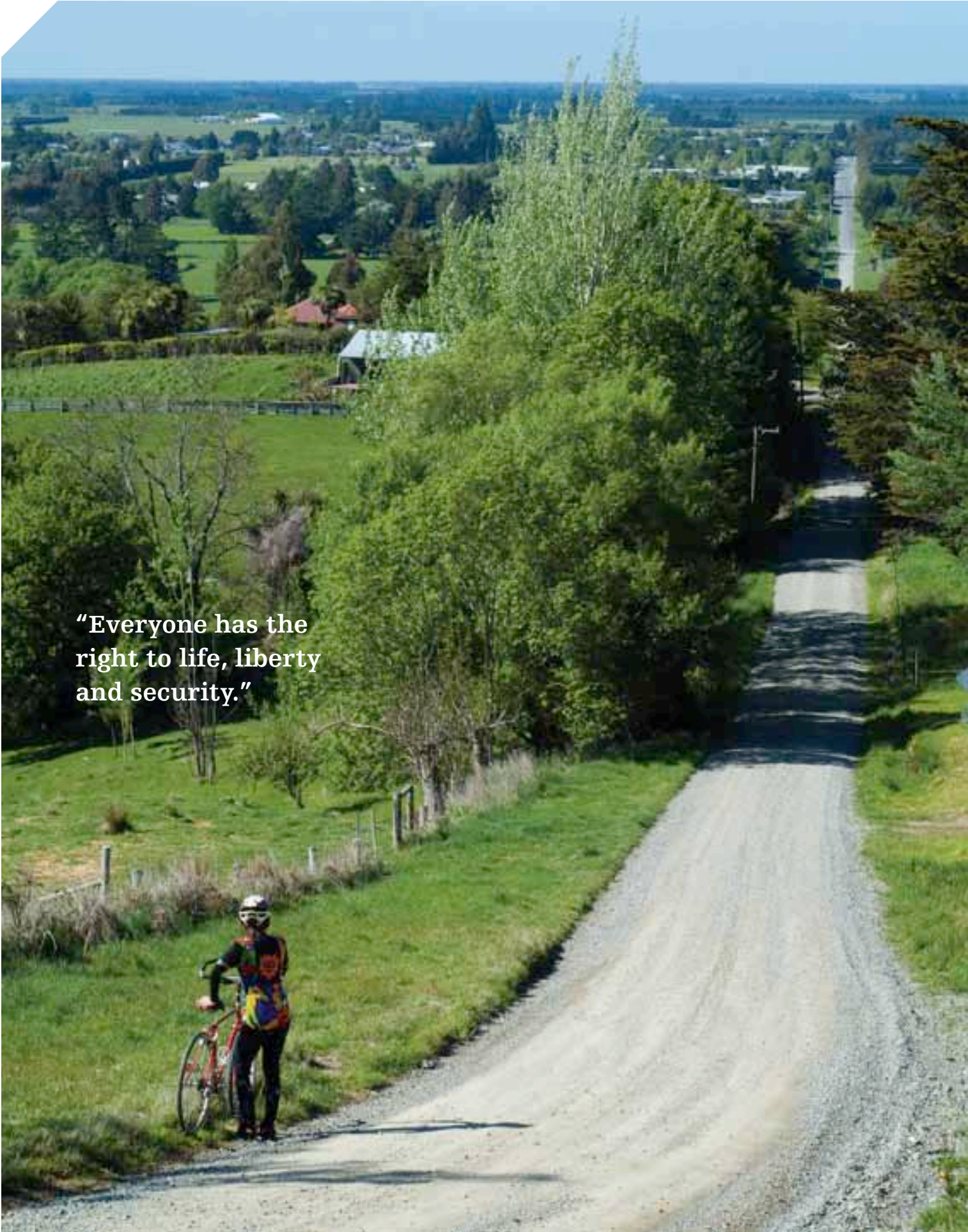


## 8. Life, Liberty and Security of Person

Te Ora, Mana Herekore me te Haumaru

**“Everyone has the right to life, liberty and security.”**



## Everyone has the right to life, liberty and security.

Universal Declaration of Human Rights, article 3 (plain text)

### Introduction Tīmatatanga

The right to life, liberty and security of person is made up of three distinct but strongly interconnected elements. This chapter focusses on the right to security of the person, but an understanding of all three elements is necessary.

The right to life is the supreme right of human beings.<sup>1</sup> It is basic to all human rights, and without it all other rights are without meaning. The term 'life' has been interpreted widely by courts internationally to include the right to livelihood, health, education, environment and dignity.<sup>2</sup> The State has a duty to protect human life against unwarranted actions by public authorities as well as by private persons.<sup>3</sup>

The right to liberty protects the physical liberty of the person through a cluster of interrelated rights, including:

- the right not to be deprived of liberty except on such grounds and in accordance with such procedures as are established by law
- the right not to be arbitrarily arrested, detained or exiled
- the right to be secure from unreasonable search and seizure, including of the person
- the right to be free from torture and cruel, inhumane and degrading treatment.

The right to liberty may be invoked in respect of all deprivations of liberty, whether arising in relation to

the application of criminal law or by reason of mental illness, vagrancy, drug addiction or immigration control. The chapter on the rights of people who are detained examines deprivation of liberty in more detail.

The right to security is closely associated with the right to liberty. The right to security includes national and individual security. National security is how the State protects the physical integrity of its citizens from external threats, such as invasion, terrorism, and biosecurity risks to human health. Individual security is how the State protects the physical integrity of its citizens from abuse by official authorities and other citizens.

The right to security of the person protects physical integrity, which has traditionally taken the narrow focus of protection from direct physical trauma. However, emerging standards are beginning to include providing for: the necessities of life (such as sustenance or healthcare); the right to social security; and the protection of health and safety, particularly in employment. These issues are addressed in other chapters and so are not included here.

Security of the person also raises issues about state or private surveillance of citizens. The Privacy Commissioner specifically deals with impingements on a citizen's privacy. These issues will not be discussed in more detail here.

The right to refuse medical treatment is also part of the right to security. Some jurisdictions, when considering the right to refuse medical treatment, have placed a particular importance on the concept of informed consent. It might be inferred from this that protection of integrity of the person extends beyond the physical to other elements.

While the right to 'freedom from fear', set out in the Universal Declaration of Human Rights (UDHR),<sup>4</sup> is

1 United Nations Human Rights Committee (1982), general comment 6: The right to life, para 1 (16th Session: HRI/GEN/1/Rev.7). Accessed 22 November 2010 from [http://www.unhcr.ch/tbs/doc.nsf/0/ca12c3a4ea8d6c53c1256d500056e56f/\\$FILE/G0441302.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/ca12c3a4ea8d6c53c1256d500056e56f/$FILE/G0441302.pdf)

2 However, in *Lawson v Housing New Zealand* (1997) 4 LRC 369, the High Court of New Zealand observed that "it requires an unduly strained interpretation to conclude that the right not to be deprived of life encompasses a right not to be charged market rent for accommodation without regard to affordability and impact on a tenant's living standards".

3 There have been differing interpretations internationally of whether the right to life applies to the unborn child. The International Covenant on Civil and Political Rights (ICCPR) declares that "every human being" has the inherent right to life while in respect of other rights the expressions used are "everyone", "every person", "every child" or "every citizen". This use of different terminology has raised the question of whether "every human being" has a more expansive meaning than usually attributed to "every person" and in particular, whether it also includes an unborn child. There have also been differing views internationally on whether the right to life includes the right to die.

4 The text of the international human rights instruments is accessible online at the website of the Office of the High Commissioner for Human Rights: <http://www.unhcr.ch/> Most of New Zealand's human rights obligations are summarised in Ministry of Foreign Affairs and Trade (2003), *Handbook on International Human Rights* (2nd ed, Wellington: MFAT)

often raised in relation to security of the person, it is not guaranteed as a right in any internationally recognised document. It is an aspiration that can be achieved only through the realisation of other rights.

Since the Commission's review of human rights in 2004, New Zealand has taken a number of positive measures to better protect, promote and fulfil the right to life, liberty and security of person. These include:

- increased emphasis on the prevention of domestic violence, including a comprehensive campaign for Action on Family Violence
- reviews of victims' rights and access to support services
- introduction of the Policing Act 2008, which takes account of national and international human rights standards
- ratification of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (OPCAT)<sup>5</sup>
- a review of the Police Complaints Authority and the introduction of the Independent Police Conduct Authority
- some amendments to New Zealand's counter-terrorism laws.

Nevertheless, the rate of reported crime, in particular violent crime, has increased since the last review, and there continues to be bias (either perceived or actual) in the criminal justice system. In examining the right to life, liberty and security of person, the Commission identifies specific groups in society who are most vulnerable to threats to their security.

This chapter focusses in particular on the New Zealand Police's functions in upholding the right to life, liberty and security of person and recent developments in their operations. Among the agencies responsible for the protection of the security of people in New Zealand, the New Zealand Police have the greatest daily role. Police do this by working to reduce the incidence of crime, detecting and apprehending offenders, maintaining law and order and enhancing public safety. However, due to

the nature of their role and their corresponding position of power, there remains a risk of infringements on human rights by them.

## International context Kaupapa ā taiao

Article 1 of the United Nations Charter lists as the first purpose of the United Nations:

**...to maintain international peace and security, and to that end, to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.**

The United Nations General Assembly and the United Nations Security Council have international security responsibilities under the UN Charter.

The International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT), the UN Convention on the Rights of the Child (UNCROC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD), and the Convention on the Elimination of All Forms of Racial Discrimination (CERD) contain provisions relevant to the right to life, liberty and security of person. New Zealand has ratified all six treaties and they are reflected in a variety of domestic legislation.<sup>6</sup>

Rights in the international human rights treaties apply to everyone. The ICCPR requires ratifying states to protect the civil and political rights of people in their jurisdiction, without discrimination.<sup>7</sup> It includes the right to liberty

5 The OPCAT establishes a dual system of preventative monitoring, undertaken by national and international monitoring mechanisms. The chapter on the rights of people who are detained considers OPCAT in more detail.

6 For example, the New Zealand Bill of Rights Act 1990 (BoRA) affirms New Zealand's commitment to the ICCPR, and the Crimes of Torture Act 1989 was enacted as a precursor to New Zealand's ratification of CAT.

7 New Zealand ratified the ICCPR and the ICESCR in 1976.

and security of person and the right not to be subjected to torture or cruel and unusual punishment, or to medical or scientific experimentation without consent. Article 20 requires the prohibition of propaganda for war and the incitement of hostility or violence on the basis of national, racial or religious hatred.

The CAT prohibits torture under any circumstances and requires states to take effective measures to prevent it. The OPCAT provides for regular visits by independent bodies to places of detention in order to ensure compliance with the CAT.

The right of children to security of the person is specifically provided for in the UNCROC.<sup>8</sup> Women's right to security of the person is referenced in CEDAW.<sup>9</sup>

The CERD requires states to legislate against acts of violence against any group on the basis of race,<sup>10</sup> and emphasises that the right to freedom from race discrimination is part of the enjoyment of the right to security of the person.<sup>11</sup> The CRPD requires states to protect the right to life, liberty and security of persons with disabilities on an equal basis with others.<sup>12</sup>

## New Zealand context Kaupapa o Aotearoa

States must ensure the human rights of their nationals and others by taking positive measures to protect them.

The New Zealand Bill of Rights Act 1990 (BoRA) specifically includes a section entitled "life and the security of the person", which lists these rights:

- not to be deprived of life (section 8)
- not to be subjected to torture or cruel treatment (section 9)
- not to be subjected to medical or scientific experimentation (section 10)
- to refuse to undergo medical treatment (section 11).<sup>13</sup>

Despite the phrase "security of the person" appearing in the subheading of the BoRA, it does not reappear in the text of any of the rights set out in sections 8 to 11. Consequently, the BoRA departs from the text of the ICCPR, which requires states to guarantee "security of the person" in addition to the right to life and to freedom from torture, degrading treatment and experimentation. It has been suggested that the rights to security of the person guaranteed in sections 8 to 11 of the BoRA are more limited than a section which explicitly guaranteed the right to security of the person would be. Other relevant rights contained in the BoRA include rights in regard to the liberty of the person (section 22) and against unreasonable search and seizure (section 21).

Section 7 of the BoRA provides an additional protection for the individual against the State by requiring the Attorney-General to bring to the attention of the House of Representatives any provision within any proposed bill that is inconsistent with the rights contained in the BoRA. This process allows a means, albeit limited, of monitoring and preventing state infringement of citizens' rights. The chapter on the right to justice examines the operation of section 7 of the BoRA in more detail.

8 Article 11 of UNCROC seeks to combat the illicit transfer abroad and non-return of children, and Article 19 requires effective and appropriate measures to protect children from all forms of physical or mental violence.

9 Article 11(f) of CEDAW promises protection of health and safety in working conditions and safeguards the function of reproduction. The CEDAW Committee has commented that "Articles 2, 5, 11, 12 and 16 of the convention require the state parties to act to protect women against violence of any kind occurring within the family, at the workplace or in any other area of social life". CEDAW Committee (1989), general recommendation 12: Violence against women. (8th Session). Accessed 22 November 2010 from <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

The committee has also ruled that violence against women is a form of discrimination, reflecting and perpetuating women's subordination, and requires states to eliminate violence in every sphere. CEDAW Committee (1992), general recommendation 19: Violence against women (11th Session: A/47/38). Accessed 22 November 2010 from <http://www.unhcr.ch/tbs/doc.nsf/0/300395546e0dec52c12563ee0063dc9d?Opendocument>

10 CERD, Article 4(b)

11 CERD, Article 5(b)

12 CRPD, Articles 10 and 14

13 In *Cairns v James* [1992] NZFLR 353, the Family Court found that section 11 of the BoRA allowed the plaintiff to refuse to provide blood for a paternity test.

## NATIONAL SECURITY

The Defence Act 1990 empowers the Governor-General as Commander-in-Chief to raise and maintain the New Zealand Defence Force (NZDF), consisting of the Royal New Zealand Navy, the New Zealand Army and the Royal New Zealand Air Force. The Minister of Defence exercises control of the NZDF through the Chief of Defence Forces.

In addition to the defence forces, other agencies that contribute to national security are:

- the New Zealand Security Intelligence Service, the Government Communications Security Bureau and the National Assessments Bureau,<sup>14</sup> which provide foreign intelligence and assessments
- the New Zealand Police, which is responsible for counter-terrorism within New Zealand and has a role in supporting multilateral regional-security initiatives
- the New Zealand Immigration Service, which has duties, under the Immigration Act 2009, relating to national security concerns and suspected terrorists
- the Customs Service, which helps prevent terrorism and threats to bio-security
- the Ministry of Defence, which is responsible for providing defence-policy advice to the Government
- the Ministry of Agriculture and Forestry, which also deals with threats to bio-security
- the Ministry of Foreign Affairs and Trade, through diplomacy
- the Ministry of Health, which provides services to prevent health threats at New Zealand's borders and overseas.

States have a responsibility to protect persons within their territory against the threat of terrorist acts, and to bring perpetrators of such acts to justice. New Zealand has a comprehensive counter-terrorism legislative framework. The key pieces of legislation that provide protection from terrorism are the Aviation Crimes Act 1972; the Crimes (Internationally Protected Persons, United Nations

and Associated Personnel, and Hostages) Act 1980; the Maritime Crimes Act 1999; the United Nations Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2001; the Terrorism Suppression Act 2002; the Counter Terrorism Act 2003; and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

In 2007, the Government amended the Terrorism Suppression Act to strengthen New Zealand's commitment to its international counter-terrorism obligations by:

- facilitating New Zealand's ratification of the Nuclear Terrorism Convention, by creating new offences concerning the use of radioactive material and radioactive devices, and amending existing offences concerning the physical protection of nuclear material
- amending the designation of 'terrorist' and associated entities
- introducing a new offence of committing a "terrorist act".

## CONSTRAINTS ON STATE ACTIONS

Protection against specific state infringements is provided by:

- the Abolition of the Death Penalty Act in 1989,<sup>15</sup> abolishing the death penalty for treason, the last remaining offence to which it had applied
- the Criminal Investigations (Bodily Samples) Act 1995, which outlines the circumstances and procedure for obtaining blood samples – under part 3 of this act, police can keep a DNA profile databank for samples taken from suspects who are subsequently convicted
- the Crimes of Torture Act 1989, which reflects the CAT by prohibiting torture by public officials
- the Contraception, Sterilisation and Abortion Act 1977, which prohibits anyone (including state officials) from consenting to sterilisation of another person when that person is too young to do so

14 The National Assessment Bureau, renamed from the External Assessments Bureau, is responsible for a national assessments programme that includes domestic and external intelligence sources.

15 In 1941, the Crimes Amendment Act changed the penalty for murder from death to life imprisonment with hard labour. The only crimes for which the death penalty still applied were treason and piracy. The National Government restored the death penalty for murder in 1950. From 1951 to 1957, there were 18 convictions for murder and eight executions. The Crimes Act 1961 abolished the death penalty for every crime except treason, which became no longer punishable by death with the passing of the Abolition of the Death Penalty Act in 1989.

- the Mental Health (Compulsory Assessment and Treatment) Act 1992, which provides for the compulsory assessment and treatment of patients suffering from a mental disorder, sets clear limits on the powers in the act and provides for patient rights (discussed in more detail in the chapter on the rights of people who are detained)
- the Privacy Act 1993, which sets out provisions protecting the citizen from impingements of privacy by people in the private and public sector – the Privacy Commission established under this act specifically monitors compliance with the privacy principles set out in the act.

When the State or its agencies impinge on people's physical integrity, a number of bodies are empowered to intervene. The Independent Police Conduct Authority (IPCA) investigates complaints against the police. The Office of the Ombudsmen investigates complaints by prisoners. The Inspector-General of Intelligence and Security reviews decisions on intelligence, including the issuing of security certificates. The Health and Disability Commissioner can receive and investigate complaints by consumers of health and disability services. The Human Rights Commission can consider human rights violations.

#### Police complaint and review processes

In response to concerns about the independence and efficiency of the Police Complaints Authority, the Independent Police Complaints Authority Amendment Act 2007 replaced it with the IPCA, which is made up of five members and is an independent Crown entity under the Crown Entities Act 2004.

In the year ending 30 June 2009, 1997 people made 3090 complaints to the IPCA. Of these, 2331 (75 per cent) were accepted for investigation. Of the 2331 complaints investigated, 1074 were resolved.

During 2008–09, the IPCA's investigators were involved in 219 investigations. The investigations covered a range of serious complaints and incidents, including:

- police actions appearing to have contributed to death and serious bodily harm – for example, deaths in police cells, and deaths and injuries arising from police pursuits
- complaints alleging corruption or flaws in relation to police investigations
- complaints of excessive force or other misconduct by police officers.

The IPCA released 11 reports during 2008–09.<sup>16</sup>

Under section 13 of the Independent Police Conduct Authority Act 1988, police must notify the IPCA of incidents of death and serious bodily harm associated with police actions (for example, deaths in police cells and deaths or injuries following police pursuits). During 2008–09, the IPCA received nine reports of death, one of suicide and 40 of serious bodily harm.

The Human Rights Commission receives some complaints from people alleging physical mistreatment by police. Unless the complaint is about alleged discrimination under part 1(a) of the Human Rights Act (HRA), the Commission will usually refer the complainant to the IPCA.

If the State infringes the BoRA, other legislation or common law rights, individuals may seek restitution through the courts.

#### PROTECTIONS FOR THE INDIVIDUAL

The key pieces of legislation that provide individuals with redress and protection from harm are the Crimes Act 1961,<sup>17</sup> the Domestic Violence Act 1995, the Harassment Act 1997, the Children, Young Persons and their Families Act 1989, the Arms Act 1983, the Civil Defence Emergency Management Act 2002, and the Fire Service Act 1975.

The Victims' Rights Act 2002 outlines the principles that guide the treatment of victims of crime. This act ensures that throughout the criminal justice system, victims of crime are:

- treated with courtesy and compassion, and with respect for their dignity and privacy
- kept informed of important information, and decisions relating to case proceedings
- able to participate in criminal justice processes if they wish to.

<sup>16</sup> These reports are accessible online at <http://www.ipca.govt.nz>

<sup>17</sup> In relation to the unborn child, section 182 of the Crimes Act 1961 makes it a crime to kill an unborn child that has not become a human being. This offence recognises that there is a life to be protected, but also that the unborn child is not a human being.

Personal security is primarily maintained by the New Zealand Police. The Policing Act 2008 repealed and replaced the Police Act 1958 to update the law in relation to organisation of the police and the powers of members of the police. The Policing Act takes account of national and international human rights standards as set out in the HRA, the BoRA, and various international conventions and covenants. The principles<sup>18</sup> on which the act is based are a cornerstone for successful policing, and ensure that the human rights of everyone in New Zealand are respected and protected by police.

In 2007, a commission of inquiry carried out a full and independent investigation into the way in which the police had dealt with allegations of sexual assault by members and associates of the police. The report found:

- There was evidence of disgraceful conduct by police officers and associates over the period from 1979, involving exploitation of vulnerable people. There was evidence of police officers condoning incidents involving inappropriate sexual activity and a culture of scepticism in dealing with complaints of sexual assault. However, there was no concerted attempt across the organisation to cover up unacceptable behaviour.
- Police management lacked the policies, procedures and practices necessary for dealing with misconduct.
- Police did not have any code of conduct or guidelines to provide sworn police officers with clear guidance about what constitutes appropriate behaviour.
- The public could not have confidence, at that time, in the calibre of police investigations into allegations of sexual assault by police officers and police associates. The Commission noted that policies and procedures for such investigations had improved in the past 25 years but considered that further improvements were needed.

The inquiry's report has had a significant impact on how police operate, and has resulted in an increased emphasis

being placed on human rights responsibilities. For example, the police are providing training courses about the code of conduct, leadership, ethical policing, and investigating of adult sexual assaults.<sup>19</sup>

#### Family violence

In 2003, the UN Committee on Economic, Social and Cultural Rights (CESCR) recommended that New Zealand intensify measures to combat domestic violence and provide disaggregated statistical data on domestic violence. More recently, the Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern about the continued prevalence of violence against women, particularly Māori, Pacific and minority women, and the low rates of prosecution and convictions for crimes of violence against women.<sup>20</sup>

In 2009, legislation<sup>21</sup> was passed to amend the Domestic Violence Act 1995, the Sentencing Act 2002 and the Bail Act 2000, to improve and strengthen the domestic violence legislative regime. Key changes were to:

- give the police the ability to issue 'on-the-spot' police safety orders
- allow the criminal courts to issue a protection order for the victim when sentencing an offender for domestic violence offending
- remove the statutory criteria that the police must take into account when considering whether to arrest, without warrant, a person who they have good cause to suspect has committed a breach of a protection order
- reform the structures and penalties for contravening a protection order.

The Taskforce for Action on Violence within Families, which advises the Government on family violence issues, has initiated the 'It's not OK' campaign in response to growing concerns about the level of family violence in New Zealand. The campaign is being led by the Ministry

18 These principles are set out in section 8 of the BoRA.

19 In 2009, the Office of the Auditor-General found that the police had responded in a committed manner to the Commission's findings and that their work programme for responding had been comprehensive.

20 See CEDAW (2007), Concluding Comments of the Committee on the Elimination of Discrimination Against Women: New Zealand, 10 August, CEDAW/C/NZL/CO/6. Accessible online at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/459/77/PDF/N0745977.pdf?OpenElement>

21 The Domestic Violence (Enhancing Safety) Bill 2008

of Social Development and the Families Commission, in association with communities. It is supported by the Accident Compensation Corporation and the New Zealand Police.

The Office for Senior Citizens is continuing to develop and monitor programmes for the prevention of elder abuse and neglect.

### Victims' rights

The Ministry of Justice is undertaking a review of victims' rights and access to support services. The Enhancing Victims' Rights Review aims to improve government agencies' responses to victims of crime and to enhance victims' rights and role in criminal justice processes. The review will cover legislative, policy and operational options to achieve this.

### Other agencies

The Ministry of Social Development is responsible for intervening to protect and help children who are being abused or neglected or who have behavioural problems.

Local authorities also have a strong role in protecting the safety of their constituents, through a range of programmes. One example is the Safer Community Councils programme, which aims to reduce crime by supporting 'at-risk' families, reducing family violence, targeting youth at risk of offending, developing programmes that address the misuse and abuse of alcohol and other drugs, addressing white-collar crime, and addressing the concerns of victims and potential victims.

Māori wardens work in close association with some Māori communities and police. They promote respect among Māori people for the standards of the community and take appropriate steps, where possible, to prevent any threatened breach of law and order.<sup>22</sup>

Community law centres and other civil society groups, including Victim Support, churches, Women's Refuge, Rape Crisis and Age Concern, work to promote and protect security of person.

22 Regulation 11(4), Māori (Community Development) Regulations 1963

23 Terrorism Suppression Act, section 32(3): Disclosure of information falls within subsection (1)(c)(ii) if the disclosure would be likely (a) to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or (b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the government of another country or any agency of such a government, or by any international organisation; or (c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or (d) to endanger the safety of any person.

## New Zealand today Aotearoa i tēnei rā

### NATIONAL SECURITY

#### Counter-terrorism

In general, New Zealand has fully implemented its international anti-terrorism obligations. However, concern continues to be raised about the effect of New Zealand's anti-terrorism regime on the enjoyment of human rights.

In 2005, the Government reviewed the Terrorism Suppression Act 2002 (TSA). The resulting Terrorism Suppression Amendment Bill provided for a summary of classified security information to be given to the entity concerned, except to the extent that a summary of any particular part of the information would itself involve disclosure that would be likely to prejudice the interests referred to in section 32(3).<sup>23</sup> This exception means that the type of information provided to the 'person concerned' must be limited, because the information, by its definition as classified, invokes the interests in section 32.

In its submission to the select committee, the Commission was one of many submitters concerned with provisions which allowed classified security information to be presented to the court in the absence of the 'designated entity', its lawyers and the public. The Commission raised concerns about access to a fair trial, if an accused is not provided with all (classified security) information held about them.

The committee did not recommend any change to the process proposed in the bill. It agreed that processes involving special advocates and security-cleared counsel would add additional elements of protection. However, it considered that the inclusion of such procedures in the act should not be considered in isolation, noting that the Immigration Bill, which was then before the Transport and Industrial Relations Committee, had a number of clauses relating to the use of classified information in decisions to be made under the proposed new Immigration Act,



and included provision for the use of special advocates. The committee recommended that if the Immigration Act, as finally enacted, made special provision for the use of classified information in decisions under that act, consideration should be given to the application of those procedures to decisions made under the Terrorism Suppression Act.<sup>24</sup>

The UN Human Rights Committee also raised concerns, commenting:

**While noting the obligations imposed under United Nations Security Council Resolution 1373 (2001), the committee expresses concern at the compatibility of some of the provisions of the Terrorism Suppression Amendment Act 2007 with the covenant. It is particularly concerned at the designation procedures of groups or individuals as terrorist entities and at the lack of a provision in the act to challenge these designations, which are incompatible with Article 14 of the covenant. The committee is also concerned about the introduction of a new section allowing courts to receive or hear classified security information against groups or individuals designated as terrorist entities in their absence.**<sup>25</sup>

The Immigration Act 2009 provides for the special advocate procedure.<sup>26</sup> Despite the limitations of this procedure, the Commission considers that the TSA should be reviewed to consider how it could adopt an analogous procedure. Discussion of this legislation will raise issues regarding how best to give effect to New Zealand's

international anti-terrorism obligations in ways that respect human rights here in New Zealand.

The UN Human Rights Committee also raised concerns about the arguably discriminatory application of the TSA, and in particular noted the allegedly excessive use of force against Māori communities during 'Operation 8'.<sup>27</sup>

## INDIVIDUAL SECURITY

The New Zealand Crime and Safety Survey 2006<sup>28</sup> showed that 39 per cent of New Zealanders had been victims of one or more crimes in 2005. Certain groups of people continue to experience greater threats than others to their security and safety, including young people, women, Māori and Pacific peoples, and people with disabilities. Other groups reporting a high level of victimisation included:

- sole parents with children (60 per cent in the 2005 survey)
- students (57 per cent) and people living with flatmates (54 per cent)
- people who were single or in de facto relationships (50 per cent and 49 per cent)
- people who rented their homes from private landlords or public agencies (49 per cent and 45 per cent)
- people who were unemployed and/or on benefits (48 per cent)
- people who lived in the most deprived fifth of New Zealand areas (45 per cent, compared with 35 per cent of those living in the least deprived areas).

Many of the characteristics associated with experiencing more crime are closely interrelated.

24 Foreign Affairs, Defence and Trade Committee (2007), *Terrorism Suppression Amendment Bill* as reported from the Foreign Affairs, Defence and Trade Committee, pp 5–6. Accessible online at [http://www.parliament.nz/NR/rdonlyres/822D8ABB-A483-44EF-9AE2-2C7CC9B63F12/66544/DBSCH\\_SCR\\_3888\\_5398.pdf](http://www.parliament.nz/NR/rdonlyres/822D8ABB-A483-44EF-9AE2-2C7CC9B63F12/66544/DBSCH_SCR_3888_5398.pdf)

25 Human Rights Committee (2010), *Concluding Observations of the Human Rights Committee: New Zealand*, 7 April, para 13. Accessible online at [http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.NZL.CO.5\\_E.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.NZL.CO.5_E.pdf)

26 Section 263 of the Immigration Act 2009 defines the role of the special advocate as follows: 263 Role of special advocates (1) The role of a special advocate is to represent a person who is the subject of (a) a decision made involving classified information; or (b) proceedings involving classified information. (2) In particular, a special advocate may (a) lodge or commence proceedings on behalf of the person; (b) make oral submissions and cross-examine witnesses at any closed hearing; (c) make written submissions to the tribunal or the court, as the case may be. (3) At all times a special advocate must (a) ensure that the confidentiality of the classified information remains protected; and (b) act in accordance with his or her duties as an officer of the High Court. 264 (2) The designated agency may recognise a lawyer as a special advocate if (a) the lawyer holds an appropriate security clearance given by the chief executive of the Ministry of Justice.

27 Human Rights Committee (2010), para 14

28 Ministry of Justice (2006), *New Zealand Crime and Safety Survey 2006* (Wellington: Ministry of Justice)

In 2010, police data on reported crime rates between 2000 and 2009 showed an increase in violence from 107.8 recorded offences per 10,000 population to 151.7.<sup>29</sup> There were 65,465 recorded 'violent' offences in the 2009 calendar year, compared with 59,937 in the previous year. The police suggest that the increase is due in part to the increased willingness to report family violence.

### Sexual violence

The groups most at risk of sexual violence are young women,<sup>30</sup> Māori and Pacific peoples, and people with disabilities.<sup>31</sup> Globally, people with disabilities are up to three times more likely to be victims of physical and sexual abuse and rape, and have less access to physical, psychological and judicial interventions.<sup>32</sup> The chapter on human rights and women considers sexual violence in more detail.

### Family violence

**For a significant number of victims of violence, the most dangerous place they can be in is their home. In 2007–08, family violence accounted for approximately 39 per cent of homicides, 42 per cent of kidnappings and abductions, 44 per cent of grievous assaults, and 64 per cent of serious assaults.**<sup>33</sup>

In 2008, there were 44,628 incidences of recorded family violence offences, up from 29,756 in 2005.

The national victimisation survey and administrative data in New Zealand indicate that women are more likely than men to be physically assaulted by intimate partners and to be victimised more frequently.<sup>34</sup> Statistics collected by the National Collective of Independent Women's Refuges (NCIWR) point to the over-representation of Māori women and children among those using NCIWR. In 2006, of the 28,845 who used NCIWR services, 42 per cent of the adults were Māori women and 51 per cent of the children were Māori.

### Children

Within the past 5–10 years, New Zealand's standing in the OECD for rates of 'intentional injury child mortality' has been a cause of shame. Unintentional injury accounts for almost nine out of 10 injury-related deaths for children aged 0–14 years. Every week an average of 226 children suffer an unintentional injury severe enough for them to be admitted to hospital, and just under two children (1.6) die from an unintentional injury.<sup>35</sup>

In the five years to 2005, 36 children and young people under 15 years are recorded to have died as a result of assault.<sup>36</sup> Despite this, there has been a recent downward trend in child deaths from maltreatment – after rising from 0.94 per 100,000 in the 1980s to 1.07 per 100,000 in the 1990s, they have fallen to 0.79 per 100,000 since 2000.<sup>37</sup> Since 2004, notifications of suspected child

29 Police resolution rates also increased in this period, from 76.6 per cent to 82.1 per cent.

30 Overwhelmingly, sexual assault is perpetrated by men against women. See Ministry of Justice (2009), *Te Toiورا Mata Tauherenga: Report of the Taskforce for Action on Sexual Violence* (Wellington: Ministry of Justice). Accessible online at <http://www.justice.govt.nz/policy-and-consultation/taskforce-for-action-on-sexual-violence/policy-and-consultation/taskforce-for-action-on-sexual-violence/documents/tasv-report-full>

31 See Ministry of Women's Affairs (2009), *Restoring Soul: Effective Interventions for Adult Victims/Survivors of Sexual Violence* (Wellington: MWA). Accessible online at <http://www.mwa.govt.nz/news-and-pubs/publications/restoring-soul-pdf>

32 World Health Organisation/UN Population Fund (2009), 'Promoting Sexual and Reproductive Health for Persons with Disabilities', WHO/UNFPA guidance note. Accessible online at <http://www.unfpa.org/public/site/global/pid/385>

33 Domestic Violence (Enhancing Safety) Bill 2008, explanatory note, general policy statement, p 1

34 Lievore D and Mayhew P (with assistance from Mossman E) (2007), *The Scale and Nature of Family Violence in New Zealand: A Review and Evaluation of Knowledge* (Wellington: MSD). Accessible online at <http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/research/scale-nature/scale-and-nature.doc>

35 Alatini M (2009), Analysis of Unintentional Child Injury Data in New Zealand: Mortality (2001–2005) and Morbidity (2003–2007) (Auckland: Safekids New Zealand)

36 Ministry of Social Development (2008), Children and Young People: Indicators of Well-being in New Zealand 2008 (Wellington: Ministry of Social Development), p 152. Accessed 30 October 2008 from <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/monitoring/children-youngindicators-wellbeing/index.html>

37 Doolan M, 'Hope for Kids', *Herald on Sunday*, 14 September 2008, p 33

abuse or neglect, as well as substantiated cases of child abuse, have been increasing.<sup>38</sup>

The Government's response to the recommendations arising from the Universal Periodic Review included a commitment to reducing violence within families and its impact on children.<sup>39</sup> One of the Government's key responses to the impact of violence on children and young people has been the establishment of a cross-sectoral Taskforce for Action on Violence within Families ('the Taskforce'). The Taskforce has now prioritised a separate programme of action, focussed on prevention of child maltreatment and neglect.

The chapter on the rights of children and young people considers the security of children in more detail.

#### Older people

Older people make up a significant and growing proportion of the population in New Zealand. Like all citizens, they have their rights protected through generic protective legislation, such as the HRA and the Protection of Personal and Property Rights Act 1988, and through specific health, social security and consumer laws.

Most older people have the same capacity to protect their personal rights and interests as younger adults. However, Age Concern New Zealand reports that abuse or neglect is experienced by 4 to 5 per cent of the older population. During the period 1 July 2004 to 30 June 2006, 944 cases of elder abuse and/or neglect were referred to Age Concern New Zealand Elder Abuse and Neglect Prevention Services.<sup>40</sup>

Elder abuse occurs when a person aged 65 or more experiences harmful physical, psychological, sexual, material/financial and/or social effects caused by the behaviour of another person with whom they have a relationship implying trust.<sup>41</sup> Elder neglect occurs when

a person aged 65 or more experiences harmful physical, psychological, material/financial and/or social effects as a result of another person's failing to perform behaviours which are a reasonable obligation of their relationship to the older person/koroua/kuia and are warranted by the unmet needs of the older person/koroua/kuia.<sup>42</sup>

#### Bullying and violence in schools

Bullying and violence continues to be a major concern in New Zealand schools. New Zealand has high levels of student-to-student and student-to-teacher physical and emotional bullying in schools, compared with other countries. In 2008, New Zealand was ranked second worst among 37 countries for bullying in primary schools. The chapter on the right to education considers security in schools in more detail.

#### Compulsory medical assessment or treatment

The Mental Health (Compulsory Assessment or Treatment) 1992 Act (MH(CAT)) provides for the compulsory assessment and treatment of people affected by mental disorders. This is an example of an exception to the right to refuse to undergo medical treatment contained in section 11 of the BoRA and Article 7 of the ICCPR. In recognition of the gravity of such an exception, the MH(CAT) Act sets out an extensive procedural and substantive framework for the circumstances in which this can occur. Some debate continues on the wider moral and ethical implications of compulsory treatment.<sup>43</sup>

Under current legislation, a person could be ordered to undergo electroconvulsive treatment (ECT) by a psychiatrist without consent. The Health and Disability Commissioner and the Human Rights Commission have stated that the use of ECT should be banned for children and never used without informed consent in other cases, unless it is the only option.

38 It could be argued that this is attributable to the increase in public awareness of violence in families and its impact on children and young people.

39 Response of the Government of New Zealand to Recommendations in the Report of 11 May 2009 of the Working Group on the Universal Periodic Review, A/HRC/12/8/Add.1, 7 July 2009

40 Age Concern (2007), *Elder Abuse and Neglect Prevention: Challenges for the Future* (Wellington: Age Concern). Accessible online at <http://www.ageconcern.org.nz/files/file/EANP-report2007.pdf>

41 Age Concern New Zealand (1992). *Promoting the Rights and Well-being of Older People and Those who Care for Them: A resource kit about elder abuse and neglect* (Wellington: Age Concern).

42 *ibid*

43 The rights of patients when being compulsorily treated are discussed further in the chapter on the rights of people who are detained.

### DNA testing and databases

DNA samples may be used to protect public security in the context of the apprehension and conviction of offenders. There is a strict statutory regime to govern the collection, storage and use of DNA in this area (Criminal Investigations (Bodily Samples) Act (CIBSA) 1995).

In 2009, the CIBSA was amended to allow police-wide powers to collect DNA from persons before they were charged or convicted, such as matching DNA profiles against samples from unsolved scenes of crime.

The amended legislation lowered the threshold for the police to obtain DNA samples from suspects. It also widened the spectrum of offences for which DNA sampling would be allowed.

The Attorney-General considered that the amending legislation undermined the right, in the BoRA, to be secure against unreasonable search and seizure, by allowing DNA databank collections to include people not charged with crimes and without judicial oversight.

Where DNA is collected under a voluntary regime (e.g. for the purpose of determining biological family connections in immigration), it will not be covered by the CIBSA. There may also be wider implications if DNA is used for different purposes from those for which it was obtained, and if the storage of the DNA collected outside the criminal regime is not adequately monitored.

### PROTECTIONS FOR THE INDIVIDUAL

Since 2004, there has been a rise in popular anxiety about crime. Successive governments have responded by implementing legislation and policy to better protect individual security by, for example, imposing longer sentences and reducing eligibility for bail. Most recently, in 2009, legislation popularly known as the 'three strikes law' imposed a life sentence with a non-parole period of 25 years for a third listed offence other than murder, and a life sentence without parole for a second or third listed offence of murder.<sup>44</sup> A number of these legislative

developments have tested the strength of New Zealand's human rights protections. The chapter on the right to justice considers these proposals in more detail.

A number of positive steps have also been taken to reduce offending and victimisation. In April 2009, the Minister of Justice and Associate Minister of Corrections convened a meeting on the 'drivers of crime' to identify and suggest ways of addressing the causes of crime. There was general agreement that the key solution lay in early intervention, and that this required a co-ordinated approach across a range of government sectors, rather than the justice sector alone. The Government has since announced an approach aimed at improving services for those at risk of being the offenders or victims of the future and their families. There is increased focus on addressing the issues that lead to the high number of Māori who are apprehended, convicted and imprisoned. The Government has identified four priority areas for cross-government action:<sup>45</sup>

- antenatal, maternity and early parenting support
- programmes to address behavioural problems in young children
- reducing the harm caused by alcohol
- alternative approaches to managing low-level offenders and offering pathways out of offending.<sup>46</sup>

Since 2004 the New Zealand Police have taken a number of steps to better protect the security of people in New Zealand. The 2009 police public satisfaction survey show that 72 per cent rated their trust and confidence in the police as 'full' and 'quite a lot', up from 69 per cent the previous year.

### Diversity

Acknowledging the increasing diversity of the New Zealand community, equity and diversity are critical elements of the New Zealand Police's Strategic Plan to 2010. Recruiting initiatives continue to reflect cultural diversity and, in particular, target female, Māori, Asian and Pacific peoples.

44 Except where the court considers it would be manifestly unjust to do so.

45 New Zealand Government (17 December 2009), 'Drivers of Crime: a whole of government priority' (media release). Accessed 3 November 2010 from <http://www.beehive.govt.nz/release/drivers+crime+whole-governance+priority>

46 The impact of these initiatives is to be monitored by the Ministry of Justice, and a review of progress will be carried out in 2011.

**ETHNIC PROFILE OF NEW ZEALAND POLICE  
(2009 AND 2010) AND NEW ZEALAND  
POPULATION (2006) ETHNICITY (IN PER CENT)**

Police profile	As at June 2010	As at June 2009	Population 2006 census
NZ European/ Pākeha	72.6	72.4	72.8
NZ Māori	11.0	11.1	14.6
Pacific peoples	4.0	4.6	7.5
Asian peoples	2.1	2.1	9.3
European	16.4	16.8	7.1
Other	0.5	0.5	1.0

*New Zealand Police, 2009–10 Annual Report*<sup>47</sup>

In 2009, the New Zealand Police launched a second edition of *A Practical Reference to Religious Diversity*.<sup>48</sup> It covers seven major religious faiths, including Māori spirituality, Buddhism, Christianity, Hinduism, Islam, Judaism and Sikhism. The book provides information to help frontline police gain basic awareness and understanding of religious diversity, and explains how religious beliefs and customs may impact on their role as police officers. A specialised workshop was held at the police college to train selected staff on Islam. A memorandum of understanding was signed with the Federation of Islamic Associations of New Zealand.

The New Zealand Police has also developed specific strategies to meet the needs of different groups. For example, training to improve police sensitivity to gay, lesbian, bisexual, transgender and intersex communities is incorporated in a training module on 'inclusiveness training'. It is mandatory for all new recruits and senior officers in each district. Civil society groups participate actively in this training. Along with the Commission, they have helped the police expand their diversity recruitment policies to include specific issues faced by trans police recruits.

The police have consulted the Commission, trans and intersex groups about proposed changes to the search procedures in their police manual. These discussions focus specifically on how provisions requiring same-sex searches are applied to trans and intersex people. This is part of a comprehensive revision of the police guidelines, in the light of the proposed changes to search and surveillance legislation. The Commission has emphasised that treating someone with dignity, privacy and respect is the best way to de-escalate what can be particularly uncomfortable procedures for trans and intersex people.

**Community policing**

Community policing aims to prevent crime by addressing the root cause of the problem. There are approximately 1000 community policing staff around the country. They usually focus on either a geographical area or a crime problem. Recently, there has been an intensified focus on community policing in areas of high crime. In South Auckland, for example, a new unit of 12 community police officers has been established, working with communities from a mobile police station to increase community safety.

**Enderley, in Hamilton, had one of the city's highest crime rates and levels of gang membership. The community constable set up a panel with a cross-section of local residents, including women and men, unemployed and employed, tenants and homeowners, Māori and European. Together, they identified Enderley's core problems and the two best responses: establish a sports club and develop weeknight activities at the community centre. These could get young people off the streets and develop a sense of community. The changes dramatically reduced crime and increased community confidence in the police.**

In 2010, Neighbourhood Policing Teams were established.<sup>49</sup> Each team usually includes a sergeant and up to six constables, and works with the same vulnerable

47 Accessible online at: <http://www.police.govt.nz/sites/default/files/2010-annual-report.pdf>

48 New Zealand Police (2009) *A Practical Reference to Religious Diversity* (2nd edition) (Wellington: NZP), accessible online at <http://www.police.govt.nz/service/ethnic/Police%20Religion%20Handbook.pdf>

49 Initially in Counties Manukau, an area where crime rates and crime resolution rates have been worse than national averages.

neighbourhood of 2000–3000 people for up to five years. They are highly visible, working at grass-roots level to build good relationships aimed at preventing crime.

The Minister of Police noted in her speech when officially launching the initiative that “the first six of 16 Neighbourhood Policing Teams planned for the Counties-Manukau District are already making a real difference in preventing crime”.<sup>50</sup>

### Challenges

Despite these initiatives, there continue to be a number of significant challenges, such as:

- bias (either perceived or actual) in the criminal justice system
- an increase in violent offending
- particular groups of people continuing to experience greater threats than others to their security.

### Bias in the criminal justice system

Māori continue to be disproportionately represented in the criminal justice system. The proportion of apprehensions (arrests) involving Māori rose slightly in the past three years, from 43.5 per cent in 2006–07 to 41.36 per cent in 2008–09.

In 2009, the Ministry of Justice released a review of international and New Zealand research on bias against ethnic minority and Indigenous people in the criminal justice system. Areas examined included stop and search; arrest; charging; prosecution; conviction; sentencing (including decisions about legal representation, plea, bail, mode of trial, and pre-sentence reports); custodial-sentence management decisions in the prison system; and parole. The review found that levels of over-representation are not consistent across different discretion points, and vary by age, gender, location and offence type. Research has consistently shown that factors such as offence seriousness, offending history, victim charging preferences and socio-economic status account for most of the variation among different ethnic groups. The review said

that a comprehensive policy approach must involve:

- addressing the direct and underlying causes of ethnic minority and indigenous offending
- enhancing cultural understanding and responsiveness in the justice sector (including improving public accountability)
- developing responses that identify and seek to offset “the negative impact of neutral laws, structures, processes and decision-making criteria on particular ethnic minority groups”.

### Tasers

Serving police officers have as much right to security as any other person in New Zealand. The onus is on the Police Commissioner to ensure that the police operate in ways that do not put officers at unreasonable risk.

In August 2008, the Police Commissioner announced the nationwide introduction of the Taser X26, following a 12-month trial in four police districts in 2006–07. An evaluation report prepared by the police analysed Taser use during the trial and reviewed international literature, health and safety issues, the Standard Operating Procedures (SOPs) used, and perceived benefits and disadvantages of Tasers. The report concluded that on balance, the Taser trial had proved successful.<sup>51</sup> While the report noted support for the introduction of Tasers among police and the public, some significant concerns have been raised by those opposed to Taser use. These include concerns about the risks of injuries or death resulting from Taser use, the potential for excessive or inappropriate use, and the possibility that certain groups, such as those with mental health issues, Māori or Pacific peoples, may be disproportionately affected.<sup>52</sup>

In 2009, the CAT recommended that Tasers be relinquished.<sup>53</sup> In 2010, the UN Human Rights Committee stated:

**The State party should consider relinquishing the use of electro-muscular disruption devices**

50 Speech at the formal launch of the policing teams in Counties-Manukau, 2010

51 New Zealand Police (2008), *Operational Evaluation of the New Zealand Taser Trial* (Wellington: New Zealand Police)

52 See, for example, Auckland District Law Society Public Issues Committee, ‘Think Twice about Tasers’, 14 December 2007; Campaign Against the Taser (2007), *Stun guns in Aotearoa New Zealand? The Shocking Trial* (Wellington: CAT). Accessible online at <http://www.converge.org.nz/pma/tasertrial.pdf>

53 CAT(2009), Concluding Observations of the Committee against Torture: New Zealand, 14 May, CAT/c/NZL/CO/5, para 16. Accessible online at <http://www2.ohchr.org/english/bodies/cat/docs/cobs/CAT.C.NZL.CO.5.pdf>

**(EMDs or ‘Tasers’). While such weapons remain in use, it should intensify its efforts to ensure that its guidelines, which restrict their use to situations where greater or lethal force would be justified, are adhered to by law-enforcement officers at all times. The State party should continue carrying out research on the effects of the use of such weapons.**<sup>54</sup>

## Conclusion Whakamutunga

For the most part, New Zealand’s legislative framework and structures for protecting life, liberty and security of person are robust and consistent with international human rights standards.

Where the State or its agencies impinge on a citizen’s right to life, liberty or security of person, a range of agencies are empowered to intervene or investigate. These include the Office of the Ombudsmen, the Health and Disability Commissioner, the Human Rights Commission and the Independent Police Conduct Authority.

Successive governments have made a commitment to better protect, promote and fulfil the right to life, liberty and security. Since 2004, there have been a number of significant government initiatives, such as community-based interventions, and an increased emphasis on the prevention of domestic violence, including a review of legislation and the development of a comprehensive campaign for action.

The introduction of the Policing Act 2008 has embedded human rights principles into police practices. Furthermore, the New Zealand Police has taken a number of positive steps to better protect the security of people in New Zealand, including an increased emphasis on community-based policing. The 2009 police public-satisfaction survey showed that 72 per cent of people rated their trust and confidence in the police as ‘full’ and ‘quite a lot’, up from 69 per cent in 2008.

However, a number of challenges remain:

- The rate of reported crime and, in particular, violent crime has increased. This is due, in part, to individuals

being more aware of their rights and becoming increasingly willing to report crimes to the police.

- Specific groups in society continue to experience greater threats than others to their security.
- National security (counter-terrorism) measures risk impacting on the enjoyment of human rights.

The Commission consulted with interested stakeholders and members of the public on a draft of this chapter. The Commission has identified the following areas for action to advance life, liberty and security of person:

### Programme of action

Implementing, in partnership with civil society, a comprehensive strategy and programme of action to address the drivers of crime.

### Children and young people

Developing and maintaining initiatives that support families, schools and communities to build positive, rights-respecting environments for children and that prevent violence and bullying.

### Sexual and family violence

Reducing sexual and family violence through target-setting and fully resourcing a national programme of action.

54 Human Rights Committee (2010), para 10

