



Human Rights Commission  
Te Kāhui Tika Tangata

# Submission in relation to the twenty-first and twenty-second periodic review of New Zealand under the Convention on the Elimination of All Forms of Racial Discrimination

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Contact Person:

Susan Devoy  
Race Relations Commissioner  
[SusanD@hrc.co.nz](mailto:SusanD@hrc.co.nz)

The New Zealand Human Rights Commission is New Zealand's National Human Rights Institution (NHRI). It is accredited as an "A" status NHRI. One of the Commission's functions pursuant to section 5 (2) (kc) of the Human Rights Act 1993 is to "to promote and monitor compliance by New Zealand with, and the reporting by New Zealand on, the implementation of international instruments on human rights ratified by New Zealand."

## **Background**

1. The Commission welcomes the opportunity to provide this submission to the Committee on the Elimination of All forms of Racial Discrimination ("Committee") for the purposes of New Zealand's twenty-first and twenty-second periodic reviews under the Convention on the Elimination of All forms of Racial Discrimination ("CERD").
2. This submission sets out the Commission's views on the key challenges in relation to New Zealand's implementation of CERD. It addresses four high level issues and then provides more detailed information aligned with the List of Themes ("LOT") released by the Committee on 29 June 2017. The Commission made a submission to the Committee to inform its development of the LOT. This submission should be read alongside the Commission's earlier submission on the LOT.
3. The four high level issues that the Commission wishes to draw to the Committee's attention for the purposes of the review are as follows:
  - (a) The adequacy of current government structures and processes to deal with New Zealand's changing demographics.
  - (b) The need for a cohesive approach across the justice, law enforcement and penal systems to address the significant ethnic disparities in detention rates and criminal justice outcomes.
  - (c) The importance of better data collection about hate crimes and the scope of the current "hate speech" legislation that is in place.
  - (d) The need for strengthened protection and comprehensive implementation of Treaty and indigenous rights, including self-determination and participation, both as fundamental rights in themselves and as a means of addressing disparities experienced by Māori across a range of outcomes.

4. A full list of the Commission’s recommendations is included as an Appendix to this submission.

Legal, institutional and public policy framework for combating racial discrimination – (arts. 2 - 7)

General Comments

5. New Zealand demographics have changed dramatically over recent years. Some major cities, such as Auckland where approximately one quarter of New Zealanders live, are particularly diverse. Data from the 2013 national census indicates that 39.1 percent of Auckland residents were born overseas, the majority in Asia or the Pacific islands.<sup>1</sup> The 2013 census data also illustrated considerable divergence in the comparative ethnic make-up of Auckland and the rest of New Zealand, as set out in the table below:

<b>Ethnicity</b>	<b>Auckland</b>	<b>New Zealand</b>
<b>NZ European</b>	59%	81%
<b>Māori</b>	11%	17%
<b>Pasifika</b>	15%	4%
<b>Asian</b>	23%	6%
<b>Other</b>	3%	3%

6. It is questionable whether current structures and government strategies are sufficiently reflective of these diverse communities and able to respond appropriately to meet their needs. The experience of the Race Relations Commissioner is that too often issues relevant to minority ethnic communities appear to be “tacked on” to general initiatives and/or are developed without reference to the affected communities. This can limit the reach and effectiveness of initiatives. The need to separately consider ethnic minority view points and perspectives can be overlooked and the benefits that can be obtained from developing solutions in genuine partnership and consultation with affected groups is not always appreciated.
7. Although there is increasing ethnic diversity in the public service, in 2016 Europeans still made up 70.5% of public service employees. Māori, Pasifika and Asian ethnicities are all underrepresented in the top three tiers of public service management.<sup>2</sup> Of the 29 Public Service Chief Executives, it is notable that only five are from an ethnic minority background, with two heading ministries established for the development of

<sup>1</sup> <http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/qstats-culture-identity-auck-mr.aspx>

<sup>2</sup> <https://enz.govt.nz/assets/Uploads/The-Economic-Impact-of-International-Education-in-New-Zealand-2015-2016.pdf>

specific ethnic communities<sup>3</sup>.

8. **Recommendation 1: That the Committee urges the Government to:**
- (a) review the adequacy of current structures and processes to respond appropriately to New Zealand’s changing demographics; and**
  - (b) make necessary changes to ensure that the diversity of the population is appropriately reflected in planning and delivery of services; and**
  - (c) develop and implement measures aimed at increasing social cohesion.**

New Zealand’s second National Action Plan on the Promotion and Protection of Human Rights (LOT 2)

9. The National Plan of Action (“NPA”)<sup>4</sup> is a web-based interactive tool that tracks Government progress against the recommendations made by the Human Rights Council following New Zealand’s second Universal Periodic Review in 2014.
10. Over 50 civil society submissions, representing more than 250 groups and individuals, were sent to the Committee for the purposes of the UPR review. These outlined the key human rights challenges and issues facing Aotearoa New Zealand.
11. Based on the issues raised, the committee made 155 recommendations to New Zealand. The Government accepted 121 of these recommendations<sup>5</sup> and the NPA captures the actions and commitments that the Government made to give effect to them.
12. Fifty-six of the recommendations made to New Zealand in its 2014 UPR relate to implementation of CERD. Of these, 44 were accepted. A full assessment of the actions the Government has taken to address the 44 accepted recommendations is available at: <http://npa.hrc.co.nz/#/treatybody/cerd>.

Independence of the Race Relations Commission (LOT 3)

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<sup>3</sup> For a list of public chief executives see State Services Commission, *Public Service Chief Executives*, 3 July 2017, available to access at [http://www.ssc.govt.nz/sites/all/files/SSC%20Exec%20Chart%203%20July%202017\\_0.pdf](http://www.ssc.govt.nz/sites/all/files/SSC%20Exec%20Chart%203%20July%202017_0.pdf). In addition, it appears that none of the leaders of the 17 independent Crown entities are from an ethnic minority background. A list of independent Crown entities can be accessed at [http://www.ssc.govt.nz/state\\_sector\\_organisations](http://www.ssc.govt.nz/state_sector_organisations)

<sup>4</sup> <http://npa.hrc.co.nz/#/>

<sup>5</sup> Among the recommendations not accepted, were recommendations to ratify and implement ILO 169 on Indigenous Peoples

13. The Human Rights Amendment Act 2016 resulted in some changes to the statutory functions of the Human Rights Commission and the role of both the Race Relations and Equal Employment Opportunities Commissioners. The relevant aspects of these changes are as follows:
- (a) The primary functions of the Commission were amended to specifically include the function of promoting racial equality and cultural diversity (new section 5(1)(c)) along with additional primary statutory functions of promoting equal opportunities (including pay equity) and promoting and protecting the full enjoyment of human rights by people with disabilities.
  - (b) The legislation previously provided for the appointment of a Race Relations Commissioner, Equal Employment Opportunities Commissioner, a Chief Human Rights Commissioner and up to three other part-time Commissioners. There was no statutory requirement for the appointment of a Disability Rights Commissioner but, in practice, one of the part-time human rights commissioners was designated as the human rights commissioner with responsibility for disability rights.
  - (c) The 2016 amendments now require the appointment of a Chief Commissioner and not less than 3, but no more than 4, other Commissioners. It is stipulated that there must be a commissioner appointed to lead the work of the commission in the priority areas of disability rights (the Disability Rights Commissioner), equal employment opportunities (the Equal Employment Opportunities Commissioner) and race relations (the Race Relations Commissioner).
14. Although there have been some structural changes to the legislation, in practice there remains a clearly identifiable, and specifically named, Race Relations Commissioner who has a broad range of statutory powers and functions. The changes have not resulted in any actual or substantive change to the independence or accessibility of the Race Relations Commissioner.
15. Since 2011 a Human Rights Commissioner has been designated with responsibility for indigenous rights. However, there is no statutory requirement to appoint an “Indigenous Rights Commissioner”.

#### Recent Initiatives of the Race Relations Commissioner

16. Recent activities of the Race Relations Commissioner include the successful “That’s Us” campaign against casual racism which encouraged people to share their stories and experiences of racism ([www.thatsus.co.nz](http://www.thatsus.co.nz)) and the recently launched “Give Nothing to

Racism Campaign” which provides tools to assist people to take a stand against racism ([www.givenothing.co.nz](http://www.givenothing.co.nz)).

17. “That’s Us” started a national conversation about racism and discrimination and since the campaign was launched in 2016 it has reached 4.23 million people and engaged with 1.3 million more. “That’s Us” supports the New Zealand Migrant and Settlement Integration strategy and is supported by the New Zealand National Commission for UNESCO.
18. In June 2017, the work to tackle casual racism was further supported when the “Give Nothing to Racism” campaign was launched. The campaign video featured prominent New Zealanders encouraging people to “give nothing to racism”. So far this campaign has reached, 4.19 million people and engaged with 2.16 million more, meanwhile communities and organisations have added their own videos to the website.
19. The Commissioner maintains a high profile speaking out publicly about discrimination and inequalities as incidents arise, maintaining close links with different communities.
20. The Race Relations Commissioner has also been a visible advocate for increasing New Zealand’s refugee quota. This advocacy, alongside the advocacy efforts of other organisations, has had some effect. In 2016, the Government announced that it will increase New Zealand’s refugee quota from 750 to 1,000 people per year, to take effect from 2018<sup>6</sup>. In addition, the Government will resettle an additional 500 refugees from Syria in each of the 2016/17 and 2017/18 calendar years, above the current quota<sup>7</sup>. The Race Relations Commissioner continues to advocate for further increases to the quota and supporting alternative pathways to refugee resettlement including private sponsorship.
21. The Race Relations Commissioner has advocated for additional programmes to support settlement for new communities and cultural capability and competency. In 2016, the Commissioner lobbied the State Services Commission to hold a forum to address these concerns.
22. Results from this forum have included the introduction of a new role in the State Services Commission to strengthen ethnic capability in the public sector, providing a strategic focus across the state service organisations on diversity and inclusion.
23. In 2017, under the Migrant Settlement and Integration strategy, two new initiatives

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<sup>6</sup> Hon Michael Woodhouse, Minister for Immigration, *Govt announces increase to refugee quota*, press release, 13 June 2016 <https://www.beehive.govt.nz/release/govt-announces-increase-refugee-quota>

<sup>7</sup> Immigration New Zealand, *New Zealand Refugee Quota Programme*, <https://www.immigration.govt.nz/about-us/what-we-do/our-strategies-and-projects/supporting-refugees-and-asylum-seekers/refugee-and-protection-unit/new-zealand-refugee-quota-programme>

were approved to strengthen settlement of new communities and increase the cultural competence across the public sector. The *Welcoming Communities* programme is an initiative of the Ministry of Business Innovation and Employment (MBIE), with the support of Human Rights Commission and the Department of Internal Affairs (Office of Ethnic Communities). It is located in five regions in New Zealand and implemented with the support of local city and district councils<sup>8</sup>. The *Cross-Government Cultural Competency Capability Development Programme* is currently under development and is supported by the State Services Commission, Ministry of Business Innovation and Employment, New Zealand Police, Human Rights Commission, Ministry of Health and the Department of Internal Affairs (Office of Ethnic Communities)<sup>9</sup>.

#### Hate Speech and Incitement to Racial hatred (LOT 4)

24. Section 61 of the Human Rights Act 1993 (“HRA”) and its criminal law counterpart in s131 of the HRA provide the legal framework to protect against hate speech and incitement to racial hatred.
25. Section 61 (headed “*Racial Disharmony*”) makes it unlawful to broadcast, publish, or distribute written material which is threatening, abusive or insulting, or to use threatening abusive or insulting word in public places if such actions are likely to excite hostility against or bring into contempt any group of persons in New Zealand on the ground of colour, race or national or ethnic origins of that group of persons.
26. Section 131 (headed “*Inciting Racial Disharmony*”) makes it a criminal offence to, with intent to excite hostility or ill will against, or bring into contempt or ridicule, any group of persons on the ground of colour, race or ethnic and social origins of the group, publish or distribute written matter, or use words in a public place, that are threatening, abusive or insulting and are likely to excite ill will or hostility to that group or bring them into contempt or ridicule.
27. The threshold for both these provisions is high. Recently, a case was brought before the Human Rights Review Tribunal (“Tribunal”) under section 61. The plaintiffs alleged that cartoons published in several major newspapers were insulting and likely to have the effect of bringing Māori and Pasifika into contempt by reason of their race, colour and/or ethnic or national origin. They claimed that this resulted in a breach of s61 of the HRA.
28. This case raised significant issues relating to the right to freedom of expression and the

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<sup>8</sup> New Zealand Immigration, *About Welcoming Communities*, <https://www.immigration.govt.nz/about-us/what-we-do/welcoming-communities/about-welcoming-communities>

<sup>9</sup> See *Development of a Cross-Government Cultural Competency Capability Development Programme* <https://www.gets.govt.nz/MBIE/ExternalTenderDetails.htm?id=18662929>

need to balance the right to express opinions that may be unpopular or controversial against material that is likely to expose persons to hatred or contempt.

29. The Commission took part in the proceedings in the capacity of an “intervener”. In its submission, the Commission took into account the high value placed on freedom of expression in international human rights law and domestically in the New Zealand Bill of Rights Act 1990 (“BORA”). The Commission noted that “international law mandates a high threshold for intervention to ensure the right to freedom of expression is infringed as little as possible.” In its decision, the Tribunal noted the cartoons were offensive but agreed with the Commission that the high threshold required for them to be unlawful had not been reached.<sup>10</sup> The Plaintiff has appealed this decision to the High Court.
30. Despite the Tribunal’s decision, and a pending appeal, some concerns continue to be raised with the Commission about the adequacy of the current legal framework to address issues of hate speech and incitement to racial hatred.
31. For example, it should be noted that both section 61 and section 131 are limited to instances of racial disharmony. Jurisprudence indicates that the provisions may only be applied to religious groups where membership is restricted to a pre-existing cultural group with a long-shared history and common belief as to their historical antecedents<sup>11</sup>. The provisions are therefore unable to be utilised in respect of religious hate speech directed at Muslim New Zealanders, who, for the most part, belong to a variety of ethnic minority communities in New Zealand.
32. The primary mechanism for dealing with complaints about section 61 is referral to mediation through the Human Rights Commission. If mediation does not resolve the complaint then a complainant can take a claim to the independent Human Rights Review Tribunal for determination. Some complainants and potential complainants have indicated to the Commission that they do not believe that mediation is an appropriate framework for dealing with complaints that regard hate speech or the incitement of racial disharmony.
33. In addition to sections 61 and 131 of the HRA, the Harmful Digital Communications Act 2015 provides that persons who are the subject to a harmful digital communication may lodge a complaint with Netsafe, an approved investigation and complaint resolution agency under that Act<sup>12</sup>. This includes communications that racially

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<sup>10</sup> *Wall v Fairfax* [2017] NZHRRT 17

<sup>11</sup> *King-Ansell v Police* [1979] 2 NZLR 531, *Mandla v Dowell Lee* [1983] 2 AC 548, for commentary see *Brookers Human Rights Law*, Vol.1, at HR21.13(3)

<sup>12</sup> Harmful Digital Communications Act 2015 sections 7-9

denigrate an individual<sup>13</sup>. If Netsafe are unable to resolve the complaint, the complainant may bring proceedings in the District Court and seek a range of orders, including removal of the digital communication in question and cessation and restraint of the conduct of the person responsible for it<sup>14</sup>.

34. **Recommendation 2: That the Committee urges the Government to:**

**(a) Review the adequacy of current legislation in addressing and sanctioning hate speech and incitement to racial disharmony, including hateful and disharmonious speech targeted at the religion and beliefs of ethnic minority communities; and**

**(b) Following that review, make any changes necessary to ensure that the legislative framework is adequate and contains appropriate and effective sanctions.**

“Hate Crime” data (LOT 7)

35. Safety and security of the person is a fundamental human right. Ensuring the safety of all people in New Zealand from hate motivated crime is a central component of achieving harmonious race relations. Data on both hate-motivated incidents and “hate crimes” provide important indicators of the state of public security and actual levels of violence affecting communities.

36. There is no specific category of offence identified as a “hate crime”. However, under the Sentencing Act, where a crime has been committed wholly or partly because of a hostility towards a group of persons due to an enduring common characteristic such as race, colour, nationality, or religion, it is regarded as an aggravating factor for the purpose of sentencing<sup>15</sup>.

37. The actual number of complaints, prosecutions and convictions relating to hate motivated crime is still not systematically recorded in New Zealand. In the absence of robust data on hate crime, information about when and how this is occurring is available only in an ad hoc way from localised studies and media reports.

38. New Zealand needs better information on the incidence and nature of “hate crimes” than is currently available because:

(a) there is a lack of understanding of the scope and magnitude of the problem – one reason for this is that hate crimes are often under-reported;

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<sup>13</sup> Ibid s 6

<sup>14</sup> Ibid s 19

<sup>15</sup> Section 9(1)(h) Sentencing Act 2002

- (b) an understanding of which groups are being targeted enables the allocation of criminal justice resources in an efficient and effective manner; and
- (c) better information and data would make it possible to better evaluate the efficacy of the justice system (and community-based) response.

39. **Recommendation 3: That the Committee urges the New Zealand Government to commit, as a matter of priority, to the collection of data on hate motivated crimes disaggregated by race and the other characteristics listed under s 9(1)(h) of the Sentencing Act 2002.**

Situation of members of the Māori and Pasifika communities (arts 2-7).

Treaty of Waitangi

40. The Treaty of Waitangi (1840) is New Zealand's founding document and has major significance for human rights and harmonious race relations in New Zealand. The Treaty is strongly aligned with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP); the four articles of the Treaty reflect fundamental human rights principles.
41. The place of the Treaty of Waitangi in New Zealand's constitutional arrangements was considered through the Constitutional Review process. The Panel recommended the Government:<sup>16</sup>
- (a) continue to affirm the importance of the Treaty as a foundational document;
  - (b) ensure a Treaty education strategy is developed that includes the current role and status of the Treaty and the Treaty settlement process so people can inform themselves about the rights and obligations under the Treaty;
  - (c) support the continued development of the role and status of the Treaty under the current arrangements as has occurred over the past decades;
  - (d) set up a process to develop a range of options for the future role of Treaty, including options within existing constitutional arrangements and arrangements in which the Treaty is the foundation; and
  - (e) invite and support the people of Aotearoa New Zealand to continue the

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<sup>16</sup> <http://www.ourconstitution.org.nz/Recommendations>

conversation about the place of the Treaty in our constitution.

42. In its twenty-first to twenty-second periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination the Government stated that “[t]he Government welcomed the Panel’s report, reflecting the views of over 5,000 New Zealanders and organisations. It will prove a valuable resource for New Zealanders now and in the future.”<sup>17</sup> However, to date no concrete steps have been taken by the Government to implement the Panel’s recommendations.
43. Alongside the work of the Constitutional Advisory Panel, an independent, Māori-led initiative has also undertaken wide-ranging consultation and issued its own report. The report of Matike Mai Aotearoa<sup>18</sup> also recommended further public conversations, and proposed for discussion on a range of constitutional models which reflect and uphold the Treaty of Waitangi and indigenous rights.
44. More recently, in 2016 proposed Government reforms to the Te Ture Whenua Māori Act, the statute that governs Māori land, were found by the Waitangi Tribunal to have an insufficient mandate from Māori. The Tribunal considered that if the reforms were enacted they would accordingly breach the principles of the Treaty of Waitangi<sup>19</sup>.
45. **Recommendation 4: That the Committee urges New Zealand Government to:**
  - (a) **Urgently progress the recommendations of the Constitutional Advisory Panel regarding the role of the Treaty within New Zealand’s constitutional arrangements, in partnership with Māori.**
  - (b) **Ensure that its public policy and legislative initiatives comply with the participation principle of Article 2 of the Treaty of Waitangi.**

#### Progress in settling historic breaches of the Treaty of Waitangi

46. Between January 2012 and March 2017, 49 Bills have been passed by Parliament giving effect to Treaty settlements.<sup>20</sup> As Māori and the Crown continue to make

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<sup>17</sup> New Zealand’s twenty-first to twenty-second periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination (Submitted December 2015) at [45].

<sup>18</sup> Matike Mai Aotearoa, (2016), *He Whakaaro Here Whakaumu mo Aotearoa: Final report of Matike Mai Aotearoa – the Independent Working Group on Constitutional Transformation*. Accessible at: <http://www.converge.org.nz/pma/MatikeMaiAotearoaReport.pdf>.

<sup>19</sup> Waitangi Tribunal, *He Karo Whenua Ka Rokohanga: Report on Claims about the reform of the Te Ture Whenua Māori Act 1993*, WAI 2478, accessed [www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz), at p 355, ,

<sup>20</sup> <https://www.govt.nz/assets/Documents/OTS/Quarterly-report-to-31-Mar-2017.pdf>

progress with Treaty settlements, innovative forms of redress have emerged. These have related to things such as recognition of mana and recognition of cultural taonga.

47. The Waitangi Tribunal's WAI 262<sup>21</sup> report on the Treaty rights of Māori as regards indigenous flora, fauna and cultural *taonga* (which, among other things, includes traditional knowledge and intellectual property as regards cultural ideas, design and language), provides a framework for the better realisation in Aotearoa New Zealand. Given the comparatively small size of Aotearoa New Zealand, and the extent of the inquiry undertaken by the Tribunal, implementation of this framework should be achievable. However, it is notable that, to date, a full Government response to WAI 262 has not yet been issued.
48. Furthermore, there remains concern that the Government's administration of the historic claims settlement process, which gives preference to negotiating with 'large natural groupings' (LNGs), has the effect of excluding smaller groups, such as hapū and whānau, from enjoying their right to participate. In its 2016 submission to the Expert Mechanism on the Rights of Indigenous People (EMRIP), the Monitoring Mechanism of the Iwi Chairs Forum (MM) noted that:

*In practice... this policy conflicts with one of the core government principles upon which Treaty settlements are based - that in attempting to resolve outstanding claims the Government should not create further injustices ...Serious concerns have been raised by Māori about this process with a number of urgent claims being made to the Waitangi Tribunal<sup>22</sup> providing evidence of a lack of representativeness and accountability, unfair processes and marginalisation of smaller groups. This has resulted in poor outcomes leading to some claimant's rights and interests not being adequately represented within the settlement process.*

49. The MM further noted that the UN Human Rights Committee<sup>23</sup>, the UN Committee on Economic, Cultural and Social Rights<sup>24</sup> and two previous Special Rapporteurs on the Rights of Indigenous People<sup>25</sup> have recommended that the New Zealand

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<sup>21</sup> [https://forms.justice.govt.nz/search/Documents/WT/wt\\_DOC\\_68356606/KoAotearoaTeneiTT2Vol2W.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68356606/KoAotearoaTeneiTT2Vol2W.pdf)

<sup>22</sup> For example, Waitangi Tribunal *The Ngapuhi Mandate Inquiry Report* (Wai 2490, 2015), Waitangi Tribunal *The Te Aroha Maunga Settlement Process Report* (Wai 663, 2014) and Waitangi Tribunal *The Final Report on the Impacts of the Crown's Treaty Settlement Policies on Te Arawa Waka and Other Tribes* (Wai 1385, 2007).

<sup>23</sup> Committee on Human Rights *Concluding observations of the Human Rights Committee: New Zealand* 98th session CCPR/C/NZL/CO/5 (2010) para 21

<sup>24</sup> Committee on Economic, Social and Cultural Rights *Concluding observations of the Committee on Economic, Social and Cultural Rights: New Zealand* 48th session E/C.12/NZL/CO/3 (2012) para 11.

<sup>25</sup> Human Rights Council *Report of the Special Rapporteur on the Rights of Indigenous Peoples: The situation of Māori people in New Zealand* 18th session A/HRC/18/35/Add.4 (2011) paras 70-72 and Human Rights Council *Report of the*

Government ensures that it has in place an inclusive model that fully complies with international human rights standards.

50. In addition, in a recent 2017 judgment the Supreme Court has ruled that the Crown has enforceable fiduciary duties towards Māori in relation to 19th century land purchases<sup>26</sup>. The effect of this decision is to provide Māori with an additional legal means of redress in respect of historic claims concerning land.
51. **Recommendation 5: That the Committee urges the Government to:**
- (a) Outline its progress to date in implementing the recommendations from the Waitangi Tribunal’s Wai 262 decision and issue a concrete plan and timetable for implementing the remainder.**
- (b) Take immediate steps to review its “large natural group” policy with a view to replacing it with a policy that fully complies with both the Treaty of Waitangi and international human rights standards regarding the participation rights of indigenous people.**

#### Criminal Justice System

52. New Zealand has a disproportionately high incarceration rate. New Zealand has 204 prisoners per 100,000 people, the 7<sup>th</sup> highest in the OECD.
53. While Māori make up only 15% of New Zealand’s population, they account for a disproportionate amount of those coming into contact with the criminal justice system – both as victims and offenders. Rates of victimisation across most offence types – particularly violent offences – are significantly higher for Māori. Māori are also over-represented at the other end of the criminal justice spectrum; in New Zealand’s arrests, prosecutions, convictions, imprisonments and re-imprisonments.
54. The Human Rights Commission was successful in receiving funding from the Special Fund of OPCAT for a project to review seclusion and restraint practices. The resulting report written by an expert in this area, Dr Sharon Shalev, found that prisoners of non-European descent were much more likely to be on directed segregation (being separated for disciplinary reasons). Between May and October 2016, Māori and Pasifika made up approximately 80 per cent of Directed Segregations. By comparison, New Zealanders of European descent accounted for

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*Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people: Mission to New Zealand* 62nd session E/CN.4/2006/78/Add.3 (2006) paras 89-90 and 93-95

<sup>26</sup> *Wakatu v Attorney-General* [2017] SCNZ 17

15 per cent.<sup>27</sup>

55. At every stage in the criminal justice process, the outcomes for Māori are generally more severe than they are for non-Māori. Māori are less likely to receive diversion or cautions and are more likely to be sentenced to prison. Māori are more than six times more likely to be imprisoned than non-Māori. If Māori were imprisoned at the same rate as non-Māori the total prison population would roughly halve and New Zealand's incarceration rate would drop to 20<sup>th</sup> in the OECD.

56. As the Working Group on Arbitrary Detention ("WGAD") acknowledged, it is important to address those underlying risk factors which increase the likelihood of exposure to the criminal justice system. The WGAD stated:<sup>28</sup>

*The search needs to continue for creative and integrated solutions to **the root causes which lead to disproportionate incarceration rates of the Māori population.*** (Emphasis added)

57. Further guidance has also been provided by the Expert Mechanism on the Rights of Indigenous Peoples study and advice on access to justice<sup>29</sup>. The study highlighted the interrelatedness of access to justice with the realisation of other rights including self-determination and collective rights; and affirmed that the Declaration must be the basis of all actions. It recommended recognition and support of traditional justice systems and the need to address the underlying issues which prevent indigenous peoples enjoying their human rights to justice. It also emphasised the need for cooperation and partnership with indigenous peoples to determine effective strategies, and to address indigenous over-representation in criminal justice systems.

58. A New Zealand Police crime and crash prevention strategy, *The Turning of the Tide*,<sup>30</sup> sets targets for reduced Māori offending, repeat offending and apprehensions. The *Turning of the Tide* approach is based on partnerships with iwi and prevention rather than enforcement. It is making a difference in some key areas and the Commission understands that there is an ongoing commitment to expand the strategy across other areas of the justice system.

59. The Waitangi Tribunal has recently reported on a claim related to Māori over-

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<sup>27</sup> Shalev, S: "Thinking Outside the Box?" A review of seclusion and restraint practices in New Zealand. 2017 at page 26.

<sup>28</sup> Working Group on Arbitrary Detention, *Mission to New Zealand*, A/HRC/30/36/Add.2 (6 July 2015)

<sup>29</sup> Expert Mechanism on the Rights of Indigenous Peoples, *Access to justice in the promotion and protection of the rights of indigenous peoples*, A/HRC/EMRIP/2014/3/Rev.1, adopted 27<sup>th</sup> session of the Human Rights Council, A/HRC/27/64, 8 August 2014

<sup>30</sup> <http://www.police.govt.nz/sites/default/files/resources/the-turning-of-the-tide-strategy.pdf>

representation in the justice system<sup>31</sup>: specifically, efforts by the Department of Corrections to address Māori reoffending. The Tribunal found that the Government had breached its obligations under the Treaty of Waitangi by not adequately prioritising the reduction of Māori reoffending<sup>32</sup>. In particular, there was no specific plan or strategy for Māori, and in fact disparities between Māori and non-Māori had been widening. Among the Tribunal's recommendations is for the Corrections Department to work with its Māori partners to design and implement a new Māori-specific strategic framework, set and commit to targets, and regularly and publicly report on progress<sup>33</sup>.

60. **Recommendation 6: That the Committee urges the Government to commit to addressing the disproportionate representation of Māori in the criminal justice system by:**

**(a) Ensuring actions are based on the Treaty and UNDRIP, and are informed by the Waitangi Tribunal findings and EMRIP study;**

**(b) Stepping up its efforts to address the root causes which lead to disproportionate incarceration rates of Māori; and**

**(c) Ensuring that justice, social sector and care and protection initiatives for Māori are linked up, have transparent governance frameworks with a designated chairperson of influence, and are based on partnerships with, and inclusion of, Iwi.**

#### Housing, health outcomes and employment (LOT 12)

61. The 2015 OECD Economic Survey on New Zealand noted the disproportionate socio-economic disparities experienced by Māori and Pasifika.<sup>34</sup> While acknowledging that New Zealand has generally done well in enabling economic and social participation of its people, income inequality and poverty have increased, rising housing costs have hit the poor hardest and the rate of improvement in many health outcomes has been slower for disadvantaged groups than for others. The survey noted: <sup>35</sup>

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<sup>31</sup> Waitangi Tribunal, *Tu Mai Te Rangī: Report on the Crown and disproportionate re-offending rate, Pre-publication version*, WAI 2540, 2017, accessed [https://forms.justice.govt.nz/search/Documents/WT/wt\\_DOC\\_121273708/Tu%20Mai%20Te%20Rangi%20W.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_121273708/Tu%20Mai%20Te%20Rangi%20W.pdf)

<sup>32</sup> Ibid p 87

<sup>33</sup> Ibid p87-90

<sup>34</sup> OECD, *Economic Surveys: New Zealand 2015* (June 2015) accessed [http://www.keepeek.com/Digital-Asset-Management/oecd/economics/oecd-economic-surveys-new-zealand-2015\\_eco\\_surveys-nzl-2015-en#.WXVRxliGOUk#page1](http://www.keepeek.com/Digital-Asset-Management/oecd/economics/oecd-economic-surveys-new-zealand-2015_eco_surveys-nzl-2015-en#.WXVRxliGOUk#page1)

<sup>35</sup> Ibid page 41

*Of particular concern are those New Zealanders who face persistently low incomes, material hardship and poor long-term outcomes across a range of dimensions. While Māori and Pasifika are less than a quarter of the population, they are significantly over-represented in these groups.*

## Housing

62. New Zealand's severely deprived housing population has risen both numerically and proportionately during the twelve-year period between the 2001 and 2013 Census reports.<sup>36</sup> Insecure housing exacerbates ill health, and is associated with poorer educational outcomes for children, as they may have to shift schools frequently, have more days off school, and lack an appropriate space in which to do homework. Overcrowding is disproportionately spread across age, ethnic and socio-economic lines. Data from the 2013 Census indicated that over half of New Zealand's 72,124 crowded households (representing about 10 percent of the population) have two or more children (at least one child aged between 5 and 14 years) living in them.<sup>37</sup>
63. The 2013 Census data also indicated that 38% of Pasifika, 20% of Māori and 18% of Asian people live in crowded households, compared to 4% of Europeans.<sup>38</sup> Furthermore, of those New Zealanders who live in crowded households, approximately 35,000 (9%) live in households that do not use any form of heating in their houses.<sup>39</sup> The highest percentage (16%) is in the Counties Manukau DHB region, where 14,103 people living in crowded households use no heating. This region, home to many of New Zealand's most economically deprived urban communities, also experienced a 9% increase in overcrowding in the period between the 2006 and 2013 Census surveys.<sup>40</sup>
64. The Government has taken some action to improve housing quality, which has led to improvements in health outcomes. The Warm Up New Zealand home insulation funding programme has been found to correlate with reduced hospitalisation rates for children in low income households.<sup>41</sup> Furthermore, amendments to the Residential Tenancies Act will require mandatory insulation standards for all social housing and rental accommodation by 2019. However, despite these developments,

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<sup>36</sup> Howden-Chapman P, *Home Truths: Confronting New Zealand's Housing Crisis*. Wellington (NZ), Bridget Williams Books, 2015, endnote 35, p. 97, from K Amore, *Severe Housing Deprivation 2001-2013*, He Kainga Oranga/Housing and Health Research Programme, Wellington.

<sup>37</sup> Ministry of Health. 2014. *Analysis of Household Crowding based on Census 2013 data*. Wellington: Ministry of Health, p vi <http://www.health.govt.nz/publication/analysis-household-crowding-based-census-2013-data>

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Housing and Health He Kainga Oranga, *Summary Paper Two: Evaluation of Warm Up New Zealand: Heat Smart Programme*, July 2016.

significant numbers of New Zealand homes are inadequately insulated. The Energy Efficiency and Conservation Authority (EECA) estimates that at least 600,000 houses still have no or inadequate ceiling or underfloor insulation, of which 300,000 are low income households.

65. Māori home ownership rates have declined from 75% in 1926 to 28.2% in 2013. The consequence of this decline in home ownership was an increase in the number of Māori whānau who became long-term renters, either in the private sector or as Housing New Zealand tenants.<sup>42</sup>
66. Māori make up 15% of the New Zealand population but comprise:<sup>43</sup>
  - (a) 34.5% of those who live in severe housing deprivation;
  - (b) 34.5% of all Housing NZ tenants (Social housing); and
  - (c) 28.2% of all Accommodation Supplement recipients.
67. Pasifika make up approximately 7% of the population but comprise:
  - (a) 25% of those who live in severe housing deprivation;<sup>44</sup> and
  - (b) 27% of all Housing NZ tenants (Social housing).<sup>45</sup>
68. **Recommendation 7: That the Committee urges the New Zealand Government, working in partnership with Māori and other key groups, to implement a comprehensive plan that identifies actions, builds ownership and measures results to meet the target of the SDG Agenda that all people in New Zealand live in adequate, affordable and safe housing by 2030. The implementation plan should have a particular focus on addressing housing affordability, habitability and security of tenure.**

### *Health Outcomes*

69. As a group, Māori have poorer health outcomes than non-Māori for many indicators:
  - (a) the life expectancy gap between Māori and non-Māori has been steadily narrowing. The difference in life expectancy for Māori males and non-Māori

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<sup>42</sup> Ministry of Business, Innovation and Employment, (July 2014), He Whare Āhuru, he Oranga Tāngata: Māori Housing Strategy 2014 - 2025, at p 4.

<sup>43</sup> Ibid.

<sup>44</sup> University of Otago, Severe Housing Deprivation: The problem and its measurement (2013)

<sup>45</sup> Housing New Zealand, Briefing to Incoming Minister (2014).

- males has dropped from around 13 years in 1950 -1952 to around 7 years today.<sup>46</sup>
- (b) Māori have higher rates than non-Māori for many health conditions and chronic diseases, including cancer, diabetes, cardiovascular disease and asthma;<sup>47</sup>
- (c) Māori experience higher disability rates;<sup>48</sup> and

70. Māori adults and children are also more likely than their non-Māori counterparts to have unmet health needs.<sup>49</sup> In this regard, barriers continue to exist in relation to cost, childcare availability and transport.
71. Pasifika also continue to experience poorer health outcomes than other groups:
- (a) Life expectancy is more than four years less than for the total population;<sup>50</sup>
  - (b) Pasifika experience higher levels of unmet primary health care needs – the cost of visits to doctors and prescriptions have been identified as key barriers;
  - (c) Infant mortality rates have remained static at about 20% higher than for the rest of the population; and
  - (d) Pasifika have higher rates of infectious diseases than other New Zealanders.<sup>51</sup>

#### *Health outcomes for Māori and Pasifika children*

72. Māori children and young people are over-represented in negative health outcomes. For example, around one in five Māori children has asthma – a rate 1.4 times that of non-Māori children.<sup>52</sup> Māori children are almost twice as likely to be either obese or morbidly obese compared with non-Māori children.<sup>53</sup> Māori young people have a suicide rate that is 2.8 times higher than that of non-Māori youth.<sup>54</sup> Māori children have a higher rate of unmet health needs: Māori children were 1.4 times more likely not to have accessed primary health when they needed it than non-Māori children.<sup>55</sup> Māori children are also more likely to be exposed to the risk factors linked to poor health, social, educational and developmental outcomes.<sup>56</sup>

<sup>46</sup> [http://www.stats.govt.nz/browse\\_for\\_stats/health/life\\_expectancy/period-life-tables.aspx](http://www.stats.govt.nz/browse_for_stats/health/life_expectancy/period-life-tables.aspx)

<sup>47</sup> Ministry of Health, (2015). *Tatau Kahukura: Māori Health Chart Book 2015 (3rd edition)*. Wellington: Ministry of Health. <http://www.health.govt.nz/publication/tatau-kahukura-Māori-health-chart-book-2015-3rd-edition>

<sup>48</sup> Ibid.

<sup>49</sup> Supra note 23.

<sup>50</sup> Supra note 22.

<sup>51</sup> [http://www.bpac.org.nz/BPJ/2010/November/docs/BPJ\\_32\\_infectious\\_pages\\_10-14.pdf](http://www.bpac.org.nz/BPJ/2010/November/docs/BPJ_32_infectious_pages_10-14.pdf)

<sup>52</sup> Ministry of Health, (2015), *Annual Update of Key Results 2014/15: New Zealand Health Survey*, at p 51. Accessible at: <http://www.health.govt.nz/publication/annual-update-key-results-2014-15-new-zealand-health-survey>

<sup>53</sup> Ibid at p 17.

<sup>54</sup> Ibid at p 19

<sup>55</sup> Ibid at p viii.

<sup>56</sup> Ministry of Health, (2015), *Health and Independence Report 2015*, at pp 32-33. Accessible at:

<http://www.health.govt.nz/system/files/documents/publications/health-and-independence-report-2015-oct15.pdf>.

73. In addition, the 2016 *Family and Whānau Status Report* produced by the Social Policy Evaluation and Research Unit (SUPERU) indicates that Pasifika families with children experience similarly disproportionate negative health outcomes.<sup>57</sup> For example, Pasifika children are much more likely to be obese and more likely to face an unmet primary healthcare need than other non-Pasifika children.<sup>58</sup>
74. Key issues affecting the health of Māori children and young people, include poverty, material deprivation and poor-quality housing. Poverty rates for Māori and Pasifika children are consistently higher than for European children.
75. The Government’s Better Public Services (“BPS”) targets have led to a significant reduction in hospitalisation rates for children with first episode rheumatic fever, since the policy’s inception in 2011.<sup>59</sup> Immunisation rates have also increased significantly during that period, and are currently at just under 94%, just below the BPS target rate of 95%.<sup>60</sup>
76. There is, however, a stark disparity between the success of the BPS targets, which have led to an improvement in the targeted child health outcomes, and the overall decline in health outcomes for children living in disadvantageous social conditions, particularly Māori and Pasifika children. In addition, single parent families with younger children across the ethnic spectrum experience low mental health outcomes.<sup>61</sup>
77. **Recommendation 8: That the Committee recommends that the New Zealand Government works in partnership with Māori and other affected communities to:**
- (a) Expand the current set of child health targets to include targets aimed at:**
- (i) Reducing overall hospitalisations for medical conditions with a social gradient; and**
- (ii) Reducing ethnic disparities in both hospitalisation and Mortality rates, particularly amongst Māori and Pasifika children.**
- (b) Increase the provision and accessibility of primary health care services to**

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<sup>57</sup> Social Policy Evaluation and Research Unit, 2016 *Family and Whānau Status Report*, p39, 41, 46, [http://www.superu.govt.nz/sites/default/files/F%26W%20Status%20Report%202016\\_0.pdf](http://www.superu.govt.nz/sites/default/files/F%26W%20Status%20Report%202016_0.pdf)

<sup>58</sup> Sorensen, Jensen et al, *Pasifika in New Zealand: How are we doing?*, Pacific Futures Ltd, 2015, accessed <http://pasifikafutures.co.nz/wp-content/uploads/2015/06/PAF0018-Pasifika-People-in-NZ.pdf>

<sup>59</sup> <http://www.ssc.govt.nz/bps-supporting-vulnerable-children#result4>

<sup>60</sup> Ibid.

<sup>61</sup> Social Policy Evaluation and Research Unit, 2016 *Family and Whānau Status Report*, p 41, [http://www.superu.govt.nz/sites/default/files/F%26W%20Status%20Report%202016\\_0.pdf](http://www.superu.govt.nz/sites/default/files/F%26W%20Status%20Report%202016_0.pdf)

**socio-economically deprived communities, including primary health care delivered by Whānau Ora providers.**

*Employment*

78. While labour market outcomes for Māori have continued to improve slightly; the Māori unemployment rate (11%) at September 2016 was twice the national rate.<sup>62</sup> Labour market participation was also slightly lower (at 66.8% compared to the national rate of 69.2%).<sup>63</sup>
79. The rate of Māori young people not engaged in employment, education or training (“NEET”), while lessening slightly in recent years, is also higher than that of other ethnic groups. As at September 2016, the NEET rate for Māori was around double that of Europeans (19.5% for Māori and 9.2% for Europeans).<sup>64</sup>
80. The labour market participation rate for Pasifika in March 2017 was 67.2% (up 4.2% from the previous year). Fewer Pasifika were NEET, 17%. The Pasifika unemployment rate also dropped to 10%. However, it remained almost double the national average.
81. **Recommendation 9: That the Committee urges the Government to work in partnership with Māori and Pasifika to:**
- (a) Set targets to increase the representation of Māori and Pasifika in corporate governance and senior management in the public sector over the next reporting period; and**
  - (b) Strengthen its efforts to increase the participation of Māori and Pasifika in the labour market.**

State Care (LOT 13)

*Historic cases of abuse in state care*

82. Between the 1950s and 1980s more than 100,000 vulnerable children and adults were taken from their families and placed in children’s homes and mental health institutions. More than half of these children were Māori, with some state homes reporting that upwards of 80 per cent of their residents were Māori. Some individuals were put into care for minor transgressions such as truanting, others

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<sup>62</sup> <http://www.mbie.govt.nz/info-services/employment-skills/labour-market-reports/Māori-labour-market/Māori-in-the-labour-market-report/Māori-in-the-labour-market-2011-2016>

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

found themselves there after a family tragedy. Many New Zealanders who were placed in government institutions suffered sexual, physical and psychological abuse.

83. The systemic reasons for the over-representation of Māori in state care and the impact of these actions, both for individuals and for Māori communities, has never been fully or publicly investigated.
84. Currently, allegations of abuse in State care are dealt with through a variety of mechanisms. These include:
- (a) The existing social security regime;
  - (b) The Accident Compensation framework;
  - (c) The Ministry of Social Development's Historic Claims process; and
  - (d) The Courts (to a very limited degree).
85. The Commission continues to be concerned that existing processes do not enable examination of underlying systemic questions and therefore do not ensure that events like this are prevented from occurring in the future.

#### *Reform of the child protection system*

86. In 2016 and 2017, the Government introduced significant legislative reforms to the child protection system<sup>65</sup>. This has included the establishment of a new ministry, the Ministry for Vulnerable Children/Oranga Tamariki (MVCOT), which has taken over responsibility for the child protection system in New Zealand.
87. The legislative reforms are largely progressive in terms of human rights impact, and include provisions that explicitly recognize and seek to uphold the rights of children under the UN Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities<sup>66</sup>. The legislation has also introduced new obligations upon the Chief Executive of MVCOT to improve outcomes for Māori children<sup>67</sup>. Māori children are disproportionately subject to statutory care and protection interventions and constitute over 55 percent of children in state care.<sup>68</sup>
88. However, the reforms have generated concern amongst Māori, due to its weakening of the incumbent care and protection principles that recognise and prioritise the

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<sup>65</sup> The Children, Young Persons and their Families (Advocacy, Workforce and Age-setting) Amendment Bill 2016 and the Children, Young Persons and their Families (Oranga Tamariki) Amendment Bill 2017

<sup>66</sup> Clause 5, Children, Young Persons and their Families (Oranga Tamariki) Amendment Bill 2017

<sup>67</sup> Ibid, clause 12, new s 7A

<sup>68</sup> Office of the Children's Commissioner, *State of Care Report 2015*, p 10 accessed <http://www.occ.org.nz/assets/Publications/OCC-State-of-Care-2015.pdf>

primary role of whānau, hapū and iwi in the care of the children<sup>69</sup>. This led to the Māori Women's Welfare League filing a claim in the Waitangi Tribunal that the reforms breach the Treaty of Waitangi<sup>70</sup>.

89. In addition, the reforms have introduced provisions that are designed to enable government agencies to share personal information of children and their families in order to undertake predictive risk modelling procedures<sup>71</sup>. The purported purpose of predictive risk modelling is to enable more accurate targeting of resources at specific vulnerable children and families. However, predictive risk modelling also risks discriminating against vulnerable groups and may have particular implications for Māori children and whānau in this respect.
90. The Government has announced the development of a Privacy, Human Rights and Ethics Framework to address these concerns. The Committee on the Rights of the Child (CRC) addressed the issue in their 2016 Concluding Observations on New Zealand and recommended that the Government ensure *“that that the Privacy, Human Rights and Ethics framework governing predictive risk modelling takes in consideration the potentially discriminatory impacts of this practice, is made public and is referenced in all relevant legislation”*.<sup>72</sup> However, despite the CRCs recommendation, the Government is yet to make the framework publicly available and did not include reference to it in the legislative reforms it subsequently introduced in 2017.
91. **Recommendation 10: That the Committee urges the Government to:**
- (a) Initiate an independent inquiry into the abuse of people held in State care in order to identify the systemic issues that permitted this to occur and the broader impact of these events on Māori communities;**
  - (b) Publicly apologise to those who were affected, including those who were abused, their families and whānau.**
  - (c) Take other appropriate steps to acknowledge the harm that has been caused to the victims and to provide them with appropriate redress and rehabilitation; and**
  - (d) Take necessary steps to ensure that similar events do not happen again.**

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<sup>69</sup> Children Young Persons and their Families Act 1989 s 13(2)(b)-(c)

<sup>70</sup> Statement of Claim dated 2 December 2016; accessed <http://img.scoop.co.nz/media/pdfs/1612/CCF04122016.pdf>

<sup>71</sup> Children, Young Persons and their Families (Oranga Tamariki) Amendment Bill 2017, clause 38

<sup>72</sup> UN Committee on the Rights of the Child, *Concluding Observations on the Fifth Periodic Report of New Zealand*, CRC/C/NZL/CO/5, 30 September 2016, para 20(b)

- (e) **Ensure that the implementation of legislative reforms to the care and protection system fully conforms with the principles of the Treaty of Waitangi.**
- (f) **Urgently implement and make publicly available the Privacy, Human Rights and Ethics Framework governing predictive risk modelling in the child protection sector.**

#### Education (LOT 14)

- 92. New Zealand’s National Certificates of Educational Achievement (“NCEA”) are national qualifications for senior secondary school students. NCEA is recognised by employers and used as the benchmark for selection by universities and polytechnics. Education achievement of Level 2 NCEA is a significant indicator of positive outcomes in later life.
- 93. *Ka Hikitia – Accelerating Success 2013-2017* outlines five focus areas to raise Māori achievement in education, namely improving Māori language, increasing early-childhood education (“ECE”), improving achievement in primary and secondary education, increasing success in tertiary education, and for education sector agencies to create conditions for Māori student to achieve. Since *Ka Hikitia* was introduced more Māori children are attending ECE and Māori students’ performance in National Standards (reading, writing and mathematics) and attainment of NCEA has increased. Research also indicates that where students are taught in culturally responsive learning environments and are exposed to their indigenous language and culture they are more likely to succeed.
- 94. Māori participation and achievement in tertiary education has also increased in recent years. Twenty-eight percent of Māori students were studying at Bachelors level and above in 2014, up from 21 % in 2007. The rate at which Māori complete qualifications has also increased: of Māori who started full-time study at Level 4 or above in 2007, 62% had completed a qualification within five years, compared with a rate of 53 % for those who started in 2004.<sup>73</sup>
- 95. Despite these improvements, current data shows a continuing gap between Māori and other ethnicities. Data released in 2017 shows that 71.1% of 18-year-old Māori have an NCEA Level 2 qualification or above compared with 87.3% for Europeans

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<sup>73</sup> New Zealand’s twenty first to twenty-second periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination

and 83.3% overall.<sup>74</sup> Schools continue to stand-down, suspend, and exclude more Māori students than any other ethnic group.<sup>75</sup>

96. The *Pasifika Education Plan: 2013 -2017* is aimed at raising participation, engagement and achievement from early learning through to tertiary education. It sets the following targets which are also BPS targets:

- (a) 85% of children starting school will have participated in early childhood education by 2017; and
- (b) 85% of all 18-year-olds will have achieved NCEA level 2 or an equivalent qualification in 2017.

97. Pasifika students' performance in NCEA level 2 has progressively improved. Seventy-eight percent of Pasifika students achieved NCEA level 2 in 2015 compared with 65% in 2011.<sup>76</sup> Pasifika participation and achievement in tertiary education has also increased in recent years.

98. However, despite these improvements the gap between Pasifika and other ethnicities remains. Data released in 2017 shows that 77.6% of Pasifika 18-year-olds had at least NCEA Level 2, compared with 87.3% of 18-year-olds of European descent, and the overall national rate of 83.3%.<sup>77</sup>

99. **Recommendation 11: That the Committee urges the Government to:**

- (a) Reduce the gap in educational outcomes between Māori and Pasifika, and other ethnicities; and**
- (b) To do this in consultation and partnership with iwi and Pasifika communities.**
- (c) Increase its investment in indigenous language retention and culturally responsive learning environments.**

#### Violence against Māori and Pasifika women (LOT 18)

100. Despite the efforts of successive governments, violence and abuse remains one of New Zealand's greatest contemporary challenges. Children, women and girls, disabled people, and Māori and Pasifika suffer greater amounts of violence and

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<sup>74</sup> [http://www.stats.govt.nz/browse\\_for\\_stats/snapshots-of-nz/nz-social-indicators/Home/Education/18-year-olds-with-higher-qualif.aspx](http://www.stats.govt.nz/browse_for_stats/snapshots-of-nz/nz-social-indicators/Home/Education/18-year-olds-with-higher-qualif.aspx)

<sup>75</sup> <http://www.educationcounts.govt.nz/statistics/indicators/main/student-engagement-participation/Stand-downs-suspensions-exclusions-expulsions>

<sup>76</sup> Supra note 45.

<sup>77</sup> Ibid.

abuse than others. Bullying in our schools also disproportionately affects disabled students and GLBTI students.

101. Most family violence, including sexual violence, is not reported to the criminal justice system so reported offences may rise without indicating an increase in actual violence and abuse. Of reported violence, over 50% of it is perpetrated by 6% of the population on 6% of the population. There is therefore a significant group of multiple victims and offenders.
102. The Government is committed to addressing the high levels of violence and abuse in New Zealand and has established a substantial work programme which touches on law and policy, awareness raising, training and support, and culture change. This work is substantive and ongoing.
103. For example, in 2014 the Government established a Ministerial Group comprising Ministers responsible for 16 portfolios who are committed to making collective decisions to systematically improve the whole family violence system in New Zealand.
104. In addition to completing background research and analysis, a number of new approaches and pilots are now being tested throughout New Zealand. Once evidence on effectiveness has been gathered, the Government has advised that it will consider further investment to improve the family violence system.
105. Furthermore, in 2017 the Government has introduced significant legislative reform to New Zealand's domestic violence laws in the form of the Family and Whānau Violence Legislation Bill. The Bill expands the scope of legal and support service interventions and is designed to support a more co-ordinated and effective response to family violence<sup>78</sup>. It also introduces a new principle that recognises that responses to family violence should be culturally appropriate and, in particular, responses involving Māori should reflect *tikanga* (Māori cultural values)<sup>79</sup>. The Bill is currently under the consideration of Parliament's Justice and Electoral Committee.
106. **Recommendation 12: That the Committee requests that the Government reports back within 12 months on progress made to address violence and abuse against women and girls with data disaggregated by race.**

#### Situation of non-citizens, including migrant workers, asylum seekers and refugees (arts. 5 -7)

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<sup>78</sup> Family and Whānau Violence Legislation Bill, Explanatory Note, <http://www.legislation.govt.nz/bill/government/2017/0247/latest/d56e2.html>

<sup>79</sup> Ibid clause 7, s 1B(i)

## International Students

107. Between 110,000 -116,000<sup>80</sup> overseas students come to New Zealand to study each year. Annually, these students contribute approximately \$4 billion to New Zealand's economy<sup>81</sup> and the Government's Education New Zealand strategy is to continue to increase this revenue over coming years. The largest number of students come from Asia and South-East Asia.
108. There is significant anecdotal evidence and some quantitative data that suggest that International Students can face challenges in relation to realising a range of core human rights. This includes evidence that suggests international students may be at increased risk of workplace exploitation, violence and abuse and may also experience difficulties accessing adequate housing, health and social services<sup>8283</sup>.
109. The Commission has been taking a leadership role and working with the Government to improve the support frameworks for individuals who come to New Zealand on student visas in order to further their education.
110. There have been some recent initiatives, such as the development of a new International Student Wellbeing Strategy and the preparation of a draft International Education Strategy that has been released for consultation. However, the Commission remains concerned about the Government's commitment to ensuring that there are appropriate support and pastoral frameworks in place to facilitate the safety and wellbeing of overseas students who are invited to the country.
111. **Recommendation 13: That the Committee requests that the Government ensures that:**

- (a) Appropriate frameworks and mechanisms are in place to support the safety and wellbeing of international students; and**

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<sup>80</sup> <https://enz.govt.nz/assets/Uploads/The-Economic-Impact-of-International-Education-in-New-Zealand-2015-2016.pdf> page 5

<sup>81</sup> Ibid, page 1

<sup>82</sup> See the following media reports - <http://www.pathwaysnz.com/news/exploitation-risk-for-students-with-big-debts/>; [http://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=11548482](http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11548482);

<http://thewireless.co.nz/articles/left-without-a-choice-how-international-students-are-exploited-in-new-zealand>

<sup>83</sup> See also Ministry of Business, Innovation & Employment, *Vulnerable Temporary Migrant Workers: Hospitality Industry*, August 2015, p 7,8 35,38, 40 43; accessed <http://www.mbie.govt.nz/publications-research/research/migrants---settlement/vulnerable-temporary-migrant-workers-hospitality-industry-2015.pdf/view?searchterm=temporary%20migrant%20>

**(b) That the initiatives committed to in the International Student Wellbeing Strategy and the International Education Strategy are implemented.**

Availability, accessibility and adequacy of social services for asylum seekers and refugees (LOT 21)

112. In 2016/2017 the Commission prepared a discussion document on the realisation of economic, social and cultural rights for asylum claimants and other people from refugee backgrounds<sup>84</sup>.

113. The discussion document concluded by stating:

*Employment, health, housing and education are now generally available to asylum claimants and people from refugee backgrounds on the same basis as nationals. The issue is around accessing associated services and entitlements promptly and easily. Perhaps the biggest issue that came through during our discussions was the fact that despite there being services available, and information on these being provided by Immigration New Zealand on its website and in hard copy to claimants, this information remains largely unknown. Even where it is known, we heard stories of government agencies not understanding their obligations to asylum claimants resulting in delays and/or inability to access services. Community groups such as the Asylum Seeker Support Trust and the Refugee Council of New Zealand have a significant impact facilitating access to the system and navigating the sometimes-confusing processes...*

*...The adequacy and availability of mental health services and housing remains a concern. While available in theory, in practice there is no systemic framework to ensure that this is achieved. Systematic screening and treatment of asylum claimants by RASNZ or a similar qualified organisation as well as prioritised social housing would go a significant way to improving the situation.*

114. A number of proposals were identified through the Commission's interviews, surveys and discussions with the sector. These were intended to be targeted, pragmatic and achievable and included recommendations relating to systemic mental health screening, funding for the Asylum Seeker Support Trust Hostel, training for front line staff in government agencies and further research and development of outcome indicators.

115. **Recommendation 14: That the Committee urges the New Zealand Government to ensure that all asylum seekers and people from refugee backgrounds have access**

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<sup>84</sup> Human Rights Commission, *Discussion paper: Treating asylum seekers with dignity and respect: The economic, social and cultural rights of those seeking protection in New Zealand*, June 2017 p45-46; available at [www.hrc.co.nz](http://www.hrc.co.nz)

**to adequate and appropriate services and support to facilitate the full realisation of their economic, social and cultural rights.**

#### Detention of asylum seekers (LOT 22)

116. Detention of asylum seekers in New Zealand can occur under two circumstances. Those arriving at the border are initially held in police custody pending a risk assessment and court hearing. After the hearing, claimants are either detained at a prison if identity or security concerns are raised, conditionally released to an approved address in their community, or held at the Mangere Accommodation Centre<sup>85</sup>.
117. Foreign nationals already detained in a prison under section 310 of the Immigration Act 2009 (“Immigration Act”) can claim asylum, but must do so within two days of being taken into custody. In these cases, refugee and protection officers have access to the prison to interview them and are encouraged to make a decision as quickly as possible, ideally within 20 weeks. Claimants remain detained in prison until a decision is made, at which point they are released if granted refugee status.
118. Asylum seekers can appeal to the Immigration and Protection Tribunal if their claims are rejected. For those detained in a prison, the appeal must be made within five working days of the decision, while in all other instances the deadline is 10 working days. Legal aid is also available to those wanting to challenge their detention, a significant change provided for through the 2009 amendments to the Immigration Act.

#### *Police cells*

119. Under the 2009 Act any police station in New Zealand can be used to detain a person without a warrant of commitment for up to 96 hours including both undocumented migrants and asylum seekers whose identity is uncertain. Under the previous immigration act detention could only last up to 72 hours. Individuals reportedly are generally detained at police stations for no longer than 24-48 hours.
120. The appropriateness of using police stations for immigration purposes has been subject to criticism by human rights groups for some time and has been raised with the CERD Committee previously. For instance, lack of separate facilities for migrants and asylum seekers, as well as overcrowding and poor hygiene<sup>86</sup>. Detainees also claimed being denied access to their belongings and being forced to sleep in cells

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<sup>85</sup> Ibid p 6-8

<sup>86</sup> Human Rights Foundation New Zealand, *Shadow report to the 15<sup>th</sup>, 16<sup>th</sup> and 17<sup>th</sup> consolidated report of the New Zealand Government under the International Covenant on the Elimination of Racial Discrimination*, June 2007, para 3.18, accessed <http://www.converge.org.nz/pma/CERD71-HRF.pdf>

without a mattress.

### *The Mangere Accommodation Centre*

121. The Mangere Accommodation Centre (also known as the Mangere Refugee Resettlement Centre) is the sole facility in New Zealand dedicated entirely to housing refugees and asylum seekers. The centre's population is predominantly made up of incoming UN Quota Refugees being resettled in the country, as well as asylum seekers whose identity is uncertain and who do not pose either a risk of absconding or to national security. Both are housed together, which has reportedly caused resentment and tension between the two groups, and has led to criticism of differences in treatment, including a lack of parity in accessing housing and employment support services. On average, asylum seekers spend six weeks at the centre, which can hold up to 28 at any given time. While at the centre, the Immigration Act officially classifies these asylum seekers as 'detainees'.
122. New Zealand authorities characterise the facility as "open detention". There are, however, limitations on asylum seekers' movements, and the centre's management has the right to refuse permission to leave during the day.
123. As part of Budget 2013, the New Zealand Government committed \$5.5 million of operating expenditure over the next four years towards the cost of the rebuild of the Mangere Centre. The rebuild process was completed in 2016.

### *Correctional Institutions*

124. Asylum seekers and irregular migrants who are considered to potentially pose risk of absconding and/or a risk to national security are detained in correctional institutions. At the time of the WGAD visit to New Zealand they are generally held in Waikeria Prison, Arohata Prison for Women and Mt Eden Corrections Facility. These prisons are not providing separate facilities for immigrants in an irregular situation and asylum seekers.
125. Asylum seekers detained in these prisons are criminalised and are subject to general prison standards such as wearing prisoner uniforms and lockdowns. The UNHCR has made it clear that the imposition of such standards on asylum seekers is inappropriate.<sup>87</sup>
126. Recent reports have illustrated the negative, and at times serious, physical and

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<sup>87</sup> UNHCR, *Detention guidelines*, p 31 available at <http://www.unhcr.org/505b10ee9.html> .

psychological, consequences for asylum seekers in prison detention<sup>88</sup>. Prison staff are often not trained in relation to asylum, the identification of the symptoms of trauma and standards related to detention of asylum seekers.

127. Furthermore, Department of Corrections staff are often unaware which detainees are asylum seekers. The absence of this basic knowledge can prove problematic in monitoring the standards and conditions being applied to asylum seekers.
128. **Recommendation 15: That the Committee urges the Government to ensure that:**
- (a) Asylum seekers detained in correctional facilities are separated from other prisoners;**
  - (b) Asylum seekers are not subject to criminal standards of detention; and**
  - (c) Prison staff are appropriately trained in relation to standards of detention for asylum seekers, the identification of the symptoms of trauma and human rights.**

#### *Alternatives to Detention*

129. Historically, New Zealand has been viewed as both a regional and global leader with regard to Alternative to Detention (“ATD”) development and implementation. Section 315 of New Zealand’s Immigration Act 2009 introduced a tiered detention and monitoring system that includes a greater ability to use reporting and residence requirements instead of secure detention.
130. Section 315 provides that an immigration officer and the liable person may enter into an agreement that, as an alternative to detention, the liable person may reside in the community. Such an agreement may be subject to a variety of conditions such as periodic reporting requirements and the appointment of a “guarantor” who is tasked with ensuring compliance, and reporting non-compliance, with any conditions set. Failure to comply with conditions of release will, however, result in arrest and detention. The liable person may also be subject to arrest and detention in the event a deportation order is executed.
131. **Recommendation 16: That the Committee encourages the Government to ensure the availability of adequate and appropriate alternatives to detention for asylum seekers in all but the most exceptional of circumstances.**

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<sup>88</sup> *Asylum seekers locked up in Auckland Prison – New Zealand’s own Manus Island*, 26 March 2017  
<http://www.stuff.co.nz/national/crime/90117261/Asylum-seekers-locked-up-in-Auckland-prison-New-Zealands-own-Manus-Island>

