand to make its own terrorist designations.
77. Since 10 February 2010, New Zealand has designated 19 non-UN listed entities, giving effect to UNSCR 1373. These designations were made pursuant to section 22 of the TSA. No individuals have been designated to date.
78. In October 2010, Cabinet refined the process for proposed designations of non-UN listed entities. Cabinet updated the agreed factors that may be relevant to officials in deciding whether to recommend to the Prime Minister the designation of a non-UN listed terrorist entity that meets the criteria in section 22 TSA.
79. The TSA requires the designation to be publicly notified in the *New Zealand Gazette* and also that a notice be given with all reasonable speed to the designated entity, if practicable and where the entity or a representative is in New Zealand. The corresponding statement of case is also published on the New Zealand Police website.
80. A designated entity may apply in writing to the Prime Minister for the designation to be revoked on the grounds that the entity does not satisfy the section 22 TSA test or that the entity is no longer involved in any way in acts of the kind that made, or that would make, the entity eligible for designation. Judicial review proceedings are also possible in respect of a designation under the TSA.
81. A designation expires three years after it is made, unless revoked or renewed. In renewing a designation, the Prime Minister must be satisfied there are still reasonable grounds for the entity to be designated. Statements of case relating to renewed designations are also accessible on the New Zealand Police website. After renewing any designation, the Prime Minister must report to the Parliamentary Intelligence and Security Committee.
82. Although the TSA now provides for closed proceedings involving classified security information no such proceedings have taken place. New Zealand's practice is to prepare all statements of case for designation as a terrorist entity using open-source or unclassified information.

**Government Communications Security Bureau and Related Legislation Amendment Bill (GSCB Bill) and the Telecommunications (Interception Capability and Security) Act 2013 (TICS Act)**

83. On 9 July 2013, the Human Rights Commission provided a report to the Prime Minister under its direct reporting function (see section 5(2)(k) of the Human Rights Act 1993) about the Government Communications Security Bureau and Related Legislation Amendment Bill (GSCB Bill) and the Telecommunications (Interception Capability and Security) Bill (TICS) Bill.
84. The Intelligence and Security Committee (ISC) is established under the Intelligence and Security Committee Act 1996 and is responsible for Parliamentary oversight of the intelligence and security agencies. The ISC considered the GSCB Bill on behalf of the House of Representatives and received public submissions about the Bill.
85. Similar issues were raised in public submissions on the GCSB Bill and some members of the ISC referred to the Commission's report in its report to the House on the Bill. The issues addressed during the Committee process are set out in the officials' Departmental Report, which is available at: [http://www.parliament.nz/resource/en-nz/50SCLO\\_ADV\\_00DBHOH\\_BILL12123\\_1\\_A347384/225786e7f301bff105a500426477f4fb5e7f9532](http://www.parliament.nz/resource/en-nz/50SCLO_ADV_00DBHOH_BILL12123_1_A347384/225786e7f301bff105a500426477f4fb5e7f9532).
86. The primary recommendation of the Commission's report was "...that a full and independent inquiry into New Zealand's intelligence services be undertaken as soon as possible". Similar recommendations were made by a number of other submitters.
87. The GSCB Bill was amended at the Committee of the Whole stage to include a requirement to hold periodic reviews of the intelligence and security agencies, the legislation governing them, and their oversight legislation. The provisions governing the review are sections 21 – 27 of the Intelligence and Security Committee Act 1996. The key elements are:
- the first review must be commenced before 30 June 2015 and thereafter held at intervals of 5 – 7 years
  - the Attorney-General is responsible for appointing the 2 reviewers and setting the terms of reference in consultation with the ISC, and
  - the reviewers will present their report to the ISC.
88. The review will be an opportunity to look at all of the issues relating to security and intelligence agencies.

**The definition of “national security”**

89. The TICS Act includes a non-exclusive definition of “national security”, which states that “national security, in relation to New Zealand, includes its economic well-being”. However, guidance as to what might constitute a national security risk in this context of network security can be found in section 50 of the TICS Act. This governs GCSB's consideration of whether a network security risk or significant network security risk is raised. In summary this amounts to consideration of the likelihood that a proposed action by a telecommunications network operator will lead to the compromise or degradation of the public telecommunications network or the impairment of the confidentiality,



availability or integrity of telecommunications across the network and the potential effect of that on the provision of important services (including for example, central or local government services, health or transport services). This includes both actual impacts (i.e. service disruptions) and any associated economic impacts.

### **Information provided to authorities**

90. The TICS Act does not distinguish between caller and receiver. It refers only to the interception of authorised telecommunications. In this respect, the Act specifies the type of information which service or network operators must be able to supply when subject to a valid interception warrant or lawful authority. These include the content of a telecommunication, and call-associated data that is generated as a result of the making of any telecommunication that identifies the origin, direction, destination, or termination of the telecommunication. The latter may include the number from which the telecommunication originates, the number to which the telecommunication is sent, any numbers to which the telecommunication is diverted, the time at which the telecommunication is set, and the duration of the telecommunication. If the telecommunication is generated from a mobile phone the point at which the telecommunication enters the provider's network may also be requested.
91. The TICS Act itself does not provide surveillance agencies with any interception powers or authorities. The authority to intercept communications is contained in the following legislation:
  - [Search and Surveillance Act 2012](#)
  - [New Zealand Security Intelligence Service Act 1969](#), and
  - [Government Communications Security Bureau Act 2003](#).
92. The TICS Act imposes obligations on network and service operators to take all practicable steps to minimise the likelihood of telecommunication interceptions that are not authorised under the scope of the warrant or lawful authority.
93. For the purposes of the TICS Act, the head of each New Zealand surveillance agency may at their own discretion certify information held by his or her agency as being classified, provided that it meets the following criteria:
  - the information might lead to the identification of, or provide details of, the source of the information, the nature, content, or scope of the information, or the nature or type of the assistance or operational methods available to the surveillance agency OR
  - the information is about particular operations that have been undertaken, or are being or are proposed to be undertaken, in relation to any of the functions of the surveillance agency OR
  - the information has been provided to the surveillance agency by a foreign government or by an international organisation which will not consent to its further disclosure AND
  - the disclosure of the information would be likely to prejudice the security of New Zealand, or the international relations of the Government of New Zealand, or would prejudice the supply of information to the Government on the basis of confidence by any foreign government or international organisation, or would prejudice the

maintenance of the law, including the prevention of offences, and the right to a fair trial, or would endanger the safety of any individual.

94. In court proceedings relating to the enforcement of the Act (i.e. in a dispute between the Crown and a service or network operator deemed in breach of the Act), the parties representing the Crown (including law enforcement authorities) must provide the court with access to all classified information relevant to those proceedings. The court must keep such information confidential. The Crown is under no similar obligation to share classified information with the defendant. However, should the defendant appoint a special advocate (a person in possession of a national security clearance), the Crown is obliged to share all relevant classified information with the special advocate.
95. The TICS Act allows a court, on a request by the Attorney-General and if it is satisfied that it is desirable to do so for the protection of classified security information, to receive or hear the classified security information in the absence of one or more of the defendant, the defendant's lawyers, journalists, and members of the public.
96. The TICS Act does not otherwise specify special treatment for the use of classified information in the enforcement of the law or other judicial proceedings more broadly.

## **Equality and non-discrimination (Issues eleven to twelve)**

### **Gender equality**

97. The New Zealand Government monitors differences between the income of men and women through the gender pay gap. The New Zealand gender pay gap compares the median hourly earnings of women and men in full and part-time work. In 2014, there was a median gender pay gap of 9.9 percent. Since the late 1990s, the gender pay gap has been steadily reducing however women still earn significantly less than men. The gender pay gap meant that women earned \$303 less per week than men in 2014.
98. Differences in pay between men and women are the result of a number of factors, including occupational segregation (the occupations that men and women work in, as well as the level of occupations), labour force history, and previous work experience.
99. New Zealand has a robust legislative framework prohibiting pay discrimination. This includes the Equal Pay Act 1972, the Employment Relations Act 2000, and the Human Rights Act 1993.
100. The 'Women in Business' survey shows New Zealand has the highest proportion of women in senior management of any developed economy at 31 percent. The Government's goal in this area is 45 percent participation of women on state sector boards.

### *Private sector*

101. Between 1981 and 2004 women's participation on public sector boards<sup>14</sup> in New Zealand rose from 12.1 percent to just over 40 percent. In 2012 women held 14.75 percent of

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<sup>14</sup> The state sector includes all public service departments, state services and state sector organisations. It does not include some Ministerial committees and councils, or Territorial Local Authorities. For a full list of public sector see <http://www.ssc.govt.nz/sites/all/files/guide-to-central-govt-agencies-5sep2014.pdf>

board roles in the top 100 companies on the New Zealand stock market. The Institute of Directors has approximately 6,500 members, 25 percent of which are women. However, more than a third of the New Zealand stock market's top 100 boards have no female directors.

102. The Ministry for Women is working to improve the “pathway to governance” for women by bringing together public and private sector partners. This is intended to streamline and simplify the appointment process to boards and commissions and to have better coordination of board vacancies.

103. The Government has supported a number of private sector campaigns and initiatives to support greater participation of women on private sector boards, such as:

- the Institute of Directors Mentoring for Diversity Programme
- the formation of the 25 Percent Group
- the introduction of the NZX's Diversity Listing rule
- the establishment of the Women of Influence and Next Women of the Year Awards, and
- networks such as Global Women and Dairy Women New Zealand.

#### *Public sector*

104. Section 56 of the State Sector Act 1988 defines specific ‘good employer’ requirements for the public service including public service agencies, local government and Crown entities. These requirements include having an equal employment opportunities programme and recognising the employment requirements of women.

105. The State Services Commission publishes an annual Human Resources Capability Survey of Public Service Departments which provides information about trends in the public service workforce. This includes information on staff numbers, pay and benefits, equality, and diversity.

#### **Inequality**

106. New Zealand's social assistance programmes aims to ensure an adequate standard of living and provide opportunities for all to participate fully in society, regardless of ethnicity or gender.

107. The majority of Government funded services are targeted to those who are vulnerable and in need of extra support.

108. Māori and Pasifika are over-represented in a number of poor social outcomes. Every effort is made to ensure that all services reach vulnerable Māori and Pacific families and are delivered in culturally acceptable ways.

#### *Employment for Māori and Pasifika*

109. The Government believes that paid work is one of the best ways to address socio-economic disparities. In 2012 and 2013, the Ministry of Social Development advanced the Government's programme of welfare reform, which was the biggest reform in New Zealand's welfare system in 50 years. The reforms modernised New Zealand's welfare

system and aimed to reduce benefit dependency, encourage work and self-reliance, and provide a safety net and support for those who need it.

110. The Government accepts that social and economic gains experienced by New Zealand over the past two decades have not been experienced by many Māori and Pasifika families. Welfare assistance in New Zealand is based on need. All New Zealanders have the same rights to government benefits. In some cases, however, assistance specifically for Māori and Pasifika is available. There are some regional initiatives which focus on specific groups like young Māori jobseekers.

111. Since the implementation of the Welfare Reform changes in 2012 and 2013, there have been some positive outcomes for Māori and Pasifika. The number of Māori and Pasifika working age (18 to 64 year olds) beneficiaries has been steadily dropping:

	<i>December 2012</i>	<i>December 2013</i>	<i>December 2014</i>
<i>Māori</i>	112,029	108,871	106,567
<i>Pasifika</i>	26,979	24,679	23,658

112. The future benefit cost (i.e. liability) for different ethnic groups is tracked through the annual actuarial valuation of the benefit system. Over the year to 30 June 2014, the liability for Maori and Pasifika decreased by 11.7 percent, compared to 9.0 percent for other ethnic groups.

113. The Tertiary Education Commission and a range of other government agencies are implementing the Māori-Pacific Trades Training Initiative. This initiative funds collaborative partnerships of tertiary providers, community organisations, and employers to recruit and support Māori and Pacific people aged 18 to 34 into trades training, and sustainable employment and apprenticeships.

#### *Employment for migrants*

114. Temporary migrants working in New Zealand receive no less favourable conditions than those which apply to New Zealand nationals and permanent residents. New Zealand employers are obliged under the terms of the Human Rights Act 1993 and of the Employment Relations Act 2000 to provide protection against discrimination in employment matters. Temporary migrant workers may be restricted to a specific employer, location, or occupation by the type of visa and the conditions granted under their visa. Temporary visa holders may apply for a change of visa conditions should they wish to alter their employment arrangements. Under the skilled migrant category of resident visas, migrant workers must have skilled employment and are incentivised to work in high demand industries.

115. The Labour Inspectorate will investigate and prosecute claims against employers made by migrant workers (including by migrants not legally entitled to work) on the same basis as claims made by New Zealanders. The Inspectorate also prioritises activity and investigations for temporary migrants and migrants not legally entitled to work, due to their vulnerable status.

116. The government provides job vacancy information, and information to support job search activities, on the internet and it is available to New Zealand citizens and permanent

residents, and to temporary migrants. Other government services for unemployed people (such as subsidies and job training) are generally prioritised for New Zealanders (and in particular for beneficiaries).

117. All migrant workers have equal access to vocational information (such as information about careers and job requirements). Migrant workers have equal access to apprenticeships and to training provided by employers.

#### *Education for Māori and Pasifika*

118. New Zealand's education system works well for most learners and education outcomes are improving on many measures. For Māori and Pasifika students, participation and achievement in education has improved in recent years and, often, at a faster rate than for the rest of the population.

119. There is strong international evidence that early intervention programmes with parents and young children can improve future educational outcomes.

120. New Zealand has a devolved schooling system with many decisions on the delivery of teaching and learning taken by schools in concert with their local communities. There are also a number of centrally funded parenting programmes targeted at parents of young children, and to support effective parenting, including preparing for, and supporting attendance at, school. These include:

- The PAFT (Parents As First Teachers) programme specifically aims to help parents participate more effectively in their children's early development and learning for families at risk of poor child outcomes with children in the zero-to-three age range.
- The Home Instruction Programme for Preschool Youngsters is a home-based education programme for children aged three-and-a-half to six years with a strong focus on school readiness and educational achievement.
- Services for Teen Parents also focus on reconnecting and supporting young parents to continue their education, as well as connecting their children to early learning experiences.
- A free breakfast programme in low socio-economic schools, providing healthy breakfasts for children who could otherwise miss out at a detriment to their learning.
- KidsCan provides free head lice treatment, raincoats, footwear, and health and hygiene items for children in low socio-economic schools, supporting vulnerable children to participate in education. KidsCan receives funding from the Government.
- A number of targeted early learning initiatives help achieve Government's Better Public Services target that in 2016, 98% of children starting school will have participated in quality early childhood education (ECE). In December 2014, 96.1% of children starting school had participated in ECE.
- The 2010 ECE participation programme engages Māori and Pasifika families, and families from low socio-economic communities, in their children's learning by ensuring that ECE services are responsive to the needs of local communities and non-participating children. There is also support to increase the supply of ECE services in target communities through full and partial funding of property projects and one-off grants.
- An Early Learning Taskforce has been specifically set up to focus on the 98% Better Public Services target. Its approach is to attract, locate, engage, retain and tailor

solutions to ensure vulnerable children and their families enjoy the benefits of ongoing, quality Early Learning. The Taskforce is engaging with communities to support local early learning initiatives, innovation and action that stimulate demand, and increase participation in ECE by our youngest learners. It is collaborating, forming connections and developing joint ventures with communities, early learning providers, iwi, Māori organisations, Pasifika churches as well as other Government agencies including Ministry of Pacific Island Affairs. The development and implementation of deliberate strategies for Iwi/Māori and for Pasifika provides another approach to lift priority learner participation and achievement, improving education outcomes. The strategies aim to specifically accelerate action towards the achievement of the Better Public Service goals.

- The Parents, Families and Whānau (extended family) programme supports parents and whānau in high potential communities to engage in their children and young people's learning to raise achievement.

121. Ka Hikitia: Accelerating Success 2013 – 2017, the Māori Education Strategy was released in late 2013. It builds on gains and accelerates system-level improvements, so that all Māori students acquire the skills, qualifications, and knowledge they need to enjoy and achieve education success as Māori. Strengthening the quality of teaching and leadership is a high priority at the system level, and responsiveness to the needs of Māori and Pasifika students is a key dimension of quality. Recent initiatives such as Investing in Educational Success, partnerships focused on achievement with parents, whānau and the community, and early, intensive support for at-risk students all help to improve outcomes for Māori and Pasifika students.

122. Māori language in education is a defining feature of our education system. The Government recognises that Māori medium education (comprising Māori language immersion schools and Māori medium settings in mainstream schools where students are taught in and through te reo Māori between 51-100% of the time) supports educational success by affirming the identity of Māori students, a critical aspect of facilitating achievement.

123. The Pasifika Education Plan 2013-2017 sets out the education sector's vision of 'five out of five' Pasifika learners engaging, participating, and achieving in education, and an investment approach to accelerate and raise the educational achievement of Pasifika learners, their parents, families, and communities, across the education pipeline. The first year of implementation has shown improvements in participation and achievement rates, but more needs to be done to improve achievement gaps.

#### *Education for migrants*

124. The Ministry of Education's Refugee and Migrant Education Coordinators support schools to develop relationships with migrant and refugee families and communities. This may be through the employment of bilingual support workers, setting up homework centres and the provision of information to parents. For example, the Ministry recently produced National Certificate of Educational Achievement (NCEA) material in eight languages to help families of different cultural and linguistic backgrounds understand how NCEA works.

## *Supporting migrants*

125. The Government has developed a Migrant Settlement and Integration Strategy to effectively settle and integrate migrants so that they “make New Zealand their home, participate fully and contribute to all aspects of New Zealand life”. The Strategy provides an outcomes framework focusing on achievement in employment, education and training, English language, inclusion, and health and wellbeing. Key agencies collaborate on settlement-related policy and the purchase of settlement services that support the outcomes and deliver effectively to migrants.
126. As part of the Strategy implementation, a new delivery model for settlement information for new migrants has made information more accessible to a greater number and range of migrants and ensures the information they receive is consistent and relevant. Information can be obtained by phone, email, website, and face-to-face services.
127. Immigration New Zealand also publishes guides providing comprehensive settlement information for migrants and their employers, in sectors where migrant workers may be vulnerable and particular needs have been identified. Guides have to date been published for the dairy, construction, and aged care sectors.
128. Migrants with limited English language proficiency can use the Language Line service, free of charge, for instant translation over the phone when dealing with government and major service agencies. Extensive support services are also available for migrant children in schools to meet their English as Speakers of Other Languages needs and ensure access to education.
129. The Ministry of Social Development also funds a small amount of niche social work and counselling services for refugees and migrants. The programme is targeted at ethnic communities with an identified need for social work assistance and support after their first year in New Zealand.
130. Providers of training and/or employment services funded by Work and Income are required to be responsive to cultural diversity. They are obliged to ensure they respect the personal privacy and dignity of participants during service delivery. They also provide services in a manner which respects and is appropriate to participants’ religious and cultural beliefs and practices, age, gender, and disability needs. In providing services to Māori tikanga Māori is integrated into services, and local Iwi/hapu are consulted.
131. All services delivered under an agreement recognise the needs of Māori, Pacific, migrant, and other communities to have services provided in a way that recognises their social, economic, political, cultural, and spiritual values.
132. Post placement support is available for clients completing training and employment services either to help them remain in or transition into employment. The contractual requirement to deliver services in a way that supports the cultural diversity of participants also applies to any post placement support element of the contract.
133. The Office of Ethnic Communities provides training and advisory services to organisations seeking to maximise the benefits of employing a diverse workforce. This training promotes the need to develop skills in intercultural awareness and

communication, and the benefits that will accrue from introducing management practices that are responsive to the changing demographics of New Zealand.

### **Combating stereotypes**

134. New Zealand is fully committed to combating racism, racial discrimination, xenophobia, and related intolerance. We remain supportive and actively engaged in global efforts to combat racism and other forms of intolerance.

#### *In the workplace*

135. Since 2008, the Office of Ethnic Communities has provided Intercultural Competency Training which aims to build intercultural skills in the workplace. It focusses on the ways in which culture can impact on behaviour, and provides tools and methods for communicating effectively across cultures. The training directly addresses stereotypes and unconscious bias – particularly when manifested in a working environment and helps people become aware of when they are stereotyping, and actions they can take to correct negative behaviours. This training is provided to public and private sector organisations.

#### *Language diversity*

136. The Office of Ethnic Communities provides Language Line (described earlier). In addition, the Office of Ethnic Communities provides stakeholders with information and advice about language use in New Zealand and issues related to language diversity. The Office of Ethnic Communities hosted a Languages Forum in March 2015, which brought together a range of government agencies and community organisations to discuss language issues in New Zealand. The Forum provided information on the range of current government policies and services in relation to language use and learning in New Zealand. This will inform discussions about whether there are needs or gaps that need to be addressed.

#### *Dealing with racially motivated incidents*

137. The New Zealand Police work with the Race Relations Commissioner on an annual basis to collate racially motivated incidents. These incidents are subsequently published in the annual Race Relations report. Racially motivated incidents are treated as a priority by Police.

138. Where incidents are shown to have race as a motivating factor, Police use the provisions afforded to them such as section 9(1)(h) of the Sentencing Act 2002. This ensures that hostility towards a group is recognised as an aggravating factor in sentencing.

139. Police support the work with the Human Rights Commission and the Office of Ethnic Communities to engage proactively with media groups. This is done by being one of the sponsors of the annual National Diversity Conference and a supporter of the ETHNICA forums around the country. During these forums there are workshops that foster engagement and education of media groups. Any racially motivated incidents that come to light in social media are dealt with swiftly by the appropriate agency.

140. Police also actively work with the different ethnic communities in New Zealand to establish a connection with new immigrants who may have come from countries where



their experience with police was not positive and develop a relationship with the different ethnic communities in New Zealand, based on mutual trust and confidence.

### *Religious freedom*

141. NZBORA affirms the right to freedom of thought, conscience, religion and belief. This includes the right to hold and embrace views without interference, and protects the right to express religion and belief in worship, observance, teaching and practice, and the right to freedom from discrimination. Discrimination on the basis of religious belief is prohibited under the Human Rights Act 1993.

### *Inciting hatred on the internet*

142. The Harmful Digital Communications Bill aims to mitigate the harm from digital communications and provide victims with a quick and effective means of redress. It covers all forms of electronic communications, such as emails, texts, comments on blog sites, and posts on social media sites such as Facebook and Twitter, which can be used to bully, harass, and intimidate others. The Bill contains a new criminal offence of causing harm by posting a digital communication, with a maximum penalty of two years imprisonment. The Harassment Act 1997 and the Human Rights Act 1993 will be amended to clarify that they apply to harmful digital communications. The Privacy Act 1993 will be amended to provide that publicly available information should not be used or disclosed where it would be unfair or unreasonable to use or disclose such information.

## **Right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and rights of non-citizens (Issues thirteen to sixteen)**

### **Violence against women**

143. Violence against women is a serious criminal justice, public health, and social problem in New Zealand. Following New Zealand's second Universal Periodic Review in January 2014 we received a number of recommendations relating to violence against women. We remain committed to eradicating family violence and progressing our UPR recommendations.

144. In 2013 there were 5,695 cases of 'Male Assaults Female' and 'Spousal Rape' brought before the New Zealand Courts. This is down from 6,326 in 2012 and 6,520 in 2011. Of the 5,695 cases approximately 67 percent resulted in a conviction, 5 percent resulted in a discharge, and 28 percent were not proved. These statistics provide some indication of the extent of and the trends in family violence, but do not provide the "whole picture".

### *Whole-of-government package to address family violence*

145. In July 2014, the Prime Minister announced a whole-of-government package of initiatives in the social and justice sectors aimed at addressing family violence and consists of two main work programmes:

- A Stronger Response to Domestic Violence, and
- Achieving Intergenerational Change.

146. The Ministerial Group on Family Violence and Sexual Violence was established in December 2014. It has commissioned a portfolio analysis of the investment in family violence and sexual violence across government (including agency roles and responsibilities). A progress report to Government on the whole-of-government approach to address family violence and sexual violence will be provided in June 2015.

147. A number of Government initiatives for preventing family violence, increasing the safety of victims of family violence, and holding offenders to account are being developed, including:

- home safety services
- GPS monitoring of high-risk family violence offenders
- a multi-agency response system to family violence
- improving the timeliness of prosecutions, and
- reviewing family violence legislation.

148. These initiatives are part of the Ministry of Justice's A Stronger Response to Family Violence work programme. A number of these initiatives involve testing and evaluation. Results are not currently available.

#### *Police initiatives to address family violence*

149. Police developed a new family violence response model in 2012. This model recognises different approaches are required when dealing with intra-familial violence, intimate partner violence, and intimate partner violence where the offender is at high risk of re-offending. The model takes an evidence-based approach to information-gathering and risk assessment. The new approach will save time and resources, and enable better prioritisation of cases for the Family Violence Inter-Agency Response System.

150. Police are committed to effective and appropriate investigations of adult sexual assault complaints and to holding offenders to account. This is demonstrated in the Adult Sexual Assault Investigation Policy and Guidelines. The policy and guidelines improve the investigation, resolution and accountability of adult sexual assault complaints. They also enhance the welfare and safety of victims through the services, information, and support provided to them.

151. The Commission of Inquiry into Police Conduct was established in 2004. It conducted a full and independent investigation into the way New Zealand Police dealt with allegations of sexual assault by members of the Police and associates of the Police. Police are currently implementing 47 of the Inquiry's 60 recommendations. The intention is to not only implement solutions but to ensure that the solutions have the desired effect.

152. Police are implementing changes which will allow Police to better understand and respond to victimisation. A new dataset on victims became available in December 2014. This dataset of victimisation will include the attributes of the victim like age, gender, and ethnicity, along with the relationship between victims and offenders. This will enable identification within specific contexts, such as intimate partner assault.

### *Anti-domestic violence campaigns*

153. E Tu Whānau and Pasefika Proud are broad-based anti-domestic violence campaigns. They adopt a strengths-based approach and support Māori and Pacific communities identify their own solutions to eliminate violence and build strong and resilient families. The campaigns emphasise existing values that promote respect and non-violence, and help to refute the notion that Māori and Pacific cultures condone or accept violence. While primarily targeted to these ethnic groups, the campaigns are in the public domain and contribute to wider public discourse.
154. The It's not OK campaign mobilises communities to take a stand against family violence and challenges attitudes and behaviour that tolerates it. The campaign uses research and evaluation, communications, media advocacy, social media and resource development. The campaign supports community-led initiatives working in partnership with sports organisations, local and non-government agencies, faith and ethnic communities, businesses and family violence prevention services.

### *Additional research*

155. The Ministry for Women has recently released a research report on Māori women's understandings of primary prevention of violence. This report focuses on what Māori women believe to be the protective factors in keeping them safe from ever becoming victims of violence and explores some of the promising prevention practice that is occurring in communities. This report is being used by Government agencies to inform policy development. This is a significant development given that Māori women are twice as likely as non Māori women to be victims of intimate partner violence and sexual violence.

### *The investigation into "The Roast Busters"*

156. Police completed a multi-agency investigation, Operation Clover, into the activities of a group calling themselves "The Roast Busters". The 12 month inquiry focused on incidents involving allegations of sexual offending against a number of girls in the Waitemata Police district and wider Auckland area.
157. The Independent Police Conduct Authority (IPCA) looked at the police handling of the group "The Roast Busters" and has found deficiencies in the police investigation. Police accepts the IPCA's report findings. The Waitemata District Commander has made a public apology for the failings in this case, and has personally apologised to the victims involved. The remedial actions suggested by the IPCA will be taken to prevent such a situation arising again. These remedial actions will strengthen guidance to investigators nationally, improve supervision, and oversight of cases and provide better liaison with Child, Youth and Family to reduce the likelihood of a recurrence of deficiencies

### **Taser use**

158. Police will continue to use tasers as they are an important tactical option to ensure the safety of both the public and police. It is particularly important given that New Zealand Police do not routinely carry firearms. Taser 'shows' and 'discharges' are closely monitored. All tasers have cameras. Reports of taser use are publicly available at <http://www.police.govt.nz/about-us/publication/taser-reports>.

## Operation Eight

159. Operation Eight was a Police operation which began in late 2005 as an investigation into alleged paramilitary training camps. It ended on 15 October 2007 with the coordinated arrest of several suspects, the execution of 41 search warrants throughout the country, and the establishment of road blocks at Ruatoki and Taneatua, in an area of particular cultural significance to the Tūhoe iwi.
160. A trial was held in February and March 2012 against four people. Two of the four people were convicted of firearms offences and sentenced to terms of imprisonment of two and a half years.
161. The appellants appealed to the High Court against conviction and sentence and further appealed to the Court of Appeal. The Court of Appeal confirmed the convictions and sentences. The Supreme Court refused leave to appeal.
162. The IPCA investigated a number of complaints about Police actions during Operation Eight. In May 2013 the IPCA issued a report concluding that a number of aspects of Operation Eight were unreasonable and contrary to law. In particular, the planning and preparation for the establishment of the road blocks in Ruatoki and Taneatua was deemed deficient. The IPCA found no lawful power or justification for Police to detain, stop and search the vehicles, and take details from or photograph the drivers or passengers. In contrast, the IPCA found “that Police were entitled, on the information they had, to view the threat posed by this group as real and potentially serious. The investigation into such activities by Police was reasonable and necessary.” It also found that the planning and preparation for the execution of search warrants on termination of Operation Eight was largely in accordance with applicable policy. The full report by the IPCA can be found at <http://www.ipca.govt.nz/Site/publications/Default.aspx>.
163. The IPCA made several operational recommendations to minimise the impact of armed police operations on members of the community. One recommendation was for Police to re-engage with Tūhoe and take appropriate steps to build relationships with the Ruatoki community to increase trust and confidence in Police. On 27 July 2014 Police Commissioner Mike Bush visited several Tūhoe whānau to deliver a personal apology for the Police actions during Operation Eight. In August 2014 the Police Commissioner was welcomed onto Te Rewarewa Marae, Ruatoki. He was accompanied by Māori Leaders, representatives of tribal groups from throughout the country, 90 police officers from the Bay of Plenty District, Iwi liaison officers and the Police Executive. The Commissioner officially apologised to the Tūhoe for the Police’s actions during the raids on the Taneatua and Ruatoki communities. He acknowledged that the way in which police acted caused a loss of credibility and mana for the iwi.
164. During both visits, the Commissioner extended an invitation to the young people of Tūhoe to visit the Royal NZ Police College in Porirua, to learn more about NZ Police as well as experience learning opportunities around Wellington. This visit occurred in February 2015 and positive feedback was received from Tūhoe and others involved.

## **Detention of migrants**

### *Safe third countries and non-refoulement*

165. New Zealand has not designated any countries as safe third countries.

166. Each asylum application is treated on its own merits. The assessment of whether an asylum seeker can access protection in any state other than their country of nationality or former habitual residence is required under sections 137(4) and 139(2) of the Immigration Act 2009.

167. The broad issue of arrangements or practices of protection elsewhere and New Zealand's duty of non-refoulement was considered by the Immigration and Protection Tribunal (the Tribunal) in *AH (Egypt)*.<sup>15</sup> In line with international law, and the view of the United Nations High Commissioner for Refugees, the Tribunal found in particular circumstances the use of safe third countries is consistent with the Refugee Convention.

168. In *AH (Egypt)* the Tribunal considered the content of the duty of non-refoulement under the Immigration Act 2009. The Tribunal held that there must be some compelling evidence of admissibility into the receiving state. The protection offered in the receiving state must extend beyond protection from direct or indirect refoulement to include protection of other rights. The Tribunal concluded that the protection offered need not amount to actual or de facto citizenship, but must be sufficiently durable so the person may not be compelled to return to the country of origin. Therefore, a person can only be refused recognition as a refugee or protected person if they can be returned to the safe country and be protected there without the risk of persecution.

### *Detention of undocumented migrants*

169. A person is liable for 'turnaround' if they fail to apply for, or are refused permission to enter New Zealand. Persons liable for turnaround can be arrested and detained for the purpose of placing that person on the first available craft leaving New Zealand. The person may be arrested and detained by Police without warrant for a period not exceeding 96 hours. However, a person who claims asylum or protection at the border cannot be deported until such time as their claim has been assessed, and they meet all legislative requirements for turnaround or deportation.

170. New Zealand's Immigration Act 2009 contains discretionary powers that may be exercised by immigration officers in relation to non-New Zealand citizens and residents arriving at New Zealand's border. Discretionary powers include the grant of a temporary visa and/or entry permission to New Zealand and release into the community or to an open (low-level security) immigration detention facility on residence and reporting requirements.

171. The overriding principle is that if freedom of movement of persons claiming refugee or protection status is to be restricted, then it should be restricted to the least degree and for the shortest duration possible. Particular care is given in any decision involving women, children, and members of other vulnerable groups. In all cases a decision to

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<sup>15</sup> *AH (Egypt)* [2013] NZIPT 800268–272

detain in a penal institute is to be made only after all other alternatives have been excluded.

#### *Detainment of migrants*

172. Immigration detainees in an open (low-level security) immigration facility have as much freedom of movement, association, and individual expression as possible within an administrative detention environment, subject to the security and good order of the detainee, the detention facility, and the safety of all those within it. Fundamental principles of immigration detention standards are dignity, privacy, cultural awareness, and provision of current, accurate, and relevant information. The Mangere Refugee Resettlement Centre is currently used for open detention for persons who claim asylum on arrival at airports and are refused entry. The Centre can currently accommodate up to 28 persons alongside, but accommodated separately from, the refugee quota.

173. The separation of sentenced and non-sentenced persons in corrections facilities is a long standing feature of the New Zealand justice system. As such, non-sentenced immigration detainees are housed separately from sentenced prisoners, unless they are found guilty by a court.

174. All detainees are entitled to clean and humane facilities and access to appropriate rehabilitation and treatment. The treatment of all persons detained in prison is subject to a number of independent oversights and legislative safeguards that ensure rights are upheld and needs are met.

#### *Mass arrivals*

175. The Immigration Amendment Act 2013 amended the Immigration Act 2009 to effectively manage a mass arrival of asylum seekers in New Zealand. A mass arrival group is defined as 30 or more people arriving in New Zealand. The Bill as originally drafted defined mass arrival as 10 or more people, but this was changed to ensure the provisions were resorted to only where absolutely necessary.

176. Being considered part of a mass arrival does not change the application and processing procedure for claims for refugee or protected person status. The same determination of eligibility procedure applies to such claims as under the Immigration Act 2009.

177. The processing of any claims by a person in New Zealand for recognition can be suspended in accordance with regulations. There are no regulations currently. The provision allows regulations to be made if there are problems in accessing information or the circumstances to which the claims relate are changing or uncertain, making a robust outcome unlikely. Regulations will not be made as a matter of course.

178. Mass arrival of asylum seekers has not yet occurred in New Zealand. Multi-agency planning has taken place to respond to such an issue should it occur. Relevant agencies will work together to ensure that legislative obligations are met, processes are as efficient as possible, and any needs are met for individuals who are part of a mass arrival.

## **Elimination of slavery and servitude (Issue seventeen)**

### **Preventing and combating trafficking in persons**

#### *Measures to prevent trafficking in persons*

179. New Zealand adopted a whole-of-government Plan of Action to Prevent People Trafficking (the Plan) in 2009. The Plan includes action points on improving intelligence collection, sharing intelligence with international partners, and engaging with international forums. Much of New Zealand's participation in anti-trafficking measures takes place within the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime initiative, of which New Zealand is an active member.
180. The Interagency Working Group on People Trafficking monitors the Plan. This group is chaired by the Ministry of Business, Innovation and Employment's Immigration Group. It includes the Department of the Prime Minister and Cabinet, the New Zealand Customs Service, the New Zealand Police, and the Ministries of Foreign Affairs and Trade, Justice, Health, Social Development, and the Ministry for Women.
181. Policies and measures are in place to ensure high-risk industries are closely regulated or monitored. In New Zealand these include the sex, horticulture, viticulture, construction, fishing, and hospitality industries. Targeted joint-agency operations were undertaken following the Government becoming aware of allegations of poor pay, and work conditions in the retail and hospitality industries.
182. New Zealand presented a National Plan of Action against the Commercial Sexual Exploitation of Children (CSEC) at the Second World Congress against CSEC in Japan in 2001, shortly after New Zealand signed the Optional Protocol. The document, titled *Protecting Our Innocence*,<sup>16</sup> identified thirteen action points that New Zealand has undertaken to implement.
183. The Organised Crime and Anti-corruption Legislation Bill improves New Zealand's compliance with the United Nations Anti-Trafficking Protocol by ensuring the human trafficking offence covers trafficking both within and into New Zealand.

#### *Measures to prosecute traffickers*

184. New Zealand has comprehensive legislation that covers offences associated with people trafficking crimes. These offences include abduction, kidnapping, rape, engaging underage prostitutes, coercing prostitutes, and exploiting workers. The penalties for trafficking are comparable to rape and murder.
185. New Zealand has recently reviewed its legislative framework on trafficking issues and concluded that the definition of trafficking should be more closely aligned with the definition in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The refined definition will remove the transnational element of the current trafficking offence and ensure that the use of an 'exploitative purpose' is covered as a means of trafficking in persons.

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<sup>16</sup> The document can be accessed here: <http://www.justice.govt.nz/publications/publications-archived/2002/protecting-our-innocence>.

186. The first people trafficking charges in New Zealand were brought by Immigration New Zealand in August 2014. The defendants have been charged under the Crimes Act for arranging by deception the entry of 18 Indian nationals into New Zealand. Trafficking in persons has a maximum sentence of imprisonment for up to 20 years and/or a fine not exceeding \$500,000. Two of the defendants have also been charged under the Immigration Act in relation to false refugee claims they organised and lodged for the 18 Indian nationals on arrival in New Zealand. The maximum penalty for that offence is up to seven years' imprisonment and/or a fine not exceeding \$100,000.

#### *Measures to support victims of trafficking*

187. Victims of trafficking may be granted a work visa to enable them to support themselves in New Zealand. They may also be eligible for a resident visa if they are unable to return home. Victim needs are assessed on a case-by-case basis and a full range of social services are available.

188. Under the Health and Disability Services Eligibility Direction 2011, a victim or suspected victim of people trafficking is eligible for publicly funded healthcare to the same extent as New Zealanders.

189. Since 1 July 2010, victims of trafficking have access to financial assistance provided under the Special Needs Grants Ministerial Welfare Programme if they or their family are in hardship. No applications for grants have been made to date.

#### *The case of T.A.T*

190. The case of T.A.T involved a Ukrainian woman who entered New Zealand on a false passport in 2004. She was charged with using false documents for her own benefit. An initial trial resulted in an acquittal, with a subsequent trial resulting in a hung jury. During this period she was in a relationship with a New Zealand citizen that later ended due to domestic violence. An application for a work permit under New Zealand's domestic violence work visa policy was declined on character grounds and her last work permit (granted on the grounds of the original relationship) expired in 2009. In 2010 she wrote to the Minister of Immigration stating that she had recently entered into a new relationship and requesting a 12 month work visa to allow that relationship to develop. The Minister declined to intervene and she left New Zealand voluntarily in April 2011.

#### *Foreign charter vessels*

191. The Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act 2014 requires all foreign-owned fishing vessels (FCVs) operating in New Zealand waters to be reflagged to New Zealand from 1 May 2016. This will mean that New Zealand will have jurisdiction over areas like employment and labour conditions on all vessels fishing in New Zealand's Exclusive Economic Zone, to ensure fair standards for all fishing crews working in our waters.

192. The New Zealand government has also implemented a range of measures to strengthen monitoring and enforcement of New Zealand's fishing and labour standards. For example there are now observers on all FCVs, and the Ministry of Business, Innovation and Employment is using a specialised auditing company to carry out independent audits of FVCs to ensure crew visa requirements, including wages, are adhered to.



## **Treatment of persons deprived of their liberty, independence of the judiciary and fair trial (Issues eighteen to twenty-one)**

### **Presumption of innocence**

193. In April 2011 the Law Commission published its report Controlling and Regulating Drugs. The Law Commission report made 144 recommendations including recommending a new Act to replace the Misuse of Drugs Act 1975. The Government responded to the Law Commission report in September 2011. The Government's approach has been to prioritise the aspects of the Law Commission report that relate to new psychoactive substances and the establishment of drug courts. Both of these matters are now complete.
194. There are 96 recommendations of the Law Commission report still to be addressed. These include a recommendation that the possession for supply offence be replaced by a new aggravated possession offence (defined by the quantity possessed). This is likely to involve amendment of the Misuse of Drugs Act 1975. The Law Commission's recommended approach would address the concern raised by the Supreme Court that the current offence of possession for supply of drugs is inconsistent with the presumption of innocence.
195. The remaining Law Commission recommendations have been reviewed in terms of consistency with the National Drug Policy. The Policy sets out the Government's approach and priorities for action in relation to tobacco, alcohol, illegal and other drugs over the next five years. It has a principle of harm minimisation and three strategies for action: supply control; demand reduction and; problem limitation. The Policy is currently being refreshed. Priorities for addressing the Law Commission recommendations will be assessed by reference to the goals of the Policy.

### **Privatisation of prisons**

196. Private prisons have been introduced in New Zealand to facilitate innovation and drive efficiency across the corrections system. New Zealand currently has one contract-managed prison (Mt Eden Corrections Facility) with a second privately managed prison (Wiri) planned for 2015. Safeguards are in place to ensure that all contract-managed prisons comply with the same domestic laws, international standards, and obligations relating to prisoner welfare and management as publicly managed prisons.
197. These prisons must provide regular reports to the chief executive of the Department of Corrections, including details of prisoner complaints, incidents of violence or self-harm involving prisoners, disciplinary proceedings taken against prisoners and/or staff, escapes and attempted escapes, and prisoner deaths. Contract-managed prisons are subject to intensive oversight by monitors appointed by the chief executive and are subject to specific investigations by external legal bodies where appropriate.
198. Each contract-managed prison is measured on an ongoing basis against 37 performance measures and 14 key performance indicators. These are designed to accurately monitor and evaluate prison performance across all New Zealand prisons and encourage excellence.

199. These prisons are also subject to the Optional Protocol to the Convention against Torture and relevant domestic legislation. Mt Eden Corrections facility was visited by the Subcommittee on Prevention of Torture in 2013.

### **The Treaty of Waitangi and the Waitangi Tribunal**

200. Inclusion of references to the Treaty of Waitangi in new legislation is considered on a case-by-case basis. About 30 Acts require decision-makers to have regard to the principles of the Treaty of Waitangi. Other legislation recognises particular rights or interests of Māori in decision-making about education, broadcasting and language. In relevant situations courts consider cases involving the principles of the Treaty of Waitangi. The Waitangi Tribunal is a specialist inquiry body charged with inquiring into and reporting on historical and contemporary claims that the terms or underlying principles of the Treaty of Waitangi have not been upheld. Government receives the Tribunal's reports and recommendations.

201. The Waitangi Tribunal's core objective is to advance a Treaty-based Crown–Māori relationship and thereby sustain the political, social, and cultural fabric of Aotearoa/New Zealand. The Waitangi Tribunal's overarching aim is to provide inquiry pathways tailored to all remaining Waitangi Tribunal claimants.

202. The Waitangi Tribunal is approaching the completion of its long-running district inquiry programme of historical claims. In July 2014 the Tribunal issued a new strategic direction for the next decade. By 2020 the Tribunal's strategic goal is to complete its six current historical inquiries, any remaining historical claims, and to progress high priority kaupapa claims. When the current historical inquiries conclude the Tribunal will have reported on claims arising in more than 90 per cent of New Zealand's land area (the remaining ten percent relates to claimants who chose to settle their claims with the Government without a Waitangi Tribunal report).

203. A district report can cover many hundreds of diverse and complex historical claims dating back to 1840 and can take several years to complete. This time is necessary so the Waitangi Tribunal can make sure its reports are of the highest standard. The Ministry of Justice is, however, continuously looking at ways of doing things faster and more effectively, including trialling iPads in hearings for Waitangi Tribunal members.

204. The Ministry of Justice does not consider there is a huge backlog of claims. The Waitangi Tribunal currently has 1865 claims on hand. In 2008 the Government set a statutory closing of all historical claims. A significant number of claims were submitted prior to the closing date. The Waitangi Tribunal first needed to consider if these claims met the criteria for registration. By April 2013 the number of outstanding unregistered claims was 876. By the end of September 2014 this had been reduced to 357, a 59 percent reduction. The Waitangi Tribunal aims to reduce this by a further 140 claims by the end of this year.

205. The settlement of claims is directly negotiated between Māori claimant groups and the Government. This reflects the principle that claimant groups and the Crown are the only two parties who can, by agreement, achieve durable, fair, and final settlements.

206. More information on the Treaty of Waitangi and its place in New Zealand's constitutional arrangements can be found in the core document of New Zealand.

## **Incarceration rates of Māori**

### *Māori offending and victimisation*

207. Over-representation of Māori and Pacific in the criminal justice system is an ongoing concern for the Government. Significant progress has been made to improve the responsiveness of the criminal justice system to Māori and Pacific peoples. Addressing the underlying social causes of Māori over-representation in both victimisation and the justice system is a long-term challenge.

208. The Government aims, by 2017, to reduce overall crime by 15 percent, with a particular focus on violence and reoffending rates among young Māori and Pacific.

209. The following initiatives promote social norms around non-violence:

- Mauri Ora training for Māori social service practitioners who are working in the area of family violence. The training includes a focus on child abuse and the impact of family violence on children. In 2012/13, 120 practitioners completed the training.
- Strategies with Kids, Information for Parents (SKIP) works with a number of Māori providers to promote positive parenting strategies in local communities. SKIP's Whakatipu resources are designed specifically from a Māori worldview to support Māori families and communities.
- Whānau Toko i te Ora is a high intensity, home-based early intervention family support service for high need Māori whānau who are unlikely to be reached by other agencies.

210. The initiative Turning of the Tide : A Whānau Ora Crime and Crash Prevention Strategy commits Police and Māori to working together to achieve common goals and sets specific targets to reach by 2014/15 to reduce by:

- 5 percent the proportion of first-time youth and adult offenders who are Māori
- 10 percent the proportion of repeat youth and adult offenders who are Māori
- 10 percent the proportion of repeat victims who are Māori
- 15 percent Police (non-traffic) apprehensions of Māori resolved by prosecution, and
- 10 percent the proportion of casualties in fatal and serious crashes who are Māori.

211. Similar reductions have been set for the second phase of the work, from 2015/16 to 2017/18, and the strategy is being adapted for Pacific and Ethnic peoples. Police are also making more effort to produce data in a format that is meaningful to Māori, for example, by presenting Māori-specific crash data on maps divided up by iwi (tribal) boundaries.

212. Together Police and Māori will deliver crime and crash prevention objectives through:

- Mahi Tahī: everyone working together to prevent crime and crashes.
- Whānau Ora: extended families preventing crime and crashes amongst themselves.
- Kōrerorero: talking crime and crash prevention in homes and schools and on the marae.

213. A number of initiatives are aimed at reducing re-offending amongst Māori offenders in prison:

- Te Tirohanga (formerly known as Māori Focus Units) is a Māori tikanga based therapeutic community environment (Mauri Tu Pae) running out of whare in Waikeria, Tongariro/Rangipō, Hawke's Bay, Whanganui, and Rimutaka prisons. Māori kaupapa values underpin and inform an 18 month programme within each of the whare, in preparation for an offender's eventual release back to their community and whānau.
- Whare Oranga Ake focuses on successfully reintegrating prisoners within a kaupapa Māori environment. The Department of Corrections has two 16-bed Whare Oranga Ake units for minimum security prisoners, located outside the prison perimeter at Hawke's Bay Regional Prison and Spring Hill Corrections Facility. Offenders in the Whare Oranga Ake are provided with opportunities to participate and reintegrate back into the community through a safe and controlled setting. The Whare Oranga Ake are managed by external iwi providers and security is provided by Prison Services.
- The bicultural therapy model is a national psychological treatment aimed at male child sex offenders and violent offenders. The model utilises both Tikanga Māori and Western Psychology for self-development and whānau healing.
- Tikanga Māori prison programmes are group-based programmes delivered by Māori service providers that use Māori philosophy, values, knowledge and practices to emphasise the relationship of the individual with their social and cultural environment. It addresses behaviour by helping participants through recognition of Māori identity, language, and cultural practices.
- The Kaiwhakamana Visitor Policy is a voluntary support role giving Kaumātua greater access to Māori prisoners. Kaumātua have access to prisons so they can support Māori prisoners.

214.A number of initiatives are aimed at offenders on community based sentences:

- A Specialist Māori Cultural Assessment is intended to address an offender's responsivity and motivational barriers. The assessment is undertaken by a Māori assessor and is useful if a Māori offender has previously been unmotivated to address their cultural-based needs.
- Tai Aroha is a violence prevention programme, targeting high risk male offenders. The programme aims to provide a culturally responsive rehabilitation experience, in particular for Māori participants, by respecting and incorporating Tikanga Māori and Kaupapa Māori.
- Tikanga Māori in the community is a programme that addresses the underlying causes of offending through Māori culture. Offenders are encouraged to recognise the value of cultural processes when setting positive goals for the future.
- As part of efforts to reduce re-offending by 25 percent by 2017, the Department of Corrections has set a national target of assisting 1,370 young Māori offenders to integrate positively in their communities this year (2014/15).

215. A review of Police and iwi/Māori relationships was undertaken in 2014. This report focused on what can be done together to reduce offending and victimization. A key finding was that for Māori, relationships are needed before partnerships and that changing senior personnel often slows progress. The report also highlighted the lack of Senior Leadership at a strategic level across Districts.
216. Since the publication of this report, all twelve Police Districts have been directed to appoint Māori Responsiveness Managers (MRM) at Inspector rank with direct line reports to their District Commander. To date ten MRMs are in place.
217. MRMs have been directed to ensure that sustainable relationships are maintained with iwi/Māori and that each district has the correct processes in place to achieve the goals as set out in the Turning of the Tide strategy.

#### *Responses to youth offending*

218. Through cross-government programmes, notably the Drivers of Crime work programme and the 2013 Youth Crime Action Plan (YCAP), the government is supporting a range of policy development and operational actions. We are committed to reducing re-offending rates and allowing earlier and more sustainable exits from the Youth Justice system by rangatahi.
219. YCAP is a 10 year plan to reduce crime by children and young people, and help those who offend to turn their lives around. It identifies ‘reducing escalation’ and ‘early and sustainable exits’ as two of the key strategies for responding to youth offending. The measures in YCAP aim to address the underlying causes of youth offending, which should in turn improve outcomes for Māori young people in the youth justice system. As part of YCAP there are now 320 supported bail places available to manage young people in the community who might otherwise be denied bail. In February 2014 the Department of Corrections took over management of electronically monitored bail. Child, Youth and Family support the Department of Corrections in assessing the suitability of electronically monitored bail for young people. Child, Youth and Family are also working more closely with the Police to increase early case consultation and avoid unnecessary escalation of young people through the formal youth justice system.
220. Child, Youth and Family are developing an Assessment Centre approach to speed up the safety planning process and provide the Youth Court with options to return the young person to their community on bail.
221. There a range of other projects underway which aim to provide tailored responses to youth offending. The Reinvigorating Family Group Conferences (FGC) Project will ensure that Youth Justice FGCs are well managed and well informed, which will assist appropriate decision making in the youth justice process. Child, Youth and Family are implementing the Tuituia assessment tool, which is a comprehensive assessment framework that will allow for better-informed decision making in respect of young people who offend. Both of these projects emphasise culturally appropriate assessment and response strategies to address the high proportion of young Māori in the youth justice system. In general there is a push towards early intervention and community-based responses to youth offending, which will also reduce the disparity of young Māori being escalated through the system.

222. Initiatives arising from YCAP are likely to include Māori designed, developed and delivered initiatives to advance New Zealand's understanding of what works for Māori, in the criminal justice system.
223. The Rangatahi and Pacific Youth Courts are a judicial initiative established in 2008 to address the disproportionate over-representation of Māori and Pacific in the youth justice system. The courts aim to encourage strong cultural links by meaningfully involving communities in the youth justice process, thereby impacting on reoffending rates for those groups. These courts are part of the Youth Court. After first appearing in the mainstream Youth Court, young offenders may be offered the opportunity to have subsequent hearings at the Rangatahi or Pacific Courts.
224. Hearings of the Rangatahi Court are held on a marae. Kaumātua (elders) take part in the hearing. The Judge is proficient in the Māori language and understands the Māori worldview. Emphasis is placed on the young person learning who they are and where they are from. For example, they are expected to learn and deliver a pepeha and mihi (introduction and greeting), and will usually be required to further their cultural knowledge by attending tikanga programmes, where available. The active involvement of whānau, hapū, and iwi is fundamental to the process. There is a greater emphasis on the provision of holistic wrap-around services to support each young person. These include life skills and anger management programmes, alcohol and drug counselling and psychological needs assessments. The Ministry of Justice will work with the Judiciary to monitor both qualitative and quantitative outcomes for the Rangatahi Courts, including reoffending rates, to ensure the best possible engagement of young offenders and their whānau in the Youth Court process.

## **Protection of the rights of children (Issues twenty-two to twenty-three)**

### **Child abuse**

225. A key Government priority is improving outcomes for vulnerable children, and addressing child maltreatment and neglect. In 2011, recognising that existing efforts to protect vulnerable children in New Zealand were not sufficient, the government initiated consultation on what needed to change to make things better. A discussion document, the Green Paper for Vulnerable Children, received close to 10,000 submissions. These contributed to the development of the reforms outlined in the 2012 White Paper for Vulnerable Children (The White Paper). The accompanying Children's Action Plan (CAP) set out objectives, actions, and timeframes to implement the White Paper's strategy. Required legislative change has been enacted with the passing of the Vulnerable Children Act 2014, along with amendments to existing legislation.
226. The Children's Action Plan is focused on improving outcomes for vulnerable children. It is driving fundamental changes in how government agencies, NGOs and iwi work together at national and local levels, to identify, support and protect vulnerable children. Local Children's Teams ensure the right level and type of service is provided to the right children by having one plan and one assessment for each child. The Children's Action Plan Directorate and its partner agencies are also working to implement the Vulnerable Children Act 2014 to improve the safety and competency of the children's workforce. This includes new standard safety checking, core competencies and child protection policies for people who work with children. The Vulnerable Children Act makes heads of the Ministries of Social Development, Health, Education, Justice and the Police

accountable for a plan to improve outcomes for vulnerable children. The Vulnerable Children's Board (VCB) oversees the implementation of the Children's Action Plan.

227. The Government has explicitly made reducing assaults on children one of its ten Better Public Service targets to be achieved by 2017. This sits alongside other targets designed to support vulnerable children. The aim is to put a stop to the rise in children being physically abused and lower the number of substantiated cases of physical abuse by five per cent by 2017. This will be achieved through deliverables under the Children's Action Plan and other initiatives to improve support for vulnerable families and ultimately reduce the number of assaults on children.<sup>17</sup> The Children's Action Plan includes measures for better screening of children for vulnerability, fully assessing the needs of vulnerable children, better enabling frontline workers and communities to communicate concerns about children, and making services more focused on results. In the year to December 2014, physical abuse was substantiated for 3,195 children, compared to the 3,089 the previous year. The overall flattened trend since 2012 for this number appears to be continuing, but this number tends to fluctuate.
228. Child, Youth and Family and the New Zealand Police work together under the Child Protection Protocol to promote a consistent and effective interagency approach to dealing with cases of serious child abuse.
229. Child, Youth and Family's three year strategic plan, *Mā Mātou, Mā Tātou Changing Young Lives*, outlines five strategic priorities, one of which is Working Together with Māori. This commits Child, Youth and Family to the delivery of a service that is internationally recognised as culturally sensitive, respectful, and responsive for Māori.
230. Child, Youth and Family provides a learning and capability curriculum to all practice staff. This includes practice, leadership and residential induction components. Abuse, neglect and maltreatment are foundation practice competencies and are a strong focus in all curricula. On-going professional development for existing Child, Youth and Family staff also includes a focus on essential practice competencies.
231. Child, Youth and Family funds the organisation *Child Matters* to raise awareness of child maltreatment and provide training, education and advisory services to professionals and community organisations working with children and young people. It also develops and monitors protocols in respect of how those organisations respond to and manage child welfare issues, including reporting concerns of child abuse or neglect.

### **Forced marriage**

232. Underage and forced marriage is illegal in New Zealand. The Government has responded to anecdotal evidence of a problem in a number of different ways. The focus is on working with migrant communities to raise awareness of the rights and freedoms of women and girls in New Zealand, and building relationships of trust with those communities. Initiatives include:

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<sup>17</sup> For more information about these initiatives, see <http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/better-public-services/supporting-vulnerable-children/snapshot.html>.

- A letter of agreement committing to a collective response, should victims of forced or underage marriage come forward, has been agreed to by government agencies with relevant operational responsibilities.
- New Zealand Police has updated its manual to provide guidance on responding appropriately to any disclosures of forced and/or under-age marriage, and is working directly with local communities to build trust and confidence.
- The Registrar-General of Births, Deaths and Marriages is encouraging people from ethnic communities to become marriage celebrants, which will result in increased community understanding of marriage law in New Zealand, particularly the legal requirements for consent.
- Resources in Hindi about forced and underage marriage have been developed and these are being translated into other languages.
- Education on forced marriage is provided to every intake of refugees at the Mangere Refugee Resettlement Centre in Auckland.

233. The Government is not proposing to increase the minimum age of marriage. Under New Zealand law, no one can marry under the age of 16 years. Further, a person aged 16 or 17 years who wishes to marry requires consent from his or her parents or from the Family Court.

### **Equality and non-discrimination, right to participate in public life and the protection of the rights of persons belonging to ethnic minorities (Issues twenty-four to twenty-seven)**

#### **The Marine and Coastal Area (Takutai Moana) Act 2011**

234. The Government reviewed the Foreshore and Seabed Act 2004 in response to international and domestic concerns about its discriminatory effect on Māori. Following extensive dialogue with Māori and the general public, Parliament repealed the 2004 Act and enacted the Marine and Coastal Area Act 2011 (the 2011 Act).

235. The 2011 Act accords the common marine and coastal area a special status. Under the Act neither the Crown nor any other person owns, or is capable of owning, the common marine and coastal area. The 2011 Act divested the Crown and every local authority of ownership of any part of the common marine and coastal area.

236. There are two pathways for Māori to apply for recognition of their extant customary rights in the common marine and coastal area. Iwi, hapū and whānau can seek recognition agreements by engaging directly with the Crown or by applying for determinations in the High Court. As of March 2015 the Crown has received 21 applications for recognition agreements and the High Court has received 12 applications for recognition orders.

237. The 2011 Act recognises and promotes the exercise of the customary interests of Māori in the common marine and coastal area. Specifically the 2011 Act allows the High Court to make orders, or the responsible Minister on behalf of the Crown to enter into agreements, with Māori for the recognition of:

- Protected customary rights which are activities, uses and practices in the common marine and coastal area (for example stone and sand collection or launching canoes).



A group applying for recognition of protected customary rights will need to demonstrate the right has been exercised since 1840 and it continues to be exercised in a particular part of the common marine and coastal area in accordance with Māori customary values and practices. The customary activities may have evolved over time. Several groups may have this right in the same area.

- Customary marine title which recognises the customary interests of groups that have proved exclusive use and occupation of an area from 1840 to the present day, without substantial interruption, and have held this area in accordance with Māori customary values and practices. Customary marine title recognises the relationship that has existed, and will continue to exist, between Māori and the common marine and coastal area. Once recognised customary marine title confers a number of rights (for example a permission right about use of coastal resources), ownership of certain minerals and the protection of certain sacred places. As customary marine title is exclusive, it is held by one group in an area. Where a broad customary collective group, itself made up of a number of sub-groups, has traditionally held an area subject to such title then the collective group can apply for recognition so that this historical shared exclusivity is recognised.

#### *Public access continued*

238. The 2011 Act recognises and protects the customary interests of Māori groups through a Court Order, an Order in Council for a protected customary rights, or legislation for customary marine title. The Act also recognises and protects the intrinsic worth of the common marine and coastal area to all New Zealanders. It assures the exercise of existing lawful rights. For instance, the public can continue to walk, swim, sail and generally enjoy the common coastal marine area except for sacred sites in customary marine title areas. The 2011 Act also assures the quality of the coastal marine environment for future generations. It records the scope of the Crown's responsibilities, especially relating to conservation and environment management processes in the common marine and coastal area, and provides for the participation of protected customary rights and protected customary rights holders in these processes.

#### *Māori rights*

239. Extant customary interests of Māori in the foreshore and seabed are recognised and given legal status by the 2011 Act. Such recognition is by way of a Court Order or an Order in Council for a protected customary rights or legislation for customary marine title. Non-exclusive protected customary rights and exclusive protected customary marine title rights are legal rights that are inalienable and enduring.

240. There is no mechanism that extinguishes protected customary rights in an area. In the case of a customary marine title the 2011 Act recognises the customary interests of one Māori group to the exclusion of all other groups. If groups contest a customary marine title application, and historical evidence supports their assertions, then it becomes difficult to establish that use and occupation of an area is exclusive. In such cases, under the 2011 Act, the Crown is able to decline to engage with the customary marine title application and has done so several times. While no customary interests are recognised in this case, neither are they extinguished.

241. In the unlikely event that the Crown recognises customary marine title for one group, and other Māori groups consider their customary rights have been extinguished, then they are able to seek a judicial review in the High Court or seek a decision at the Court of Appeal.

#### *WAI 262 decision*

242. The New Zealand government response to WAI 262 is complex and involves a range of agencies. Policy development will continue, with reference to international instruments and best practice. Specific policy and timing decisions are yet to be made.

### **Representation of Māori in local government**

243. In the 2007 local elections, the percentage of elected members who were Māori was 3.6 percent and the percentage of elected members who were European and Māori was 1.2 percent.<sup>18</sup>

244. A range of mechanisms have been developed by councils for engaging with Māori in their communities, for example:

- appointments of iwi representatives to council standing committees
- establishment of joint council and Māori planning or advisory committees
- establishment of specific Māori standing committees or ad hoc committees
- Māori strategy and liaison departments within councils and Council Kaumātua
- providing updates on council projects directly to Māori organisations
- maintaining schedules of Māori stakeholders to enable targeted consultation
- service and funding agreements with Māori groups and organisations
- formal and informal consultation arrangements, particularly on resource management issues
- fixed agenda items at council committee meetings to discuss tangata whenua issues
- accords and protocols for joint management of particular resources
- charters and memoranda of understanding and partnership
- performance targets for Māori participation opportunities in decision-making
- staff level working relationships with staff in Māori organizations, and
- interpreters for submissions presented to councils in te reo Māori.

245. The Local Government Act 2002 seeks to maintain and improve opportunities for Māori to contribute to local government decision-making by placing obligations on councils. The obligations are intended to facilitate participation in decision-making processes. As shown above, councils have engaged with Māori in a range of different ways, to varying degrees. In addition, recent Treaty of Waitangi settlement agreements have resulted in a number of statutory co-governance and co-management arrangements between iwi and councils, particularly over natural resources of significance to iwi.

246. The Local Electoral Act 2001 was amended in 2002 to provide councils and electors with the option of establishing Māori wards (territorial authorities) or constituencies (regional councils) without the need for a specific local Act. Māori wards or constituencies can be established by council resolution (if no subsequent petition demanding a poll is received) or as a result of a binding poll that can be initiated by:

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<sup>18</sup> Human Rights Commission, *Tūi Tūi Tuituiā Race Relations in 2007*, p 74.

- council resolution, or
- a petition of electors, at any time, or
- by a petition of electors in response to a resolution of the council.

247. So far two councils have Māori constituencies (though one established its Māori constituencies through a specific local Act prior to the 2002 amendments to the Local Electoral Act 2001).

248. The Government did not establish Māori seats on the Auckland Council because of the councils' existing power to establish Māori wards under the Local Electoral Act 2001. The Local Government (Auckland Council) Act 2009 did, however, establish an Independent Māori Statutory Board to promote issues of significance for the mana whenua and Māori of Auckland to assist the Council in its decision making, and to carry out legislative requirements. Amongst other things, the Board must appoint members to sit on Council committees with full voting rights, the Council must consult with the Board on matters affecting mana whenua and Māori, and the Council must take into account the advice of the Board to ensure that the input of mana whenua and Māori are reflected in strategy, policies, and plans.

### **Consultation with Māori**

249. Although there is no single standard procedure for consulting with Māori, a number of principles have been established for consultation procedures between the Government and Māori, including through the Courts and the Waitangi Tribunal. The principle of partnership and a commitment to an enduring Crown-Māori relationship is central to consultation, as is the role of kanohi ki te kanohi engagement. The Crown continues to seek opportunities to strengthen the Crown-Māori relationship and improve consultation processes.

250. The Government has a number of initiatives in place for consultation with Māori. These initiatives aim to develop the technical capacity of Māori and ensure their effective participation in decision-making processes. They also ensure the use of traditional Māori decision-making through kanohi ki te kanohi engagement, and consultation with hapū and iwi.

251. There are many mechanisms for effective Māori participation in decision-making processes on issues that affect Māori and their right to free, prior and informed consent. These include Crown-Iwi Accords, Relationship Agreements, Protocols and Memoranda of Understanding between the Crown (through various agencies) and iwi.

## Annex 1 – Tokelau

252. References should be made to previous reports on the situation in Tokelau, particularly New Zealand's Fourth Periodic Report on the Covenant (CCPR/C/NZL/2001/4). For further background information, reference should be made to the report to Parliament of the Administrator of Tokelau and to the working papers issued each year by the UN Special Committee on Decolonisation.
253. The people of Tokelau live in villages on three widely separated atolls. In each village/atoll the focus is on caring for individual members of the community in a communal manner.
254. Tokelau's Human Rights Rules 2003, which have legal effect in Tokelau, recognise that individual human rights for all people in Tokelau are those stated in the Universal Declaration of Human Rights, and reflected in the Covenant. The Rules also recognise that the rights of individuals in Tokelau shall be exercised having proper regard to the duties of other individuals, and to the community to which the individual belongs. The Constitution affirms Tokelau's commitment to the Universal Declaration on Human Rights and the Covenant.
255. Tokelau also has a specific criminal code set out in the Crimes, Procedure and Evidence Rules 2003 (the Rules). The Rules were developed in close consultation with the elders of each atoll in order to ensure that it reflects actual Tokelau needs, is consistent with Tokelau custom, and is determined by what is appropriate for Tokelau. The Rules are consistent with Tokelau's obligations under international law regarding human rights issues, including the Covenant, containing, for example:
- a rule against double jeopardy
  - provision for a speedy trial
  - procedures in relation to arrest and detention, and
  - maximum penalties for criminal offences.
256. Tokelau at the same time seeks understanding of its situation, and particularly of the challenge inherent in moving from socially known rules in an oral tradition to written law of the Western conception. As Tokelau considers its commitment to basic human rights, it is mindful that human rights promote the imported notion of individuality, while the idea of community, with which Tokelauans are familiar, promotes a sense of unity and sharing.
257. What is involved is a considerable evolution away from tradition. For Tokelauans this means a move away from following a particular set of rules and practices within their cultural setting, to following a set of rules and practices recognisable as consistent with life in the international community, and the rules and practices of other States.
258. Tokelau is assured of the continuing interest and support of the New Zealand Government in its development.

## **Information on Tokelau relating to specific Articles of the Covenant**

259. This section does not report on all the individual Articles of the Covenant. The Rules and, where applicable, the Crimes, Procedure and Evidence Rules 2003 apply more generally in relation to these Articles.

### *Article 1*

260. Under a programme of constitutional devolution developed in discussions with Tokelau leaders in 1992, Tokelau, with New Zealand's support, has developed institutions and patterns of self-government. As a first step, that part of Government which deals with the interests of all of Tokelau was returned to Tokelau in 1994. In 2003, the majority of the Administrator's powers were formally delegated to the three Village Councils, the General Fono (the national legislative and executive body) and the Council for Ongoing Government (which conducts the executive business of the General Fono when it is not in session). In 2012 a decision was made not to delegate the Administrator's powers under the Tokelau (Exclusive Economic Zone) Fishing Regulations 2012.

261. In 2006 and 2007 self-determination referenda were held under UN supervision. On both occasions, the requisite two-thirds majority for a change in status was not reached. Tokelau therefore remains a non-self governing territory under the administration of New Zealand.

### *Article 2*

262. Tokelau's Human Rights Rules accord generally with Article 2 by recognising the human rights contained in the Universal Declaration of Human Rights, and reflected in the Covenant for all people in Tokelau. The Rules also provide for a person to apply to Tokelau's Council for Ongoing Government for protection of that right.

### *Article 3*

263. Developments in the equal rights of men and women to the enjoyment of all civil and political rights during the report period in Tokelau are covered by Appendix Three of New Zealand's Seventh Periodic Report to the Committee on the Elimination of all forms of Discrimination against Women (CEDAW/C/NZ/7).

264. Tokelau has a National Policy for Women and National Plan of Action that will assist the Government's response to women's development issues. Tokelau's women's groups (Fatupaepae) are currently involved in implementing the Government's project to Stop Violence against Women and Young Girls. This involves raising awareness among women of their rights under the law as well as suggestions for amendments to Tokelau laws as they affect women.

### *Article 14*

265. Tokelau's judicial system formally consists of the Commissioner's Court and Appeal Committee of each village, the High Court and the Court of Appeal.

266. Currently the judges of Tokelau are the Law Commissioners of each island. These are lay officers who perform their duties with the village councils in the context of the village structures and local tradition. In the fulfilment of their roles, Commissioners

typically are informed more by custom than legislation. Although, as discussed, the Crimes, Procedure and Evidence Rules 2003 have, where possible, incorporated these customs. The Commissioners are concerned primarily with criminal offences of a minor nature and, in cooperation with the local police officers, deal with offenders by way of reprimand, sentences of community service or fines. There are no prisons in Tokelau. In case of need, major criminal or civil matters would be dealt with by the High Court of New Zealand acting as a Court for Tokelau. An appeal committee may hear appeals from the Tokelau Law Commissioners.

267. The requirement of the availability of defence counsel, at public cost if necessary, presents practical problems for a community of Tokelau's type, given its small population (1466 people in the 2006 census) and physical isolation. However, there is provision in Rule 94 of the Rules for the grant of legal aid, taking into account the means of the applicant and the nature of the case. Under Rule 95 of the Crimes, Procedure and Evidence Rules the prior written approval of the Council for Ongoing Government is required in order to be able to practise law in Tokelau or before a court of Tokelau. To date three New Zealand qualified lawyers have been admitted to practice in the courts of Tokelau. Two of those are in the Government service and one in the private sector.

268. No dispute from Tokelau has ever been litigated outside Tokelau. There has been a strong community feeling that disputes are matters for the community and the community alone. This has meant that, to date, community thinking has been opposed to any thought of having a case decided in another village, let alone outside Tokelau.

#### *Article 25*

269. Under longstanding practice, two village leadership positions - Faipule and Pulenuku (one with an external focus and the other with an internal one) - are filled on the basis of three yearly elections, by universal adult suffrage. Most recently, on the basis of a decision taken by the General Fono in 1998, Tokelau has moved from a system of appointment by each village of its delegates to the General Fono, to a system of election of delegates. The first such elections were held in January 1999, when each village elected delegates proportionate to its overall population for three year terms. The most recent election took place in January 2014 in accordance with the Tokelau National Elections Rules 2013.

## Annex 2 - Glossary of Māori terms

**Hapū:** A hapū is a division of a Māori iwi often translated as ‘subtribe’. Membership is determined by genealogical descent; a hapū is made up of a number of whānau (extended family) groups.

**Hui:** meeting.

**Iwi:** The traditional Māori tribal hierarchy and social order made up of hapū and whānau with a founding ancestor and territorial (tribal) boundaries. Iwi are the largest everyday social units in Māori populations.

**Kaupapa:** topic, policy, matter for discussion, plan, purpose, scheme, proposal, agenda, subject, programme, theme, issue, initiative.

**Kaumātua:** adult, elder, elderly man, elderly woman, old man - a person of status within the whānau.

**Kanohi ki te kanohi:** face-to-face

**Kura:** school.

**Marae:** Is the central area of a Māori community, a place where the local people (tangata whenua) can meet to conduct many of their familiar and sacred events.

**Rangatahi:** younger generation or youth.

**Tamariki Māori:** Māori children.

**Tangata whenua:** people of the land.

**Te Reo Māori:** the Māori language.

**Tikanga:** correct procedure, custom, habit, lore, method, manner, rule, way, code, meaning, plan, practice, convention, protocol - the customary system of values and practices that have developed over time and are deeply embedded in the social context

**Whakapapa:** genealogy, lineage or descent.

**Whānau:** Whānau is a wider concept than just an immediate family made up of parents and siblings - it links people of one family to a common tupuna or ancestor. However it is commonly used in many contexts as the Māori term for family or extended family.

**Whare:** house, building, residence, dwelling, shed, hut, habitation.