



**Te Kāhui Tika Tangata**  
**Human Rights Commission**

# **Written contribution to List of Issues**

**For New Zealand's 7<sup>th</sup> Periodic Report under the International  
Covenant on Civil and Political Rights (ICCPR)**

**January 2025**

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## Introduction

1. Te Kāhui Tika Tangata Human Rights Commission (the **Commission**) is Aotearoa New Zealand's (**NZ**) National Human Rights Institution (**NHRI**) accredited with A-status under the Paris Principles.<sup>1</sup>
2. In 2024, NZ had its fourth Universal Periodic Review (**UPR**), its ninth review under the women's rights convention (**CEDAW**), and its Convention Against Torture (**CAT**) follow-up. This submission draws on Commission submissions to those procedures:
  - a. [NHRI submission to 2024 UPR](#)
  - b. [NHRI report and factsheets for 2024 CEDAW Review](#)
  - c. [NHRI submission to 2024 CAT follow-up](#)

## Civil and political rights realisation in NZ

3. People in NZ generally enjoy a high level of realisation of civil and political rights, but challenges remain for the full realisation of rights contained in the ICCPR, particularly for certain groups.
4. The Commission is also conscious of the challenges globally to the international human rights framework, and the importance of building public appreciation and understanding of human rights.
5. Key human rights events since the last review:
  - a. On 15 March 2019, 51 people were killed and many injured when two masjidain were attacked by a terrorist driven by white supremacist, anti-Islamic ideology. The *Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019 (Terrorist Attack RCOI)* made 44 recommendations to Government.<sup>2</sup>
  - b. A Royal Commission of Inquiry (**RCOI Abuse in Care**), into the abuse and neglect of children, young people and adults in State and faith-based care between 1950 and 1999, reported serious human rights abuses.<sup>3</sup>
  - c. Lockdowns, vaccine mandates and other rights-restrictive measures insulated NZ from many rounds of the Covid-19 pandemic but also prompted protests and had lasting impacts on social cohesion.<sup>4</sup>

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<sup>1</sup> <https://ganhri.org/paris-principles/>.

<sup>2</sup> <https://christchurchattack.royalcommission.nz/>.

<sup>3</sup> <https://www.abuseincare.org.nz/>.

<sup>4</sup> See below: Impacts of Covid-19 (articles 4, 6, 12, 21).

- d. Climate change impacts have been felt (repeatedly, by some communities) in a range of severe weather events.<sup>5</sup>
- e. Parliament has passed significant legislation under parliamentary urgency<sup>6</sup> or with reduced opportunity for public participation,<sup>7</sup> including the Fast-track Approvals Bill.<sup>8</sup>
- f. Tens of thousands joined NZ’s largest protest to date, marching throughout the country in November 2024 in support of Te Tiriti o Waitangi (the 1840 agreement between Māori and the British Crown).<sup>9</sup>

## Constitutional and legal framework (article 2)

### Improvements

- 6. Since the last review, NZ’s human rights framework has been strengthened by:
  - a. ratifying the Optional Protocols on a Communications Procedure under the children’s rights convention (**CRC**) and disabled people’s rights convention (**CRPD**).
  - b. developing a National Mechanism for Implementation, Reporting and Follow-Up (**NMIRF**) with a website recording recommendations and tracking progress.<sup>10</sup> The website currently presents recommendations from the 2024 UPR cycle.<sup>11</sup> Regular meetings between the Commission and the NMIRF governing body will start in 2025.
  - c. amending the NZ Bill of Rights Act 1990 (**NZBORA**) to require follow-up to Court declarations of inconsistency with NZBORA. The amendments require declarations be brought to Parliament’s attention, and a report on the government response, but do not require repeal of inconsistent laws.<sup>12</sup>

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<sup>5</sup> See below: Cyclone recovery and climate (articles 4, 6).

<sup>6</sup> The Commission has warned against urgency, both for [previous government COVID-19 legislation](#) and [early in the current government’s term](#) following [unprecedented use of urgency](#), as has [academic commentary](#).

<sup>7</sup> <https://www.nzherald.co.nz/nz/politics/opposition-cries-foul-over-governments-perplexing-decision-with-controversial-legislation/IFLMZR2XSFDI7J5XO3PFYWBAIQ/>.

<sup>8</sup> <https://www.beehive.govt.nz/release/one-stop-shop-fast-track-bill-passes-third-reading>. Criticism of the [Bill’s process and content](#) included criticism of an [“unprecedented” overruling of advice from the Clerk of the House relating to the private benefit involved in amendments to the Bill](#). A [seabed mining project previously stalled by a Supreme Court decision](#) is among fast-tracked projects.

<sup>9</sup> Crowd estimates vary. Over 42,000 reportedly participated on the final day in the capital: <https://www.rnz.co.nz/news/te-manu-korihi/534140/42-000-join-as-treaty-principles-bill-hikoi-reaches-parliament>. The [hikoi \(march\) began days earlier](#).

<sup>10</sup> <https://humanrights.govt.nz/pages/4>.

<sup>11</sup> <https://humanrights.govt.nz/categories/2>.

<sup>12</sup> [Sections 7A and 7B and heading “Required actions after declarations of inconsistency” were added in 2022](#).

Commission submission: [https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/53SCPR\\_EVI\\_96241\\_PR47/human-rights-commission](https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/53SCPR_EVI_96241_PR47/human-rights-commission)

- d. incremental amendment of the Human Rights Act 1993, improving employment protections for family violence survivors,<sup>13</sup> and prohibiting “conversion practices” seeking to suppress gender or sexuality.<sup>14</sup>

7. Opportunities for improvement remain, and various reviews are underway, eg:

- a. NZ retains some reservations and is not party to all conventions.
- b. While the NZBORA affirms ICCPR, NZBORA is not supreme law and does not contain all ICCPR rights (and no economic, social and cultural rights). Government has received a recommendation to consider adding the right to security of the person to NZBORA.<sup>15</sup> Draft legislation proposes increased protection of selected rights in regulatory processes.<sup>16</sup>
- c. Protections against discrimination on the grounds of gender identity, gender expression and sex characteristics have been referred to Te Aka Matua o Te Ture Law Commission (**Law Commission**) for review.<sup>17</sup>
- d. The Court of Appeal has heard a case arguing for expansion of incitement protections on the basis of sexuality.<sup>18</sup>

8. See also below section on indigenous rights.

I. **We recommend asking about:**

- a. removing reservations to ICCPR and CAT.
- b. becoming party to the International Conventions for the Protection of All Persons from Enforced Disappearance and on the Protection of the Rights of All Migrant Workers, and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights on communication.
- c. ongoing formal NMIRF engagement with the NHRI.
- d. adding all current recommendations to the NMIRF’s online Human Rights Monitor.
- e. strengthening and expanding NZBORA, including by addressing deficiencies in the NZBORA section 7 process, such as lack of reporting on subsequent versions of a Bill.

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<sup>13</sup> Human Rights Act s62A, <https://www.employment.govt.nz/assets/uploads/documents/leave-and-holidays/rights-for-employees-affected-by-domestic-violence.pdf>.

<sup>14</sup> <https://tikatangata.org.nz/resources-and-support/conversion-practices>.

<sup>15</sup> [RCOI Abuse in Care recommendation 119](#).

<sup>16</sup> <https://consultation.regulation.govt.nz/rsb/have-your-say-on-regulatory-standards-bill/>;

<https://www.odt.co.nz/opinion/anybody-taking-notice-regulatory-standards-bill>; <https://e-tangata.co.nz/comment-and-analysis/the-dangerous-bill-flying-under-the-radar/>; <https://newsroom.co.nz/2025/01/04/anne-salmond-hunger-games-in-the-beehive/>.

<sup>17</sup> <https://www.lawcom.govt.nz/our-work/ia-tangata/>.

<sup>18</sup> The *Hoban* case: <https://tikatangata.org.nz/news/sexual-orientation-should-be-protected-under-hate-speech-laws>.

- f. Human Rights Act changes, including Law Commission’s *Ia Tangata* review of gender- and sex characteristic-based discrimination protections.
- g. legislation containing unjustifiable limits on NZBORA rights (according to a section 7 NZBORA Attorney-General report<sup>19</sup> or judicial determination).
- h. use of parliamentary urgency and other accelerated policy processes.
- i. working with the NHRI to support and promote the international human rights framework.

## National plans of action for human rights

9. The Commission has statutory responsibility for developing a national plan of action (**NPA**) for human rights,<sup>20</sup> and has previously developed NPAs.<sup>21</sup> The Commission developed an online tool monitoring Government progress on recommendations from NZ’s second UPR in 2014. The tool was maintained until the third UPR cycle<sup>22</sup> and is now offline. To develop an updated NPA, the Commission’s current performance commitments to Government include design of an engagement plan for an NPA.<sup>23</sup>
10. Government began and then stopped developing a national plan of action to implement the UN Declaration on the Rights of Indigenous Peoples (**UNDRIP**).<sup>24</sup>
11. Government is developing a national plan of action against racism (**NAPAR**).<sup>25</sup>

## II. We recommend asking about:

- a. resourcing the Commission to continue developing a refreshed NPA informed by meaningful public engagement
- b. national plan of action to implement UNDRIP
- c. NAPAR (see below).

<sup>19</sup> [Section 7 vetting background on Commission website. Attorney-General NZBORA reports.](#)

<sup>20</sup> [Human Rights Act s5\(2\)\(m\).](#)

<sup>21</sup> [See Commission’s Final NPA Report for the 2014-2019 UPR cycle \(July 2019\) 2.2.](#)

<sup>22</sup> *Ibid.*

<sup>23</sup> [Statement of Performance Expectations 1 July 2024 to 30 June 2025](#), p18 at 1.1. To work towards a new NPA, the 2024/25 business plan includes a stock-take of past Commission recommendations, and design of an engagement plan for an NPA.

<sup>24</sup> See “noted” [4th cycle UPR recommendations re UNDRIP; https://assets.nationbuilder.com/nationalparty/pages/18466/attachments/original/1700778597/NZFirst\\_Agreement\\_2.pdf?1700778597](#), p10 (“He Puapua”).

<sup>25</sup> See below p12.

## Indigenous rights (articles 1, 2, 6, 14, 27)<sup>26</sup>

12. He Whakaputanga o te Rangatira o Nu Tireni (New Zealand's 1835 Declaration of Independence) and Te Tiriti o Waitangi (**Te Tiriti**) are NZ's founding constitutional documents, defining the relationship between hapū (Māori nations) and the British Crown.<sup>27</sup> Te Tiriti recognises pre-existing and ongoing tino rangatiratanga (sovereign authority) and self-determination of hapū, rights affirmed by international standards eg ICCPR and UNDRIP.
13. UN bodies have repeatedly recommended<sup>28</sup> that Government progress constitutional conversations in partnership with hapū and iwi to strengthen constitutional protections for Te Tiriti and human rights.
14. Government has halted work on a national action plan for UNDRIP, and stated UNDRIP has no binding legal effect on NZ.<sup>29</sup>
15. The Waitangi Tribunal has made findings on Government policies and actions including:
  - a. disestablishing the Māori Health Authority<sup>30</sup>
  - b. restricting recognition of customary coastal land rights<sup>31</sup>
  - c. removing duties to Māori children in child protection laws<sup>32</sup>
  - d. reducing protections for Māori representation in local government<sup>33</sup>
  - e. removing all existing legislative references to Treaty principles<sup>34</sup>
  - f. a Bill the Tribunal found reinterprets Treaty principles to exclude Māori self-determination and tino rangatiratanga<sup>35</sup>

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<sup>26</sup> Issues raised elsewhere in this submission also disproportionately affect Māori, eg under articles 10, 14 and 25 rights.

<sup>27</sup> See [See Commission's UPR factsheet](#).

<sup>28</sup> Including CERD, CESCR, CEDAW, EMRIP, UPR – see [HRC-UPR-submission\\_Final.pdf](#) paras 8-11. Previous COB 46 of this Committee.

<sup>29</sup> Above footnote 24.

<sup>30</sup> <https://www.waitangitribunal.govt.nz/en/news-2/all-articles/news/tribunal-releases-report-on-disestablishment-of-te-aka-whai-ora>.

<sup>31</sup> <https://www.waitangitribunal.govt.nz/en/news-2/all-articles/news/tribunal-releases-report-on-the-takutai-moana-act-2011>.

<sup>32</sup> <https://www.waitangitribunal.govt.nz/en/news-2/all-articles/news/tribunal-releases-report-on-oranga-tamariki-section-7aa>.

<sup>33</sup> <https://www.waitangitribunal.govt.nz/en/news-2/all-articles/news/maori-wards>. See below: Electoral rights (article 25)

<sup>34</sup> [https://forms.justice.govt.nz/search/Documents/WT/wt\\_DOC\\_217933408/Nga%20Matapono%20W.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_217933408/Nga%20Matapono%20W.pdf) Chapter 5.

<sup>35</sup> <https://www.waitangitribunal.govt.nz/en/news-2/all-articles/news/tribunal-releases-chapter-6>. Above para 5.f mentions related protests.



16. The Waitangi Tribunal is yet to report on a claim about repeal of smokefree legislation.<sup>36</sup>
17. Legislation affecting Māori participation in resource and environmental decision-making has:
  - a. fast-tracked consent processes for infrastructure and natural resource projects<sup>37</sup>
  - b. lifted bans on petroleum exploration<sup>38</sup>
  - c. reversed environmental law reforms that supported Māori decision-making and protection approaches.<sup>39</sup>
18. The Waitangi Tribunal has commenced a Climate Change Priority Inquiry.<sup>40</sup>
19. The Government law reform programme includes reviewing the Waitangi Tribunal.<sup>41</sup>
20. Inequitable outcomes for Māori continue across sectors, including education,<sup>42</sup> housing,<sup>43</sup> justice,<sup>44</sup> state care<sup>45</sup> and health.<sup>46</sup>

### III. We recommend asking about:

- a. actions the Government will take to meet its indigenous rights obligations (including as articulated in UNDRIP and recognising and respecting Māori rights to self-determination)
- b. actions the Government will take to progress stronger constitutional protection for Te Tiriti in partnership with hapū and iwi
- c. actions the government will take to address inequitable health, justice, and environmental outcomes affecting Māori
- d. how the Government is protecting the rights of indigenous people under Articles 2(3)(a) and 14(1), including to provide access to justice and an effective remedy for Māori<sup>47</sup>

<sup>36</sup> <https://www.teaonews.co.nz/2024/02/01/waitangi-tribunal-claim-lodged-over-governments-smokefree-policies/>.

<sup>37</sup> [Fast-track Approvals Bill](#).

<sup>38</sup> [Crown Minerals Amendment Bill](#).

<sup>39</sup> [Resource Management \(Freshwater and Other Matters\) Amendment Act 2024](#).

<sup>40</sup> <https://www.waitangitribunal.govt.nz/en/inquiries/kaupapa-inquiries/climate-change-priority-inquiry;>  
<https://www.rnz.co.nz/news/te-manu-korihi/509291/waitangi-tribunal-to-hold-inquiry-into-climate-change-policy>.

<sup>41</sup> [Coalition Agreement: National Party and New Zealand First, November 2023](#), p10;

[NZ Herald: Waitangi Tribunal ... attack from senior ministers](#)

<sup>42</sup> [Ngā Haeata Mātauranga: The Annual Report on Māori Education 2020](#)

<sup>43</sup> [Te Pā Harakeke: Māori Housing and Wellbeing 2021](#)

<sup>44</sup> [Ināia Tonu Nei: Hui Māori – A Report Back](#).

<sup>45</sup> [Oranga Tamariki 'Disparities and disproportionality experienced by tamariki Māori' \(23 August 2023\)](#).

<sup>46</sup> [Māori Health Priorities](#)

<sup>47</sup> [MR-2024-NZHC-3110.pdf; Wairarapa Moana tells UN Special Rapporteur of Crown's 'trail of broken promises' – Te Ao Māori News](#). See below Civil justice process for Māori legal issues.

## Non-discrimination (article 2)

### Reducing inequities

21. Wellbeing is unevenly distributed in NZ,<sup>48</sup> with Māori and Pacific peoples experiencing inequities across wellbeing indicators.<sup>49</sup>
22. The Commission’s recent submission to the CEDAW Committee details the higher rates of material hardship experienced by Māori, Pacific and disabled people, and the significant financial disadvantage women face at retirement.<sup>50</sup>
23. Coalition agreements confirm Government’s commitment to “ending race-based policies”.<sup>51</sup> Government has directed the public sector to increase scrutiny of temporary special measures.<sup>52</sup>
24. Population agencies specifically responsible for supporting Māori, Pacific and ethnic communities, and women, received funding cuts in the Government’s 2024 budget cuts across the public sector.<sup>53</sup> Further cuts to public spending have been indicated for Budget 2025.<sup>54</sup>

#### IV. We recommend asking about:

- a. Government’s approach to promoting equity in wellbeing indicators

### Employment

25. Women continue to experience bullying, sexual and racial harassment in workplaces.<sup>55</sup>
26. The Government Employment Strategy 2019 included seven population-based Employment Action Plans, including for women, for youth and for disabled people.<sup>56</sup> They were succeeded by a single 2024 Employment Action Plan<sup>57</sup> with reduced focus on removing systemic barriers to gender and ethnic equality and establishing temporary special measures.

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<sup>48</sup> <https://www.treasury.govt.nz/sites/default/files/2022-11/te-tai-waiora-2022.pdf>, Chapter 3.

<sup>49</sup> <https://www.treasury.govt.nz/sites/default/files/2022-11/te-tai-waiora-2022.pdf>, p7.

<sup>50</sup> [Commission CEDAW submission](#) paras50-54.

<sup>51</sup> [National-ACT](#), [National-NZFirst](#) para3.

<sup>52</sup> A coalition party leader press release “[Need, not race” circular honours universal human rights](#), and the [the related government policy directive](#) both reference CERD special measures provisions.

<sup>53</sup> <https://budget.govt.nz/budget/pdfs/summary-initiatives/b24-sum-initiatives.pdf>.

<sup>54</sup> <https://budget.govt.nz/budget/pdfs/bps/bps25.pdf>.

<sup>55</sup> <https://tikatangata.org.nz/our-work/experiences-of-workplace-bullying-and-harassment-in-aotearoa-new-zealand>.

<sup>56</sup> <https://www.mbie.govt.nz/business-and-employment/employment-and-skills/employment-strategy>.

<sup>57</sup> <https://www.mbie.govt.nz/business-and-employment/employment-and-skills/employment>

27. While NZ has a persistent gender pay gap, ethnicity and disability are more significant factor in pay gaps.<sup>58</sup> For \$1 a Pākehā (NZ European) man earns, a Pākehā woman earns \$0.89, Māori woman earns \$0.81, Pacific woman earns \$0.75. In research, a substantial portion of the gap for Pacific peoples was not explained by observed characteristics such as educational attainment. Reasons for the unexplained portion likely include discrimination.<sup>59</sup>
28. The Equal Pay Act considers pay equity for women only,<sup>60</sup> and limited private sector claims are made (outside government-funded sectors).<sup>61</sup> Government’s 2024 ‘Pay Equity Reset’ emphasises fiscal management, including meeting settlements with existing funding, limiting the funding available to pay equity settlements, and to the processes<sup>62</sup> which can be long and complex.<sup>63</sup>
29. The previous Government committed to legislation requiring larger companies to report gender pay gaps, but not ethnicity and disability pay gaps.<sup>64</sup> The current Government decided against mandatory reporting,<sup>65</sup> instead developing a voluntary gender pay gap tool made public in November 2024.<sup>66</sup>
30. In December 2023, Government repealed the Fair Pay Agreements Act 2022 under urgency without usual democratic process. The Act aimed to “enable employment terms to be improved for employees”.<sup>67</sup> Official advice was that groups including women, young people, Māori and Pacific peoples would be disproportionately affected by the repeal.<sup>68</sup>

**V. We recommend asking about:**

- a. measures to ensure equal employment opportunity by gender, ethnicity and disability
- b. Employment Action Plans, including actions to reduce systemic barriers to equality in opportunity

<sup>58</sup> <https://tikatangata.org.nz/cms/assets/Documents/Reports-and-Inquiry/Employment/Pacific-Pay-Gap-Inquiry/Voices-of-Pacific-Peoples-Pacific-Pay-Gap-Inquiry-Report.pdf> eg pp21,76-78.

<sup>59</sup> <https://tikatangata.org.nz/cms/assets/Documents/Reports-and-Inquiry/Race-and-Ethnicity/Empirical-analysis-of-Pacific-Maori-and-ethnic-pay-gaps-in-New-Zealand.pdf> p1.

<sup>60</sup> <https://www.legislation.govt.nz/act/public/1972/0118/latest/whole.html#LMS427128> s2AAC.

<sup>61</sup> <https://www.publicservice.govt.nz/assets/DirectoryFile/Joint-Report-Approach-to-pay-equity.pdf> para2.

<sup>62</sup> [Cabinet-Paper-Pay-Equity-Reset.pdf](#) (publicservice.govt.nz).

<sup>63</sup> <https://www.women.govt.nz/women-and-work/pay-equity-and-equal-pay#:~:text=Pay%20equity%20claims%20are%20raised,a%20long%20and%20complex%20process.>

<sup>64</sup> <https://www.beehive.govt.nz/release/government-acts-close-gender-pay-gap>

<sup>65</sup> <https://www.beehive.govt.nz/release/government-and-business-tackling-gender-pay-gap>

<sup>66</sup> <https://www.beehive.govt.nz/release/pay-gap-calculator-toolkit-launched>

<sup>67</sup> <https://www.legislation.govt.nz/act/public/2022/0058/latest/whole.html#LMS655988> s3.

<sup>68</sup> <https://www.rnz.co.nz/news/political/503958/christopher-luxon-has-every-confidence-in-cabinet-after-papers-leaked>, <https://www.mbie.govt.nz/dmsdocument/27868-coversheet-to-fair-pay-agreements-regulatory-impact-statement-2023-pdf> at[13].

- c. appropriately funding and supporting pay equity processes for both correcting and maintaining pay equity, including for private sector claims
- d. introducing pay transparency legislation

## Immigration Act

31. Immigration Act section 392 precludes individuals from bringing complaints to the Commission alleging discrimination in application of the Immigration Act or associated regulations.<sup>69</sup>

### VI. We recommend asking about:

- a. repealing Immigration Act 2009 s392.

## National Action Plan Against Racism

32. Māori, Pacific and ethnic minority communities continue to experience discrimination (both at the individual and institutional level) across several areas of life including employment, education and health. Negative impacts compound for people who are members of more than one community facing discrimination, eg Māori women.

33. A National Action Plan Against Racism (**NAPAR**) has been in development for some years and the Commission has been involved in its development.<sup>70</sup> In 2024 the Indigenous peoples caucus withdrew support for NAPAR after the Justice Minister “signalled [...] he wanted to reduce the focus on colonial racism and institutional racism”.<sup>71</sup>

### VII. We recommend asking about:

- a. prioritising completion and implementation of NAPAR by 2025
- b. monitoring and reporting publicly on NAPAR’s implementation
- c. how the issues of institutional racism and racism experienced by Māori and ethnic minorities will be addressed through NAPAR

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<sup>69</sup>[https://www.legislation.govt.nz/act/public/2009/0051/latest/DLM1441222.html?search=sw\\_096be8ed81ed1717\\_392\\_25\\_se&p=1&sr=1](https://www.legislation.govt.nz/act/public/2009/0051/latest/DLM1441222.html?search=sw_096be8ed81ed1717_392_25_se&p=1&sr=1)

<sup>70</sup> <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/national-action-plan-against-racism/>

<sup>71</sup> <https://e-tangata.co.nz/comment-and-analysis/tina-ngata-why-we-walked-away/>

### Violence against women (article 3)

34. NZ has persistent high levels of sexual and gender-based violence (**SGBV**), which disproportionately affects Māori, ethnic and disabled women.<sup>72</sup>
35. Budget 2024 reduced funding to SGBV prevention and response initiatives.<sup>73</sup> Police also plan withdrawing from some family harm callouts.<sup>74</sup> *Te Aorerekura* is the National Strategy to Eliminate Family Violence and Sexual Violence.<sup>75</sup> The second action plan<sup>76</sup> under the strategy has recently launched,<sup>77</sup> with some criticism of progress.<sup>78</sup>
36. The CEDAW Committee “note[d] with concern that gender-based violence is often not taken into account in court decisions on child custody and visitation rights”.<sup>79</sup> There are also ongoing concerns about limited protection against abusive litigation in the Family Court;<sup>80</sup> judicial understanding of sexual violence;<sup>81</sup> and clarity of definitions of consent.<sup>82</sup>

#### VIII. We recommend asking about:

- a. progress on mainstreaming a disability focus in policy and legislative responses to SGBV violence
- b. support provided to ensure Māori self-determined initiatives can address SGBV within Māori communities
- c. improving accessibility and resourcing of trauma-informed, linguistically and culturally appropriate supports and redress for SGBV victims (including complaints mechanisms, shelters, medical care, psychosocial support, and legal assistance)
- d. system-wide change to strengthen capacity for the Family Court, judges, law enforcement and welfare personnel on gender-sensitive responses to SGBV.

### Cyclone recovery and climate (articles 4, 6)

37. Regions of NZ have experienced severe flooding. In February 2023 Cyclone Gabrielle led to 11 deaths and had devastating impacts on land, infrastructure and property. A national state of emergency was called on 14 February 2023, following region-specific

<sup>72</sup> <https://tikatangata.org.nz/our-work/violence-and-abuse-of-tangata-whaikaha-maori-and-disabled-people>.

<sup>73</sup> Budget 2024 - Summary of Initiatives - 30 May 2024 pp3,62.

<sup>74</sup> <https://www.rnz.co.nz/news/national/508917/concern-over-police-plans-to-pull-back-from-family-harm-callouts>.

<sup>75</sup> <https://www.tepunaaonui.govt.nz/national-strategy>.

<sup>76</sup> <https://tepunaaonui.govt.nz/national-strategy/second-te-aorerekura-action-plan>

<sup>77</sup> <https://www.beehive.govt.nz/speech/speech-launch-second-te-aorerekura-action-plan>.

<sup>78</sup> <https://www.rnz.co.nz/news/national/536417/family-and-sexual-violence-government-s-action-plan-makes-little-progress>.

<sup>79</sup> CEDAW para44.

<sup>80</sup> <http://www.nzlii.org/cgi-bin/sinodisp/nz/journals/UOtaLawTD/2023/14.html?query=adoption>

<sup>81</sup> <https://www.newsroom.co.nz/ideasroom/a-crisis-we-just-cant-seem-to-fix>.

<sup>82</sup> <https://www.1news.co.nz/2022/08/05/its-2022-and-nz-law-still-doesnt-define-what-consent-is/>.

states of emergency. All states of emergency were lifted by 14 March 2023. Urgent legislation was passed on 20 March<sup>83</sup> (an omnibus Act making changes to multiple existing laws), and 12 April 2023<sup>84</sup> (introducing an Order in Council mechanism).

38. The Supreme Court has allowed a case against seven major NZ companies to proceed. The plaintiff is seeking to hold the companies to account for climate change damage.<sup>85</sup>
39. In another case, the Court of Appeal has found, “Given the context of the climate emergency, which can be described as one of the greatest human rights challenges the world has ever seen, and the developing jurisprudence around the world responding to this challenge” an interpretation of the right to life that “encompasses a requirement [on the State] to take protective measures against foreseeable threats to life is not [...] clearly untenable [...]”.<sup>86</sup> However the Court confirmed strike out of the claim on essentially procedural reasons.<sup>87</sup>
40. See also above paras 5(e) and 17 about recent legislation.
41. The Government’s first National Adaption Plan 2022-2028<sup>88</sup> does not address what happens if people are forced to retreat from their homes, or rights to compensation for damaged or destroyed homes. A human rights approach was absent from the Government’s Climate Strategy (2024)<sup>89</sup> and Emissions Reduction Plan (2024).<sup>90</sup> A recent attempt to legislate for the right to a clean, healthy and sustainable environment failed to gain Parliamentary support.<sup>91</sup> The Commission developed a critical checklist to ensure human rights are prioritised during relief and recovery efforts.<sup>92</sup>

## **IX. We recommend asking about:**

- a. how Government will avoid regression of human rights (such as health, housing, water and sanitation) and limit negative environmental impacts when using fast-track consents
- b. how Government will ensure human rights, including indigenous people’s rights and Te Tiriti, are integrated into all policy-making for climate change prevention and disaster response.

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<sup>83</sup> <https://www.legislation.govt.nz/act/public/2023/0004/latest/whole.html#whole>.

<sup>84</sup> <https://www.legislation.govt.nz/act/public/2023/0017/latest/whole.html#whole>.

<sup>85</sup> <https://www.courtsofnz.govt.nz/assets/cases/2024/MR-2024-NZSC-5.pdf>.

<sup>86</sup> <https://www.courtsofnz.govt.nz/assets/cases/2024/2024-NZCA-692.pdf> para88.

<sup>87</sup> <https://www.courtsofnz.govt.nz/assets/cases/2024/MR-2024-NZCA-692.pdf>

<sup>88</sup> <https://environment.govt.nz/publications/aotearoa-new-zealands-first-national-adaptation-plan/>

<sup>89</sup> <https://environment.govt.nz/what-government-is-doing/areas-of-work/climate-change/about-new-zealands-climate-change-programme/governments-climate-strategy/>

<sup>90</sup> <https://environment.govt.nz/news/second-emissions-reduction-plan-released/>.

<sup>91</sup> [https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb\\_20240410\\_20240410\\_24](https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20240410_20240410_24).

<sup>92</sup> <https://tikatangata.org.nz/news/human-rights-fundamental-in-disaster-response>

## Impacts of Covid-19 (articles 4, 6, 12, 21)

42. On 25 March 2020 a national state of emergency was declared in relation to Covid-19, and was extended six times. It ended on 13 May 2020, replaced by a National Transition Period. NZ did not provide notice of derogation as per Article 4.
43. Human rights issues arising out of Covid-19 included impacts on employment, living standards, physical and mental health, access to justice, children’s rights and disabled people’s rights. Movement and assembly rights were heavily restricted, on public health grounds. Nationwide and regional lockdowns took place in 2020 and 2021, and borders were closed to non-citizens, with mandatory 14-day quarantine periods in managed facilities.<sup>93</sup> NZ had the lowest rate of Covid-19 related deaths in the OECD, but the measures faced some opposition.
44. In February 2022, groups protesting vaccination mandates<sup>94</sup> occupied Parliament grounds. Lasting 23 days, culminating in a riot, the occupation was dispersed by police. The Independent Police Conduct Authority received 1,905 complaints.<sup>95</sup> Nineteen complaints required individual investigation, with a small number finding police use of force excessive. Overall, the review found police acted professionally and with restraint.
45. In March 2022, concerned about how the protection framework was affecting vulnerable communities, the Commission launched an urgent inquiry into the Omicron outbreak response, finding that the framework reduced public health protections and highlighted the need for effective and appropriate mitigation methods.<sup>96</sup>
46. In November 2024, the *Royal Commission of Inquiry into Covid-19 Lessons Learned (RCOI Covid)* released its Phase One Report.<sup>97</sup> The purpose of the inquiry is to learn from the experience of the Covid-19 pandemic and improve preparedness for future pandemics.

### X. **We recommend asking about:**

- a. how Government will ensure communities, especially those more greatly impacted, are included in pandemic preparedness, response and recovery planning
- b. social cohesion impacts following Covid-19
- c. how Government will respond to RCOI Covid recommendations.

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<sup>93</sup> [Grounded Kiwis court case.](#)

<sup>94</sup> <https://www.legislation.govt.nz/regulation/public/2021/0094/latest/LMS487853.html>

<sup>95</sup> <https://www.ipca.govt.nz/Site/parliament-protest/>

<sup>96</sup> <https://tikatangata.org.nz/our-work/inquiry-into-the-support-of-disabled-people-and-whanau-during-omicron>.

<sup>97</sup> [Royal Commission of Inquiry into COVID-19 Lessons Learned | Covid-19 Lessons Learned.](#)

## Right to life, health and the environment (article 6)

47. Access to fundamental healthcare has been impacted by global workforce shortages, low pay in the sector, and lack of long-term investment. Throughout the 2010s, just over 9 percent of GDP was spent on health, when comparable countries were spending 10-12 percent.<sup>98</sup>
48. Legislation repealing smokefree law passed under urgency and against advice of health practitioners and officials.<sup>99</sup>
49. Abortion was decriminalised in 2020.<sup>100</sup> CRPD Committee recommendations for a moratorium on sterilisation of disabled women without consent have not been implemented.<sup>101</sup>
50. Suicide remains the leading cause of maternal mortality, accounting for over 40% of direct maternal mortality events. Wāhine Māori (Māori women) have over three times the suicide rate of NZ Europeans.<sup>102</sup> NZ has one of the worst youth suicide rates in the OECD, with Māori, Rainbow youth and those in poverty at higher risk than the rest of the population.<sup>103</sup> The Association of Salaried medical Specialists has “no confidence the proposed [Draft Suicide Prevention] Action Plan [for 2025-2029] will achieve its aim”, noting growing unmet need for mental health services and government cuts, including to the Suicide Prevention Office established in 2019 (under recommendations of the Government Inquiry into Mental Health and Addiction).<sup>104</sup>
51. Affordability and quality of housing remains a challenge. Despite current and past governments prioritising emergency housing,<sup>105</sup> demand for emergency housing continues to grow, outstripping supply. At the 2023 Census, 112,496 people (2.3%) were estimated to be severely housing deprived.<sup>106</sup>

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<sup>98</sup> <https://www.auckland.ac.nz/en/news/2024/08/28/nz-needs-proper-health-funding--not-crisis-management.html>

<sup>99</sup> <https://www.otago.ac.nz/news/newsroom/repeal-of-smokefree-laws-means-thousands-will-die,-researchers-warn;>  
See also above para 16.

<sup>100</sup> [Abortion Legislation Act 2020](#)

<sup>101</sup> [The Disability Action Plan 2019-2023](#)

[included a Safeguarding Bodily Integrity Rights Work Programme, which aimed to strengthen the safeguarding framework for disabled people against non-consensual sterilisation and other bodily integrity abuse.](#)

[That work programme was reported as “off-track” in the final report on the action plan.](#)

[No new plan is in place.](#)

<sup>102</sup> <https://www.treasury.govt.nz/sites/default/files/2024-05/pc-inq-fcfa-sub-086-maternal-care-action-group-nz.pdf>

<sup>103</sup> <https://mentalhealth.org.nz/suicide-prevention/suicide-statistics>

<sup>104</sup> <https://asms.org.nz/wp-content/uploads/2024/11/Submission-Ministry-of-Health-Suicide-Prevention-Action-Plan-Nov-2024.pdf>

<sup>105</sup> <https://www.nzherald.co.nz/nz/public-housing-waitlist-drops-for-only-second-quarter-since-june-2015/KMFLNOHJUFEFARQYT7NOAXFVE/>; <https://www.rnz.co.nz/news/political/533642/watch-govt-announces-wrap-around-services-for-people-in-emergency-housing-long-term>

<sup>106</sup> <https://www.stats.govt.nz/information-releases/2023-census-severe-housing-deprivation-homelessness-estimates/>



52. Grocery prices are high in OECD terms, and increased more than any other common household bill 2019-2023.<sup>107</sup> A 2022 study into the grocery sector found more competition was needed.<sup>108</sup> The first annual report of the Grocery Commissioner, appointed under the Grocery Industry Competition Act 2023,<sup>109</sup> expresses ongoing concern.<sup>110</sup>
53. There were 13 “unnatural” deaths in Corrections custody in 2023-24, the highest number in many years.<sup>111</sup> This does not include deaths in other custody, for example Police custody.

**XI. We recommend asking about:**

- a. staff shortages and long-term sustainable investment in the health system to ensure access to fundamental healthcare
- b. plans for reducing suicide rates, especially amongst youth
- c. plans for combatting rising costs of basic food
- d. prohibiting involuntary sterilisation and involuntary non-therapeutic procedures on disabled women
- e. reinstating smokefree legislation
- f. plans for reducing deaths in custody

## **Torture, inhumane or degrading treatment (articles 2(3), 7)**

### **Abuse in care**

54. The *Abuse in Care Royal Commission of Inquiry (RCOI Abuse in Care)*, established in 2018, investigated abuse in State and faith-based institutions’ care from 1950 to 1999.<sup>112</sup>
55. In 2021, the RCOI Abuse in Care released a redress report, recommending establishing a holistic redress scheme, independent from government.<sup>113</sup> The report recommended government agencies use best endeavours to resolve claims, pending a new scheme being established.

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<sup>107</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0019/362305/Annual-Grocery-Report-2024.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0019/362305/Annual-Grocery-Report-2024.pdf) p58.

<sup>108</sup> <https://comcom.govt.nz/regulated-industries/grocery>

<sup>109</sup> [Grocery Industry Competition Act 2023](https://www.govt.nz/legislation/grocery-industry-competition-act-2023/)

<sup>110</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0019/362305/Annual-Grocery-Report-2024.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0019/362305/Annual-Grocery-Report-2024.pdf)

<sup>111</sup> [https://www.corrections.govt.nz/resources/statistics/deaths\\_in\\_custody](https://www.corrections.govt.nz/resources/statistics/deaths_in_custody)

<sup>112</sup> <https://www.abuseincare.org.nz/>

<sup>113</sup> <https://www.abuseincare.org.nz/reports/from-redress-to-puretumu/>.

56. The RCOI Abuse in Care Final Report in 2024<sup>114</sup> estimated up to 200,000 people were abused in State and faith-based care in the report period.<sup>115</sup> People experienced racism and ableism across all care settings, with Māori and Pacific children more likely to be physically abused than children of other ethnicities.<sup>116</sup> Over 30% of people in State care during this period served prison sentences in later life.<sup>117</sup>
57. The Prime Minister has formally apologised to survivors,<sup>118</sup> as have other public officials.
58. The Prime Minister also acknowledged that torture occurred at Lake Alice Hospital.<sup>119</sup> Abuse at Lake Alice first emerged in 1976 and governments have long been aware.<sup>120</sup> The Committee against Torture has repeatedly recommended governments investigate, prosecute and accord redress to Lake Alice survivors,<sup>121</sup> and has made specific findings about two individuals.<sup>122</sup>
59. Following the RCOI Abuse in Care final report, Government announced reimbursement to Lake Alice survivors for legal fees deducted from 2001 financial settlements.<sup>123</sup>
60. The Prime Minister’s formal apology in November 2024 gave no definitive position on compensation and rehabilitation. The Ombudsman found current benchmark payments were arbitrary and unreasonable.<sup>124</sup> NZ has maintained its reservation to article 14 of the Convention against Torture, leaving awards of compensation to victims of torture to the discretion of the Attorney-General. The State did not accept UPR recommendations to remove this reservation.<sup>125</sup>

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<sup>114</sup> [RCOI Final Report ‘Whanaketia’](#). See particularly [recommendations 39-87](#) and [recommendations 111-138](#). Recommendations include: a national strategy, independent oversight agency and legislation; comprehensive standards with penalties for non-compliance; staff vetting, registration and training; effective complaints system; progressive de-institutionalisation; best practice data and record keeping; strengthening independent monitoring; community empowerment reducing the need for out-of-home care; targeted prevention programmes.

<sup>115</sup> [Ibid, Summary of key findings on nature and extent](#) [75(a)-(k)].

<sup>116</sup> [Ibid](#), [75(k)(vi)]

<sup>117</sup> [Ibid](#), [77(h)].

<sup>118</sup> <https://www.beehive.govt.nz/speech/prime-minister-apologises-abuse-care>

<sup>119</sup> [Ibid](#)

<sup>120</sup> <https://newsroom.co.nz/2024/10/14/crown-cover-up-the-timeline/>;

[‘The Royal Commission of Inquiry into Abuse in Care: a timeline’ \(14 November 2024\)](#);

[‘RCOI Beautiful Children: Inquiry into the Lake Alice Child and Adolescent Unit \(December 2022\)’](#).

<sup>121</sup> CAT 5<sup>th</sup>-7<sup>th</sup> periodic reviews, and eg [7 May 2012 follow-up](#).

<sup>122</sup> [Paul Zentveld](#) and [Malcolm Richards](#).

<sup>123</sup> See [RCOI final report recommendation 18](#); [‘Crown to pay Lake Alice survivors back \\$2.67m for legal fees’ \(30 October 2024\)](#); and [Government press release](#).

<sup>124</sup> <https://www.ombudsman.parliament.nz/news/chief-ombudsman-finds-rate-msd-compensation-payments-abuse-survivors-be-arbitrary-and>

<sup>125</sup> <https://humanrights.govt.nz/recommendations?search=reservation>

61. Government updates at the formal apology indicated work had begun on 28 of the 138 RCOI Abuse in Care final report recommendations. Initial legislation has been introduced making some recommended changes.<sup>126</sup>
62. Government announced \$32 million to increase capacity for the current redress system while the new system is established.<sup>127</sup> Rapid payments for abuse victims were previously capped at \$30,000.<sup>128</sup> It is unknown if this investment will increase the cap or whether survivors who previously accepted compensation will be eligible for further payments.<sup>129</sup>
63. Government has since announced new redress options for Lake Alice survivors.<sup>130</sup>

### Electro-muscular disruption devices

64. The Committee has previously recommended ceasing use of electro-muscular disruption devices (**TASERS**). A 2024 report on taser use showed 42% of TASER deployments and 54% of TASER discharge events were noted as involving people who were experiencing mental distress, were mentally unwell and/or suicidal.<sup>131</sup> TASERS are disproportionately used against Māori and men aged between 21-40 years old.<sup>132</sup>

## **XII. We recommend asking about:**

- a. redress, including compensation and rehabilitation, for the torture that occurred at Lake Alice.
- b. Government response to the RCOI Abuse in Care's recommendations, including redress for other survivors of abuse in care
- c. progress towards reducing the use of TASERS (electro-muscular disruption devices) in favour of lower-harm policing approaches

65. See also below recommendations relating to conditions in detention.

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<sup>126</sup> [Abuse in Care Legislation Amendment Bill](#).

<sup>127</sup> <https://www.beehive.govt.nz/speech/prime-minister-apologises-abuse-care>

<sup>128</sup> [Ministry of Social Development 'Making a claim for abuse or neglect in state care' \(March 2023\). 'Economic cost of abuse in care' \(29 September 2020\) report commissioned by the RCOI estimated the cost over a lifetime per individual abused in care at \\$857,160' \(29 September 2020\) \(p37 Table 9\).](#)

<sup>129</sup> ['Abuse survivors sceptical about funding boost for current redress system' \(13 November 2024\).](#)

<sup>130</sup> <https://www.beehive.govt.nz/release/torture-redress-survivors-lake-alice-unit>; with a mixed response from survivors.

<sup>131</sup> [UPD Report 3 taser data report.pdf](#) pp37,41

<sup>132</sup> *Ibid* pp28,29,32.

See also [RNZ 'Māori men more likely to be stopped, tasered, prosecuted by police due to 'bias' and 'structural racism'](#)

## Trafficking and modern slavery (article 8)

66. The Walk Free 2023 Global Slavery Index estimated 8000 people in NZ were in modern slavery in 2022.<sup>133,134</sup>

67. NZ does not have specific modern slavery legislation. In 2023, the previous Government announced commitment to addressing modern slavery by introducing new legislation.<sup>135</sup> The current Government stated specific modern slavery legislation is not a priority but remains under consideration.<sup>136</sup> A recent independent report proposes a Bill.<sup>137</sup>

68. Section 19 of the Prostitution Law Reform Act 2003 prohibits temporary visa holders from lawfully working as sex workers, meaning they lack the law's protection.<sup>138</sup> CEDAW has recommended amendments.<sup>139</sup>

### XIII. We recommend asking about:

- a. repealing s19 Prostitution Reform Act
- b. enacting modern slavery legislation with due diligence requirements for workplaces/businesses

## Migrant exploitation (articles 8, 12, 23, 27)

### RSE scheme (articles 8,12, 21, 27)

69. The Recognised Seasonal Employer (**RSE**) scheme provides seasonal visas for workers from the Pacific to work in horticulture and viticulture. The Commission's 2022 RSE human rights review found workers often face significant restrictions on their movement and other rights, imposed by their employer, eg restrictions on leaving residences in their free time, geographical boundaries, restrictions on leisure activities,

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<sup>133</sup> [The Global Slavery Index 2023](#)

<sup>134</sup> <https://www.stuff.co.nz/nz-news/350477009/four-more-auckland-properties-under-investigation-for-allegedly-housing-exploited-migrants>

<sup>135</sup> <https://www.mbie.govt.nz/business-and-employment/employment-and-skills/plan-of-action-against-forced-labour-peopletrafficking-and-slavery/modern-slavery>

<sup>136</sup> <https://newsroom.co.nz/2024/07/17/govt-shuts-down-modern-slavery-group/>;  
[https://modernslaveryrecommendations.nz/MSTEP\\_Modern\\_Slavery\\_Bill\\_Report\\_Final-101224.pdf](https://modernslaveryrecommendations.nz/MSTEP_Modern_Slavery_Bill_Report_Final-101224.pdf), p14

<sup>137</sup> [https://modernslaveryrecommendations.nz/MSTEP\\_Modern\\_Slavery\\_Bill\\_Report\\_Final-101224.pdf](https://modernslaveryrecommendations.nz/MSTEP_Modern_Slavery_Bill_Report_Final-101224.pdf)

<sup>138</sup> <https://www.rnz.co.nz/news/national/489477/migrant-sex-workers-face-dangerous-situations-exploitation-advocates>

<sup>139</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FNZL%2FCO%2F9&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FNZL%2FCO%2F9&Lang=en), 24-25.

and curfews.<sup>140</sup> The Employment Court is considering the legality of RSE wage deductions.<sup>141</sup>

70. Married couples in NZ under the scheme may be separated from their partners for the duration of their employment.<sup>142</sup> Lack of visa support for family members is also an issue.<sup>143</sup>
71. RSE workers have been prohibited by their employers from drinking kava in their own time.<sup>144</sup> Kava is “well known and recognised within the Pacific for its mythical, narcotic, spiritual, medicinal and cultural value”.<sup>145</sup>
72. In September 2024, Government made RSE workers eligible for multi-entry visas, so workers can attend (and return from) events at home such as funerals, without applying for another visa,<sup>146</sup> increasing freedom of movement.

### AEWV scheme (articles 8, 23)

73. The Accredited Employer Work Visa scheme (**AEWV**) is NZ’s largest temporary migrant work visa scheme. In June 2024 policy changes led to a significant group of AEWV workers no longer being able to apply to support work, visitor or student visas for their partners and dependent children.<sup>147</sup>
74. The Commission’s AEWV human rights review spoke with workers who identified concerns regarding potential human trafficking within the scheme.<sup>148</sup> In 2023, when asked if reported migrant exploitation under the AEWV scheme was human trafficking, the then Minister for Immigration, responded “Yes, almost certainly”.<sup>149</sup>

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<sup>140</sup> [https://tikatangata.org.nz/cms/assets/Documents/Reports-and-Inquiry/Employment/The\\_RSE\\_Scheme\\_in\\_Aotearoa\\_New\\_Zealand\\_A\\_Human\\_Rights\\_Review\\_HRC\\_website.pdf](https://tikatangata.org.nz/cms/assets/Documents/Reports-and-Inquiry/Employment/The_RSE_Scheme_in_Aotearoa_New_Zealand_A_Human_Rights_Review_HRC_website.pdf), p16.

<sup>141</sup> <https://tikatangata.org.nz/news/commission-calls-for-human-rights-of-migrant-workers>.

<sup>142</sup> <https://tikatangata.org.nz/our-work/the-rse-scheme-in-aotearoa-new-zealand-a-human-rights-review>, para73.

<sup>143</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FNZL%2FCO%2F9&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FNZL%2FCO%2F9&Lang=en), 40-41.

<sup>144</sup> [https://tikatangata.org.nz/cms/assets/Documents/Reports-and-Inquiry/Employment/The\\_RSE\\_Scheme\\_in\\_Aotearoa\\_New\\_Zealand\\_A\\_Human\\_Rights\\_Review\\_HRC\\_website.pdf](https://tikatangata.org.nz/cms/assets/Documents/Reports-and-Inquiry/Employment/The_RSE_Scheme_in_Aotearoa_New_Zealand_A_Human_Rights_Review_HRC_website.pdf), p18.

<sup>145</sup> <https://nepituno.to/~nepituno/index.php/education/item/2692-kava-drinking-research-highlighted-in-global-report>

<sup>146</sup> <https://www.immigration.govt.nz/employ-migrants/hiring-a-migrant/employ-workers-through-the-rse-scheme/rse-changes-for-the-2024-25-season>

<sup>147</sup> <https://www.immigration.govt.nz/about-us/media-centre/news-notifications/further-changes-to-accredited-employer-work-visa-aewv>

<sup>148</sup> <https://tikatangata.org.nz/cms/assets/Documents/Reports-and-Inquiry/Employment/Accredited-Employer-Work-Visa-review-report-2024/The-Accredited-Employer-Work-Visa-Scheme- A-Human-Rights-Review-FINAL.pdf>

<sup>149</sup> <https://www.stuff.co.nz/nz-news/350477009/four-more-auckland-properties-under-investigation-for-allegedly-housing-exploited-migrants>

#### XIV. We recommend asking about:

- a. implementing 24 October 2023 Cabinet paper “Outcomes of the Recognised Seasonal Employer policy review” recommendations and outcomes, including developing guidance on human rights obligations<sup>150</sup>
- b. reviewing the Accredited Employer Work Visa (**AEVV**)<sup>151</sup> and Recognised Seasonal Employer (**RSE**) schemes<sup>152</sup>
- c. appropriate funding for, and implementation of, the activities within the Plan of Action against Forced Labour, People Trafficking and Slavery 2020-2025.<sup>153</sup>

### Arbitrary detention (articles 2(3), 9, 26)

#### Criminal justice

75. NZBORA is silent on awarding compensation for rights violations by State action or omission, or by those exercising public functions. NZ courts established a discretionary jurisdiction to award compensation for violations of NZBORA rights in “*Baigent’s Case*” (1994).<sup>154</sup>
76. In 2022 the High Court awarded \$450,000 to a claimant whose prison sentence was found to be unjust and grossly disproportionate.<sup>155</sup> The award was overturned in the Court of Appeal, and a further appeal to the Supreme Court is yet to be heard.
77. The Prisoners and Victim’s Claims Act 2005 places particular procedural requirements and restrictions on compensation for prisoners and persons subject to community-based sentences for breaches and interferences with their human rights.<sup>156</sup>
78. As outlined below,<sup>157</sup> reforms have been introduced limiting judicial discretion in favour of increased sentences. Legislation has also been passed which requires rehabilitative programmes to be completed for parole eligibility, when Corrections is not delivering such programmes.<sup>158</sup>

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<sup>150</sup> <https://www.mbie.govt.nz/dmsdocument/27706-outcomes-of-the-recognised-seasonal-employer-policy-review-proactiverelease-pdf>, particularly para85.

<sup>151</sup> <https://tikatangata.org.nz/news/migrant-worker-exploitation>.

<sup>152</sup> <https://tikatangata.org.nz/our-work/the-rse-scheme-in-aotearoa-new-zealand-a-human-rights-review>.

<sup>153</sup> <https://www.mbie.govt.nz/business-and-employment/employment-and-skills/plan-of-action-against-forced-labour-people-trafficking-and-slavery>

<sup>154</sup> *Simpson v Attorney General [Baigent's case]* [1994] 3 NZLR 667

<sup>155</sup> *Fitzgerald v Attorney General* [2022] NZHC 2456

<sup>156</sup> *Prisoners' and Victims' Claims Act 2005*, ss2,6,13,14.

<sup>157</sup> See below ‘Conditions of detention, treatment of prisoners (articles 10, 2, 6, 7, 17)’.

<sup>158</sup> *Parole (Mandatory Completion of Rehabilitative Programmes) Amendment Bill*. See the Commission's submission.

## Health and disability detention (articles 2,9,10,12,14)

79. Disabled people are over-represented in prison and experience disparate outcomes.<sup>159</sup>

There are alternate avenues to detain people charged with offences and found to have intellectual disabilities,<sup>160</sup> or deemed unfit to stand trial.<sup>161</sup> Prolonged detention under these procedures, in a facility utilising extended seclusion, restrictive practices, and lacking expert staff and cultural advisors,<sup>162</sup> was recently challenged in the Supreme Court as being inconsistent with the NZBORA and CRPD.<sup>163</sup>

80. Monitors of mental health and disability facilities have expressed concerns about over-occupancy, substandard material conditions, and limited specialist staff with inadequate training and varied cultural competence.<sup>164</sup> The Mental Health Bill has been introduced, aiming to protect rights and improve equity in mental health outcomes.<sup>165</sup> The Commission submission on this Bill raises concerns about the likely effectiveness of this Bill.<sup>166</sup> This and other aims, including reducing and eliminating use of seclusion, will be difficult to achieve in practice without addressing issues identified in these facilities.

81. The Commission's 2023 submission to the Committee Against Torture review of NZ details concerns with compulsory treatment.<sup>167</sup>

### XV. We recommend asking about:

- a. aligning compensation policies with international human rights obligations, including the article 2(3) right to a remedy
- b. the "J" case and reform of the Intellectual Disability (Compulsory Care and Rehabilitation) Act
- c. how the Mental Health Bill will address the human rights issues associated with compulsory treatment

<sup>159</sup> [Corrections 'Disability Action Plan'; Ombudsman 'Kia Whaitake', \[139\].](#)

<sup>160</sup> [Intellectual Disability \(Compulsory Care and Rehabilitation\) Act 2003 \(IDCCR Act\).](#)

<sup>161</sup> [Criminal Procedure \(Mentally Impaired Persons\) Act 2003.](#)

<sup>162</sup> [Ombudsman OPCAT Report: Report on an announced inspection of Pohutukawa Forensic Intellectual Disability Unit Mason Clinic under the Crimes of Torture Act 1989 \(September 2022\), p9.](#)

<sup>163</sup> ['Commission intervenes in Supreme Court disability rights case' \(29 August 2024\).](#) Both CAT (CAT/C/NZL/CO/7, at [42(b)]) and CRPD Committees (CRPD/C/NZL/CO/2-3, at [28(b)]) have raised concerns with the IDCCR Act.

<sup>164</sup> [New Zealand National Preventive Mechanism 2022/23 annual report](#) pp18,52.

<sup>165</sup> [Mental Health Bill.](#)

<sup>166</sup> [Yet to be published. Available on Parliament website once published.](#)

<sup>167</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FIFN%2FNZL%2F53059&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FIFN%2FNZL%2F53059&Lang=en) para 154 and following.

## Conditions of detention, treatment of prisoners (articles 10, 2, 6, 7, 17)

82. NZ is a signatory to OPCAT.<sup>168</sup>
83. The Government abolished targets to reduce the prison population,<sup>169</sup> and increased budgets<sup>170</sup> to the Department of Corrections (**Corrections**) to expand capacity.<sup>171</sup> The onsite prison population now exceeds 10,000 for the first time in four years.<sup>172</sup>
84. Prisons have not been meeting minimum entitlements,<sup>173</sup> and Corrections does not consistently record their provision.<sup>174</sup> Corrections' ongoing staff shortages have detrimental impacts, including:<sup>175</sup>
- a. extended cell lock-up times (24 hours per day)
  - b. limits on outside visitors (including legal representatives and family)
  - c. reduced daily entitlements to telephone calls
  - d. reduced access to education and rehabilitation programmes (often prerequisite to parole)
  - e. mandatory transfers to prison sites outside their home region, without right of review.
85. Reforms have increased surveillance of prisoners, limited judicial discretion in favour of increased sentences, and reversed measures to reduce discrimination in the system.<sup>176</sup> Officials have identified flow-on impacts of an increasing remand

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<sup>168</sup> <https://tikatangata.org.nz/our-work/monitoring-places-of-detention>

<sup>169</sup> [Corrections Amendment Act 2024](#). See [Commission submission](#) and [supplementary submission](#).

<sup>170</sup> [Legal Services Amendment Act 2024](#);

[RNZ 'Legislation scrapping funding for Section 27 cultural sentencing reports passes under urgency' \(6 March 2024\)](#).

<sup>171</sup> [New Zealand Government 'Budget 2024 - Summary of Initiatives' \(30 May 2024\) p26](#);

[Office of the Minister of Corrections 'The Minister of Corrections' priorities' \(18 June 2024\) at \[13\]–\[17\]](#).

<sup>172</sup> ['Prison population exceeds 10,000 for first time in four years' \(11 November 2024\)](#). Compared with total prison population of 8,513 at time of CAT review – in [Corrections 'Prison facts and statistics \(June 2023\)'](#).

<sup>173</sup> [Corrections, Office of the Inspectorate 'Special investigation into minimum entitlements at Auckland Prison' \(April 2024\) pp.49-50](#).

<sup>174</sup> [Corrections 'Government response to the Report of the Justice Committee on the Office of the Ombudsman OPCAT Reports \(30 September 2024\) \[12\]–\[14\]](#).

<sup>175</sup> See [Commission 'Concerns about rights of people in detention during response to COVID-19 \(2 April 2020\)](#);

[RNZ 'Covid-19: Prisoners confined to cells for up to 29 hours, diary shows \(1 May 2020\)](#);

[The Guardian 'Staff shortages send New Zealand's prisons to crisis point' \(18 January 2023\)](#).

<sup>176</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FNGS%2FNZL%2F60511&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FNGS%2FNZL%2F60511&Lang=en) [7].



population<sup>177</sup> including for meeting accommodation capacity, ensuring safety, and delivering rehabilitation effectively.<sup>178</sup>

86. Recent court decisions found the use of “cell-buster” pepper spray on women in prison was inhumane;<sup>179</sup> and unlawful discrimination occurred when transferring women prisoners because their individual circumstances were not considered.<sup>180</sup> Monitoring bodies also found the overuse of seclusion (including periods of prolonged solitary confinement) being used disproportionately against women when compared with men.<sup>181</sup>
87. Māori are over-represented among people arrested, prosecuted, convicted, and in prison,<sup>182</sup> State care<sup>183</sup> and youth justice detention.<sup>184</sup> Māori women are the fastest-growing prison population in NZ.<sup>185</sup> The Chief Ombudsman has identified several culturally unsafe practices experienced by Māori in prison and recommended significant systemic change to enhance cultural competence.<sup>186</sup> Legislative requirements for Corrections to improve outcomes for Māori, and references to Te Tiriti o Waitangi, were removed from the Corrections Amendment Bill after opportunities for public consultation had concluded.<sup>187</sup>
88. In 2019, Corrections established a new Prisoners of Extreme Risk Unit (**PERU**) to hold detainees identified as presenting “extreme risk” after the Christchurch terror attacks.<sup>188</sup> The role of the PERU has since expanded, to cover prisoners identified as presenting an “ongoing risk of serious violence” or having the ability to “influence others to engage in serious violence or threats.”<sup>189</sup> In December 2024, the Ombudsman

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<sup>177</sup> [At 30 September 2024, 42.7 percent of people in prison were held on remand \(27 percent remand-accused and 15.7 percent remand-convicted\). See Corrections Prison facts and statistics September 2024.](#)

<sup>178</sup> [Ombudsman New Zealand 'Kia Whaitake | Making a Difference: Investigation into Ara Poutama Aotearoa | Department of Corrections \(June 2023\)](#) at [150], referring to Ministry of Justice.

<sup>179</sup> [Cripps and Bassett v Attorney-General \[2022\] NZHC 1532, para\[202\]; Special investigation into the management of three wāhine at Auckland Region Women's Corrections Facility.](#)

<sup>180</sup> [Wallace v Chief Executive of the Department of Corrections \[2023\] NZHC 592; Wallace v Chief Executive of the Department of Corrections \[2023\] NZHC 2248, paras\[75\],\[90\],\[98\].](#)

<sup>181</sup> [Commission's three reports by Dr Shalev in 2017, 2020, and 2021. Chief Inspectorate of prisons: Separation and Isolation report.](#)

<sup>182</sup> [Ministry of Justice 'Hāpaitia te Oranga Tangata: Safe and Effective Justice'.](#)

<sup>183</sup> ['Oranga Tamariki 'Disparities and disproportionality experienced by tamariki Māori' \(23 August 2023\).](#)

<sup>184</sup> [In the period 1 July 2017 to 30 April 2023, 89 percent of all young people in youth justice detention each day were Māori and/or Pacific. See Oranga Tamariki 'Youth justice custody trends' p12.](#)

<sup>185</sup> <https://www.apr.ch/global-report/new-zealand>.

<sup>186</sup> [Ombudsman 'Kia Whaitake', above footnote 178, \[465\]-\[493\].](#)

<sup>187</sup> [Corrections Amendment Act 2024. See Commission submission and supplementary submission. https://www.corrections.govt.nz/\\_data/assets/pdf\\_file/0010/52984/Removing\\_the\\_Treaty\\_of\\_Waitangi\\_Provisions\\_from\\_the\\_Corrections\\_Amendment\\_Bill.pdf](#)

<sup>188</sup> ['Prisoners of 'extreme risk' directorate set up after Christchurch terror attack' \(16 November 2020\)..](#)

<sup>189</sup> ['Prison within a prison: Secret \\$3m unit to hold mosque shooter' \(7 March 2021\).](#)

released an OPCAT report on the PERU,<sup>190</sup> observing evidence of prolonged solitary confinement in oppressive conditions as well as other human rights abuses.<sup>191</sup> The Ombudsman has recommended Corrections stop the use of PERU without delay.<sup>192</sup>

89. There remains only one private prison in NZ: Auckland South Correctional Facility (**ASCF**), operated under a Public Private Partnership with the Department of Corrections.<sup>193</sup> In November 2024, videos of fighting within the facility at ASCF were streamed on social media.<sup>194</sup> In response, Corrections deployed staff from the public prison system to monitor and provide advice on operations in the prison.<sup>195</sup>

**XVI. We recommend asking about:**

- a. the prison population, particularly those on remand
- b. urgent steps to lift restrictions on minimum entitlements in prisons
- c. removal of public funding for cultural reports to inform sentencing<sup>196</sup>
- d. action to address over-representation of Māori in the criminal justice system
- e. action to address over-representation of disabled people in the criminal justice system
- f. Corrections' increased powers of surveillance over communications<sup>197</sup>
- g. the 'three strikes' sentencing regime,<sup>198</sup> imposing maximum sentences and loss of parole, and sentencing reform which introduces new aggravating factors and limits sentence reductions<sup>199</sup>
- h. provision of gender-responsive, culturally and trauma-informed measures including mental health support to women in prison
- i. data about prevalence, needs assessment and provision of adequate supports for disabled people in detention

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<sup>190</sup> [OPCAT Report - Prisoners of Extreme Risk Unit.pdf](#)

<sup>191</sup> [Ibid 41-42](#)

<sup>192</sup> [Ibid 11](#)

<sup>193</sup> [Auckland South Corrections Facility | Department of Corrections](#)

<sup>194</sup> [Auckland prison inmate goes viral with video of guards filmed behind bars - NZ Herald](#)

<sup>195</sup> [Corrections deploys staff to private Auckland prison where gang members filmed TikToks on smuggled phones - NZ Herald](#)

<sup>196</sup> [Legal Services Amendment Act 2024](#);

[RNZ 'Legislation scrapping funding for Section 27 cultural sentencing reports passes under urgency' \(6 March 2024\).](#)

<sup>197</sup> [Corrections Amendment Act 2024.](#)

<sup>198</sup> [Sentencing \(Reinstating Three Strikes\) Amendment Act 2024.](#)

[See the Commission's submission on the related Bill.](#) See also below 'Non-retroactivity of laws (article 15)', and above footnote 19 and recommended issues I(e) and I(g) relating to NZBORA section 7 reports.

[Following Select Committee, the Bill was "toughened" by lowering the threshold for qualifying offences. The public had no opportunity to submit on the revised Bill.](#)

<sup>199</sup> [Sentencing \(Reform\) Amendment Bill; Defence Lawyers Association of New Zealand submission.](#)

- j. use of force in detention, including ending use of pepper spray and spit hoods
- k. ensuring solitary confinement is used only in accordance with Mandela and Bangkok Rules
- l. government oversight of, and processes and mechanisms to mitigate risks and harm in, private prisons

## Asylum seekers (articles 13, 16)

90. NZ has made progress in its treatment of asylum seekers. However, people who seek asylum continue to be treated differently to people arriving through the Refugee Quota programme. The Government provides basic support to asylum seekers *after* their claim is approved,<sup>200</sup> but very limited specialist support services beforehand. Asylum seekers rely heavily on a handful of NGOs for support while their claim is processed, which can take 1-3 years.
91. Government's Refugee Resettlement Strategy<sup>201</sup> sets out good resettlement practice for refugees arriving through the Quota programme. This does not include asylum seekers.
92. Until 2020, some asylum seekers were detained in criminal justice facilities.<sup>202</sup> With detention ceased during the COVID pandemic, Immigration NZ in 2021 commissioned an independent review and in 2022 accepted its recommendations to better align with human rights obligations.<sup>203</sup> During the last OPCAT inspection, no asylum seekers were detained at the relevant residential centre.<sup>204</sup>
93. The Immigration (Mass Arrivals) Amendment Act<sup>205</sup> reopens the possibility of detention, although prisons and police stations have been excluded. Any person arriving by boat, in a group of 30+ people, can be detained for 4-7 days, and up to 28 days in some circumstances. This Act has not yet been used.
94. Most asylum seekers who are trans or non-binary have to use identity documents with the wrong name and/or gender marker.<sup>206</sup> Most have left countries where they cannot change their name and/or gender marker, and they cannot change their name in NZ

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<sup>200</sup> <https://www.redcross.org.nz/get-help/help-for-refugees/convention-refugees>.

<sup>201</sup> <https://www.immigration.govt.nz/about-us/what-we-do/our-strategies-and-projects/refugee-resettlement-strategy>.

<sup>202</sup> <https://amnesty.org.nz/report-outlines-clear-human-rights-violations-asylum-seekers-govt/>.

<sup>203</sup> <https://www.mbie.govt.nz/about/news/inz-accepts-review-recommendations-relating-to-the-detention-of-asylum-seekers>.

<sup>204</sup> <https://www.ombudsman.parliament.nz/sites/default/files/2024-02/OPCAT%20Report%20-%20Te%20Ahuru%20Mowai%20o%20Aotearoa%20-%20Mangere%20Refugee%20Resettlement%20Centre.pdf> p3.

<sup>205</sup> <https://www.legislation.govt.nz/act/public/2024/0017/latest/LMS797386.html>

<sup>206</sup> <https://rainbowpathnz.com/2021/08/03/all-trans-and-non-binary-people-in-aotearoa-need-legal-gender-recognition/>

until they are a permanent resident. This creates barriers to recognition before the law when (for example) seeking to open a bank account, or evidencing that they have a work visa.

**XVII. We recommend asking about:**

- a. services to asylum seekers, and public service training in asylum seeker rights
- b. ensuring refugees, asylum seekers, and migrants on temporary visas can amend the sex marker on their identification documents
- c. any asylum seeker detention and any use of “mass arrivals” legislation

## **Equality before the courts and fair trial (article 14)**

### **Criminal justice**

95. There remains a disproportionately high number of people held on prolonged pre-trial detention (as remand-accused).<sup>207</sup> This issue has consistently been raised by UN bodies.<sup>208</sup>
96. The high population of people on remand puts pressure on the prison system contributing to over-crowding and failure to meet minimum entitlements, as discussed above.<sup>209</sup>
97. All people held on remand are automatically subject to a high security classification, regardless of the nature of their alleged offending. They also have restricted access to educational and rehabilitative programmes and services.
98. In December 2024, the Supreme Court released a decision relating to preventive detention and post-sentence orders. The Court decided to issue declarations of inconsistency with the right to freedom from double jeopardy.<sup>210</sup> The Law Commission is reviewing related law.<sup>211</sup>
99. The Ministry of Justice has sought feedback on a proposal to change the NZBORA threshold for the right to a jury trial.<sup>212</sup>

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<sup>207</sup> [https://www.corrections.govt.nz/resources/statistics/quarterly\\_prison\\_statistics](https://www.corrections.govt.nz/resources/statistics/quarterly_prison_statistics)

<sup>208</sup> [Eg Working Group on Arbitrary Detention noted over-representation of Māori and Pacific peoples, and indications of bias in relation to extended custody in remand - A/HRC/30/36/Add.2 para93; SPT recommended Government ensure pretrial detention is used as last resort and is not excessively prolonged CAT/OP/NZL/1 para32.](#)

<sup>209</sup> Eg at para 84. [Contrary to Nelson Mandela Rules, rule 113.](#)

<sup>210</sup> [Chisnall: MR-2024-NZSC-178.pdf](#)

<sup>211</sup> [https://www.lawcom.govt.nz/our-work/public-safety-and-serious-offenders-a-review-of-preventive-detention-and-post-sentence-orders/.](https://www.lawcom.govt.nz/our-work/public-safety-and-serious-offenders-a-review-of-preventive-detention-and-post-sentence-orders/)

<sup>212</sup> [https://www.justice.govt.nz/justice-sector-policy/key-initiatives/improving-jury-trials-timeliness/.](https://www.justice.govt.nz/justice-sector-policy/key-initiatives/improving-jury-trials-timeliness/)

**XVIII. We recommend asking about:**

- a. recognising and supporting Māori rangatiratanga (sovereign authority) and self-determination to design and implement their own initiatives to address Māori and criminal justice in accordance with tikanga Māori;
- b. reducing the rate of people being held on prolonged pre-trial detention; and
- c. improving the conditions of prisoners held on pre-trial detention, in accordance with international human rights standards and obligations including the Nelson Mandela Rules
- d. progress of the Law Commission review of preventive detention and post-sentence orders, and the Government response
- e. progress on proposed changes to the right to a jury trial.

### Legal aid system

100. The legal aid system is under pressure. There have been few increases to payment rates or eligibility.<sup>213</sup> The Chief Justice has expressed concern about reducing availability of legal aid lawyers, affecting access to justice.<sup>214</sup> The criminal bar has called for urgent and ongoing investment to mitigate years of underinvestment and stem the attrition of lawyers available for legal aid work.<sup>215</sup> The criminal duty lawyer scheme is described as “at breaking point”.<sup>216</sup>
101. A Legal Aid fund (in place for 23 years) to help community groups take environmental court cases has been cut.<sup>217</sup>
102. Criminal legal aid operates on an assignment basis, meaning people cannot choose their lawyer unless facing a charge with a maximum sentence over 10 years.<sup>218</sup>

**XIX. We recommend asking about:**

- a. ensuring that the criminal and civil legal aid system including the duty lawyer scheme is sustainable and high quality

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<sup>213</sup> <https://www.justice.govt.nz/about/news-and-media/media-releases/legal-services-commissioner-announces-rate-increase-and-review-for-duty-lawyers/>; <https://newsroom.co.nz/2023/06/11/duty-lawyers-threaten-mass-walkout-over-pay-rate-stalemate/>

<sup>214</sup> <https://www.courtsofnz.govt.nz/assets/7-Publications/2-Reports/20231129-memorandum-for-incoming-AG-REDACTED.pdf> para36–39.

<sup>215</sup> <https://criminalbar.org.nz/files/cust/Letter%20to%20the%20Minister%20of%20Justice%2018.03.24.pdf>

<sup>216</sup> <https://www.lawsociety.org.nz/news/publications/lawtalk/lawtalk-issue-960/reflecting-on-50-years-of-the-duty-lawyer-scheme/>

<sup>217</sup> <https://newsroom.co.nz/2024/06/04/environmental-legal-aid-fund-killed-in-budget-cuts/>

<sup>218</sup> <https://www.justice.govt.nz/courts/going-to-court/legal-aid/get-legal-aid/can-i-get-criminal-legal-aid/apply-for-criminal-legal-aid/get-a-criminal-legal-aid-lawyer/>.

## Civil justice process for Māori legal issues

103. Māori have raised issues with access to civil justice in relation to the Crown.
104. Days after a Court decision that claimants could have a claim assessed by the Waitangi Tribunal,<sup>219</sup> legislation<sup>220</sup> was passed settling that claim. The claimants have now applied to the courts for a declaration of inconsistency with the right to access to justice.<sup>221</sup>
105. There is ongoing consideration of customary title to marine and coastal areas.<sup>222</sup>

### XX. We recommend asking about:

- a. progress on the *Wairarapa Moana* case and claim
- b. progress on title to marine and coastal areas

## Non-retroactivity of laws (article 15)

106. The Sentencing (Reinstating Three Strikes) Amendment Act 2024 reinstates provisions that remove parole eligibility with retrospective effect.<sup>223</sup> The Act also reactivates warnings from the previous three strikes regime, repealed in 2022.<sup>224</sup> Official advice was that this would likely engage relevant human rights and legislative process obligations.<sup>225</sup> The Act passed into law without formal opportunity for public input on significant amendments.<sup>226</sup>

### XXI. We recommend asking about:

- a. amending all current and proposed legislation to ensure it does not breach art 15 regarding retrospectivity

## Terror attack on Christchurch mosques (articles 2(3), 6, 17, 18, 19, 20)

107. On 15 March 2019, a terrorist attacked two Christchurch masjidain, killing 51 people and injuring many. A Royal Commission of Inquiry (**Terrorist Attack RCOI**) reported on actions of the terrorist, actions of relevant public sector agencies, and changes to prevent such terror attacks in the future.<sup>227</sup>

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<sup>219</sup> <https://www.courtsofnz.govt.nz/cases/wairarapa-moana-ki-poukani-incorporation-v-mercury-nz-limited-and-ors>

<sup>220</sup> <https://legislation.govt.nz/act/public/2022/0078/latest/LMS15001.html>

<sup>221</sup> <https://tikatangata.org.nz/news/media-advisory-wairarapa-moana-court-of-appeal-case-commission-to-intervene>

<sup>222</sup> See above para 15.b and footnote 31.

<sup>223</sup> <https://www.lawsociety.org.nz/assets/Law-Reform-Submissions/Sentencing-Reinstating-Three-Strikes-Amendment-Bill.pdf> para6.1-6.3.

<sup>224</sup> [Sentencing \(Reinstating Three Strikes\) Amendment Act 2024](https://www.beehive.govt.nz/release/government-toughen-three-strikes-bill); <https://www.beehive.govt.nz/release/government-toughen-three-strikes-bill>

<sup>225</sup> <https://www.treasury.govt.nz/sites/default/files/2024-06/ris-justice-rtssl-mar24.pdf> pp43-45.

<https://disclosure.legislation.govt.nz/bill/government/2024/65> p10.

<sup>226</sup> See also above footnotes 198 and 199 to recommended issue XVI(g) (on page 26).

<sup>227</sup> <https://christchurchattack.royalcommission.nz/>.

108. The previous Government accepted all recommendations of the Terrorist Attack RCOI, and apologised for “disproportionate scrutiny” of Muslim communities by security and intelligence agencies.<sup>228</sup> The current Government has identified 22 of the 44 recommendations deemed implemented, 14 underway in some form, and eight not to be implemented.<sup>229</sup>
109. Some of the recommendations not being progressed relate to counterterrorism and national security and intelligence. The required review of the Intelligence and Security Act was brought forward so it could consider Terrorist Attack RCOI recommendations. The review makes significant recommendations.<sup>230</sup>
110. The Terrorist Attack RCOI issued a dedicated report on “Hate crime and hate speech related legislation”.<sup>231</sup>
111. The previous Government started work on hate speech reform and announced in 2022 it would amend legislation only to extend existing protection to religious groups.<sup>232</sup> The current Government has halted all work on hate speech reform.<sup>233</sup> Civil and criminal laws under the Human Rights Act 1993 prohibit discrimination on the basis of religion, but not incitement of hatred on the basis of religion.<sup>234</sup> NZ maintains its reservation to Article 20 not to introduce further legislation in this area.
112. The Terrorist Attack RCOI also made recommendations on hate crime data collection and legislative reform. Police work on hate crime data collection is underway<sup>235</sup> but subject to criticism.<sup>236</sup> The Law Commission is reviewing whether a standalone hate crime offence should be developed.<sup>237</sup>
113. The Terrorist Attack RCOI did not consider compensation or other forms of reparation.<sup>238</sup> Affected whānau (families) and the wider Muslim community have voiced concerns that the Government has not exercised its discretion to make

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<sup>228</sup> <https://www.beehive.govt.nz/release/government-accepts-all-royal-commission-recommendations>

<sup>229</sup> <https://www.beehive.govt.nz/release/march-15-coordinated-response-concludes;>  
<https://www.dpmc.govt.nz/sites/default/files/2024-08/March-15-Royal-Commission-of-Inquiry-Recommendations-Implementation-Status.pdf>

<sup>230</sup> [Arnold and Mahuika \(2023\) Taumarū: Protecting Aotearoa New Zealand as a free, open and democratic society: Review of the Intelligence and Security Act 2017](#)

<sup>231</sup> <https://christchurchattack.royalcommission.nz/publications/comp/introduction/>

<sup>232</sup> Archived (outdated content): <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/key-initiatives-archive/human-rights-act-amendment-to-strengthen-incitement-laws/>

<sup>233</sup> <https://www.rnz.co.nz/news/national/513176/muslim-organisation-questions-why-hate-speech-law-reforms-abandoned>

<sup>234</sup> See also above footnote 18 regarding incitement on sexual orientation grounds.

<sup>235</sup> <https://www.police.govt.nz/advice-services/advice-victims/hate-motivated-crime/te-raranga-weave>

<sup>236</sup> [https://www.act.org.nz/police\\_national\\_headquarters\\_must\\_explain\\_hate\\_speech\\_training](https://www.act.org.nz/police_national_headquarters_must_explain_hate_speech_training).

<sup>237</sup> <https://www.lawcom.govt.nz/our-work/hate-crime/>.

<sup>238</sup> [Terrorist Attack RCOI Part 10, Chapter 4.2, para 7.](#)

payments to victims and their families in accordance with international human rights obligations.<sup>239</sup>

**XXII. We recommend asking about:**

- a. actions to address harmful impacts of hate speech
- b. action on Terror Attack RCOI recommendations,<sup>240</sup> including recommendation 39 on create a standalone hate crime offence
- c. action on recommendations from the review of the Intelligence and Security Act<sup>241</sup>
- d. progress on reparations (which might include both compensatory payments and provision of services) for affected whānau, survivors and witnesses of the terror attack on Christchurch mosques

## Privacy (article 17)

### Gangs Act 2024 (articles 17, 19, 21, 22)

114. The Gangs Act 2024 introduces multiple measures aiming to “reduce the ability of gangs to operate and cause fear, intimidation, and disruption”.<sup>242</sup> It also creates Police enforcement powers.<sup>243</sup>
115. The Attorney-General<sup>244</sup> and the Commission<sup>245</sup> concluded the legislation was inconsistent with freedom of expression, association and assembly.
116. Later amendments to the draft legislation extended application of the gang insignia ban into private homes. The Law Society raised concern,<sup>246</sup> but the legislation passed with no further formal opportunity for public input.
117. The Ministry of Justice advised against the legislation, citing lack of evidence that the approach would reduce gang-related harm, and concern that it may increase harm.<sup>247</sup>

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<sup>239</sup> <https://tikatangata.org.nz/our-work/reflections-on-the-report-of-the-royal-commission-of-inquiry-into-the-terrorist-attacks-on-christchurch-masjidain>

<sup>240</sup> [March-15-Royal-Commission-of-Inquiry-Recommendations-Implementation-Status.pdf](https://www.justice.govt.nz/assets/Documents/Publications/Gangs-Legislation-Amendment-Bill.pdf)

<sup>241</sup> <https://www.dpmc.govt.nz/our-programmes/national-security/intelligence-and-security-act-2017/2022-review-intelligence-and-security-act-2017>

<sup>242</sup> <https://www.legislation.govt.nz/act/public/2024/0036/latest/whole.html#LMS939338> s3. [The gangs covered](#) do not include white supremacist gangs. The swastika [is not specifically covered](#).

<sup>243</sup> <https://www.police.govt.nz/about-us/programmes-and-initiatives/gangs-act-2024>

<sup>244</sup> <https://www.justice.govt.nz/assets/Documents/Publications/Gangs-Legislation-Amendment-Bill.pdf>

<sup>245</sup> [https://www.parliament.nz/resource/en-NZ/54SCJUST\\_EVI\\_d054c8b9-9572-438f-0895-08dc3e31559c\\_JUST2521/b9863a0143d72aeddc048ab462af547166da797](https://www.parliament.nz/resource/en-NZ/54SCJUST_EVI_d054c8b9-9572-438f-0895-08dc3e31559c_JUST2521/b9863a0143d72aeddc048ab462af547166da797)

<sup>246</sup> <https://www.lawsociety.org.nz/news/newsroom/amendment-to-gangs-bill-raises-rule-of-law-and-human-rights-concerns/>

<sup>247</sup> [https://www.justice.govt.nz/assets/Documents/Publications/RIS\\_Responding-to-Gang-Harms\\_FINAL.pdf](https://www.justice.govt.nz/assets/Documents/Publications/RIS_Responding-to-Gang-Harms_FINAL.pdf)



118. There have also been suggestions that the gang patch ban will lead to more gang-related facial tattoos.<sup>248</sup>
119. The RCOI Abuse in Care featured strong engagement by gang whānau, and showed the correlation between gang membership and harm experienced in State care as a child.<sup>249</sup>

**XXIII. We recommend asking about:**

- a. the Gangs Act 2024
- b. responses to RCOI Abuse in Care recommendations, including as they relate to gang membership

### Police photography

120. An inquiry into Police photographing members of the public found gaps in policies and guidance, including lack of guidance on mobile technology use, and lack of Privacy Act training and knowledge.<sup>250</sup>

### Police vetting

121. Government has introduced legislation formalising the Police vetting service<sup>251</sup> following a 2016 independent review which identified a number of ways the service could improve privacy safeguards.<sup>252</sup>

### Technological change

122. Biometric data is inherently sensitive (including culturally).<sup>253</sup> Concerns about the use of biometric data and AI by State agencies can be expected to continue as technology develops. The 2023 review of the Intelligence and Security Act raised the possibility of

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<sup>248</sup> <https://www.nzherald.co.nz/nz/mongrel-mob-wahine-toa-leader-fears-patch-ban-will-lead-to-spike-in-gangs-getting-facial-tattoos/TEG4CIJS7ZE3HORO3KX3SSZ5GE/>

<sup>249</sup> <https://www.abuseincare.org.nz/assets/Uploads/Arewa-Ake-te-Kaupapa-Gang-Independent-Submission.pdf> [61],[66],[67]-[77].

<sup>250</sup> <https://www.ipca.govt.nz/download/163049/8%20SEPTEMBER%202022%20IPCA%20AND%20OPC%20-%20Joint%20Inquiry%20into%20Police%20photographing%20of%20members%20of%20the%20public.pdf>; <https://www.dpmc.govt.nz/sites/default/files/2023-05/Taumaruru%20-%20Protecting%20Aotearoa%20New%20Zealand.PDF> [2.24]-[2.28].

<sup>251</sup> <https://www.beehive.govt.nz/release/government-formalises-police-vetting-service>

<sup>252</sup> <https://www.ipca.govt.nz/Site/publications-and-media/2016-Reports-on-Investigations/2016-OCT-28-Police-Vetting-Service.aspx>

<sup>253</sup> <https://www.dpmc.govt.nz/sites/default/files/2023-05/Taumaruru%20-%20Protecting%20Aotearoa%20New%20Zealand.PDF> para6.34; see <https://www.temanararaunga.maori.nz/resources-copy>.

State use of private-sector biometric and other datasets,<sup>254</sup> and identified related gaps in the current regulatory regime.<sup>255</sup>

123. There are calls for privacy laws to modernise.<sup>256</sup> The Privacy Commissioner intends issuing a Biometric Processing Privacy Code of Practice.<sup>257</sup> The Employment Court is hearing a case about employers' use of employees' biometric data.<sup>258</sup>

124. A Budapest Convention Bill has been introduced,<sup>259</sup> amending various provisions search and surveillance and other legislation, expanding powers to allow for preservation orders and cross-border sharing. The Law Commission recommended some changes to the Bill as introduced.<sup>260</sup> The Bill is still progressing.

#### **XXIV. We recommend asking about:**

- a. processes in place to improve, monitor and review frontline Police conduct in relation to search and surveillance powers and privacy rights
- b. developments to protect privacy of biometric information
- c. developments following introduction of the Budapest Convention Bill
- d. response to the review of security and intelligence legislation (as recommended above at XXII(c)).

### **Freedom of expression and the online space (articles 19, 25)**

125. The right to freedom of expression enjoys strong protection under the NZBORA.

126. Government intends to legislate requiring universities to adopt a "freedom of speech statement" that meets specific criteria.<sup>261</sup> Proposed changes "will also prohibit universities from adopting positions on issues that do not directly relate to their core role or functions".

127. NZ's legal and regulatory framework for online content moderation was designed over 30 years ago, focussing on traditional media, before widespread internet use. In

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<sup>254</sup> <https://www.dpmc.govt.nz/sites/default/files/2023-05/Taumaruru%20-%20Protecting%20Aotearoa%20New%20Zealand.PDF> para2.21, 2.18.

<sup>255</sup> Ibid para6.22, E.39, 6.31-6.44.

<sup>256</sup> <https://www.auckland.ac.nz/en/news/2022/12/07/social-media-and-privacy--nz-laws-fail-to-keep-pace.html>; <https://theconversation.com/nzs-proposed-anti-stalking-law-is-good-news-but-it-must-be-future-proofed-against-rapidly-evolving-technologies-243465>; <https://nzfvc.org.nz/news/harmful-digital-communications-act-recent-cases-changes-and-calls-review>

<sup>257</sup> <https://www.privacy.org.nz/resources-2/biometrics/>

<sup>258</sup> <https://employmentcourt.govt.nz/assets/Documents/Decisions/2024-NZEmpC-171-Lanigan-v-Fonterra-Brands-New-Zealand-Ltd-Interlocutory-No-3.pdf>.

<sup>259</sup> <https://www.legislation.govt.nz/bill/government/2024/0081/latest/d2903460e2.html>

<sup>260</sup> <https://www.lawsociety.org.nz/assets/Law-Reform-Submissions/Budapest-Convention-and-Related-Matters.pdf>.

<sup>261</sup> <https://www.beehive.govt.nz/release/strengthening-free-speech-universities>

addition, there are gaps in protection under the newer Harmful Digital Communications Act. For example, proof of harm to the victim is required, making the process of gaining protection more exposing.<sup>262</sup>

128. Online threats, harassment and abuse of Members of Parliament (especially women), journalists and minorities have increased.<sup>263</sup>
129. NZ has seen a stark rise in mis- and dis-information online, especially since 2020.<sup>264</sup>
130. A government department was reviewing the regulatory framework for online services and media platforms “with a particular focus on minimising content harms for children and young people”.<sup>265</sup> Government stopped the work, citing freedom of expression concerns.<sup>266</sup>

**XXV. We recommend asking about:**

- a. adequacy of New Zealand’s current regulatory framework to combat online hate and harassment, mis/dis information and future online threats
- b. Education and Training Act amendments requiring Universities to implement a free speech policy

## Trade unions (article 22)

131. NZ’s legal framework nominally supports freedom of association for trade unions, eg. the Employment Relations Act’s objectives include promoting “observance” of “the principles underlying International Labour Organisation Convention 87 on Freedom of Association”.<sup>267</sup>
132. Commission stakeholders have raised concerns with conduct from some employers interfering with freedom of association. The Commission has received reports of efforts in business and community sectors to discourage temporary migrant workers from joining unions.<sup>268</sup>

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<sup>262</sup> <https://netsafe.org.nz/our-work/helpline-services/the-harmful-digital-communications-act>

<sup>263</sup> <https://www.tandfonline.com/doi/full/10.1080/1461670X.2023.2289913>;

<https://www.rnz.co.nz/news/political/514453/abuse-of-mps-increased-to-98-percent-in-2022-study>

<sup>264</sup> <https://newsroom.co.nz/2024/03/14/one-in-71-nz-social-media-posts-is-misinformation-study/>

<sup>265</sup> <https://www.dia.govt.nz/media-and-online-content-regulation#About-the-regulatory-system>

<sup>266</sup> <https://www.rnz.co.nz/national/programmes/mediawatch/audio/2018938976/media-oversight-one-stop-shop-stopped>

<sup>267</sup> <https://www.legislation.govt.nz/act/public/2000/0024/latest/DLM58323.html> s3(b).

<sup>268</sup> [The-Accredited-Employer-Work-Visa-Scheme- A-Human-Rights-Review-FINAL.pdf](#), pp26-27; [The RSE Scheme in Aotearoa New Zealand A Human Rights Review HRC website\(2\).pdf](#) p18.

133. In 2020 the Employment Relations Authority held that a government-contracted bus company had discriminated against certain staff members in terms of pay because they belonged to a particular union.<sup>269</sup>
134. In 2024 Government amended the Education and Training Act, providing for charter schools. The Act effectively prohibits charter school workers from coverage by multi-employer collective agreements (common within the secondary education sector).<sup>270</sup> Government reportedly received legal advice that the amendments “would probably breach International Labour Organisation obligations”.<sup>271</sup> The NZ Council of Trade Unions Kauae Kaimahi has complained to the International Labour Organisation.<sup>272</sup>

**XXVI. We recommend asking about:**

- a. the restriction on staff at charter schools associating with others in their industry through collective bargaining.
- b. steps taken to protect workers, including migrant workers, exercising their right of freedom of association to join and participate in trade unions

### Right to a family (article 23)

135. CEDAW recently commented on “insufficient measures to prevent child and forced marriages of migrant girls and women”.<sup>273</sup>
136. Adoption law is outdated<sup>274</sup> and discriminatory.<sup>275</sup> Government has recognised the need for change, but reform has been paused and deprioritised.<sup>276</sup>
137. Surrogacy is dealt with under adoption law and instead requires modernised, dedicated law.<sup>277</sup>

**XXVII. We recommend asking about:**

- a. preventing child and forced marriage
- b. adoption and surrogacy law

<sup>269</sup> <https://www.nzlii.org/nz/cases/NZERA/2020/233.html>

<sup>270</sup> <https://www.legislation.govt.nz/act/public/2020/0038/latest/LMS997674.html> s212ZE.

<sup>271</sup> See <https://www.rnz.co.nz/news/national/527191/secretive-legal-advice-argues-charter-school-rules-likely-to-breach-fta-labour-rules>; <https://www.rnz.co.nz/news/national/523819/please-listen-to-the-experts-charter-schools-would-break-labour-laws-union-says>.

<sup>272</sup> <https://newsroom.co.nz/2024/11/05/unions-seek-international-inquiry-into-charter-schools-policy/>

<sup>273</sup> CEDAW para40

<sup>274</sup> <https://adoptionaction.co.nz/>

<sup>275</sup> <https://adoptionaction.co.nz/wp-content/uploads/2016/04/2016-NZHRRT-9-Adoption-Action-Inc-v-Attorney-General-OPTIMISED.pdf>

<sup>276</sup> <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/adoption-law-reform/>

<sup>277</sup> <https://www.lawcom.govt.nz/our-work/review-of-surrogacy/>; <https://www.rnz.co.nz/news/thedetail/536045/nz-surrogacy-law-a-mix-of-modern-science-and-outdated-legislation>;

## Children's rights (articles 24, 6, 10)

138. The Committee on the Rights of the Child reviewed NZ in 2023.<sup>279</sup>

### Abuse, and wellbeing

139. Child abuse remains a significant concern, and Oranga Tamariki, the State agency for children in care, continues to receive high levels of attention.

140. The RCOI Abuse in Care made extensive recommendations to ensure children are not abused in care.

141. Section 7AA of the Oranga Tamariki Act was added in 2019, setting out specific Tiriti o Waitangi duties to Māori children.<sup>280</sup> The Government Bill proposing its repeal<sup>281</sup> is progressing contrary to Concluding Observations of the Committee on the Rights of the Child,<sup>282</sup> and recommendations of the Waitangi Tribunal.<sup>283</sup>

142. The repeal aims to address the Government's concern that "the introduction of section 7AA has led Oranga Tamariki staff to prioritise cultural factors over the safety and stability of children in long-term care arrangements."<sup>284</sup> Official advice has indicated a lack of evidence-based policy and research to support that concern.<sup>285</sup>

### Youth justice

143. Despite youth offending decreasing over the last decade,<sup>286</sup> the previous Government commenced law reforms targeting youth justice which the current Government has continued, citing concern with serious offending including "ram raids".<sup>287</sup>

144. UPR recommendations to raise the minimum age of criminal responsibility were not accepted.<sup>288</sup>

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<sup>278</sup> See above para70 footnote 142.

<sup>279</sup> [Relevant concluding observations included eg \[16\], \[18\] and \[18\(b\)\], \[27\], \[35\].](#)

<sup>280</sup> <https://www.legislation.govt.nz/act/public/1989/0024/latest/LMS216331.html>

<sup>281</sup> <https://www.legislation.govt.nz/bill/government/2024/0043/latest/LMS960294.html>

<sup>282</sup> [CRC/C/NZL/CO/6 commending section 7AA at para 27.](#)

<sup>283</sup> <https://www.waitangitribunal.govt.nz/en/news-2/all-articles/news/tribunal-releases-report-on-oranga-tamariki-section-7aa>

<sup>284</sup> <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Information-releases/Cabinet-papers/7AA-repeal/Regulatory-Impact-Statement-Repeal-of-section-7AA.pdf> para6.

<sup>285</sup> [Ibid pp1-2.](#)

<sup>286</sup> <https://www.sia.govt.nz/assets/Document-Library/Youth-Crime-and-Wellbeing.pdf>;  
[https://www.justice.govt.nz/assets/Documents/Publications/Youth-Justice-Indicators-Summary-Report-June-2024\\_v2.0.pdf](https://www.justice.govt.nz/assets/Documents/Publications/Youth-Justice-Indicators-Summary-Report-June-2024_v2.0.pdf).

<sup>287</sup> <https://www.beehive.govt.nz/release/new-offence-ram-raiding-young-offenders-face-more-accountability>

<sup>288</sup> <https://humanrights.govt.nz/recommendations?search=age%20of%20criminal%20responsibility>

145. Coupled with repeal of s7AA of the Oranga Tamariki Act,<sup>289</sup> reforms have been introduced which:

- a. Create new categories of offence aimed at youth, and allowing prosecution of 12-year-olds through the adult criminal jurisdiction.<sup>290</sup>
- b. Limit judicial discretion to apply youth-based sentencing reductions.<sup>291</sup>
- c. Create a new category of Young Serious Offender for 15 to 17-year-olds,<sup>292</sup> and establish military-style boot camps.<sup>293</sup> The Government is considering extending eligibility to those aged 10 and above.<sup>294</sup> Legislation has been introduced to extend powers for staff and “third party providers” to use physical force against young people in these settings.<sup>295</sup>

146. Youth justice residences are under pressure. Budget 2024 introduced significant cuts for Oranga Tamariki, which is responsible for administering youth justice residences.<sup>296</sup> Recent reports found young people held overnight in Police cells due to limited availability in Oranga Tamariki facilities.<sup>297</sup> The Children and Young People’s Commission (**Mana Mokopuna**) has cautioned against punitive approaches, regular incidence of assaults, limited cultural understanding, lack of meaningful activities, and short-staffing pressures at youth justice residences.<sup>298</sup> Officials have warned against de-prioritising rehabilitation and reintegration,<sup>299</sup> while past experience indicates boot camp models are ineffective to address the complex rehabilitative needs of young people<sup>300</sup> and increase the risk of abuse.<sup>301</sup> The approach has also

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<sup>289</sup> Above paras 141-142.

<sup>290</sup> [Ram Raid Offending Bill](#) and Commission’s [submission](#).

<sup>291</sup> [Sentencing \(Reform\) Amendment Bill](#).

<sup>292</sup> [‘Risk young offenders will be labelled for life rather than rehabilitated - Children’s Commissioner’ \(24 June 2024\)](#).

<sup>293</sup> [‘Children’s Minister unveils pilot boot camp in Palmerston North’ \(20 July 2024\)](#);  
<https://www.beehive.govt.nz/release/government-launches-military-style-academy-pilot>;  
<https://www.nzherald.co.nz/nz/politics/pm-christopher-luxon-adamant-bootcamp-pilot-not-a-failure-hints-at-changes-after-youths-absconded/37HROMIWQRFOHN7GSHUGNK3G3U/>.

<sup>294</sup> [‘No evidence’ government’s boot camps, Young Serious Offender category will work - critics \(24 June 2024\)](#).

<sup>295</sup> <https://www.legislation.govt.nz/bill/government/2024/0099/17.0/d18686280e2.html#LMS1007343>. Currently powers to use force exist only inside youth justice residences. See also

[‘Leaked email reveals government departments’ concerns about bootcamp proposal \(18 November 2024\)](#).

<sup>296</sup> <https://www.nzherald.co.nz/nz/politics/labour-warns-oranga-tamariki-cuts-will-decimate-youth-justice-system/E2TVULTKRFBJ5I3JPR6VDXFXWI/>.

<sup>297</sup> [‘Should be banned’: 14-year-old spends two night in police cells \(9 March 2024\)](#).

<sup>298</sup> [RNZ ‘Evidence of regular assaults’ at youth justice facilities, staff fail to intervene \(2 September 2024\)](#);  
[Mana Mokopuna ‘Rapid review of youth justice system is just the beginning’ \(21 September 2023\)](#).

<sup>299</sup> [‘Boot camps: Officials’ warnings ahead of new laws to tackle youth offenders’ \(14 October 2024\)](#).

<sup>300</sup> <https://www.1news.co.nz/2024/06/30/nzdf-documents-reveal-serious-concerns-about-youth-offender-boot-camps/>.

<sup>301</sup> ‘Whanaketia’ above footnote 114, [Part 7: Factors at \[811\]](#); and [Recommendation 71](#).

been criticised for commencing as the RCOI Abuse in Care reported on abuse in past bootcamps.<sup>302</sup>

## Children’s rights protection

147. Changes to agencies that monitor Oranga Tamariki heighten risk. Legislative reforms took effect in July 2023 establishing Mana Mokopuna<sup>303</sup> as successor to the Office of the Children’s Commissioner, and shifting some former Commissioner functions to the Chief Ombudsman (complaints functions) and the Independent Children’s Monitor (**ICM**), a departmental agency responsible for monitoring domestic care standards.<sup>304</sup>
148. A Bill was introduced in November 2024 to establish the ICM as an independent Crown entity, while dis-establishing the board of Mana Mokopuna and ending the term of the Chief Children’s Commissioner early.<sup>305</sup> A review of the current system has been brought forward two years to run concurrent with the Bill’s passage through Parliament, and will consider removing additional functions from Mana Mokopuna including its OPCAT designation.<sup>306</sup> The Commission has submitted that restructuring and reviewing the new monitoring framework without allowing it an opportunity to embed risks detracting from the core responsibility of upholding the rights of the most vulnerable children in NZ.<sup>307</sup>
149. Against official advice, the Government’s Child and Youth Strategy de-prioritised mental wellbeing.<sup>308</sup>

### **XXVIII. We recommend asking about:**

- a. the number of children in State care, and NZ’s record on child abuse
- b. response to the RCOI Abuse in Care
- c. progress on reviewing the child and youth wellbeing strategy (2019) to ensure an implementation framework establishing the priorities, targets, and responsibilities for the realisation of the CRC

<sup>302</sup> <https://www.abuseincare.org.nz/assets/Whanaketia/PDF-downloads/Case-study-Whakapakari.pdf>.

<sup>303</sup> [Children and Young People’s Commission Act 2022](#).

<sup>304</sup> [Oversight of Oranga Tamariki System Act 2022](#).

<sup>305</sup> [Oversight of Oranga Tamariki System Legislation Amendment Bill](#).

<sup>306</sup> [Ministry of Social Development ‘Independent reviewer appointed for oversight of the Oranga Tamariki system’ \(7 October 2024\)](#).

<sup>307</sup> [https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/54SCSSC\\_EVI\\_37d07ba5-e9c3-4e79-66d3-08dcf94dbd03\\_SSC10809/te-kahui-tika-tangata-human-rights-commission](https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/54SCSSC_EVI_37d07ba5-e9c3-4e79-66d3-08dcf94dbd03_SSC10809/te-kahui-tika-tangata-human-rights-commission).

<sup>308</sup> <https://www.rnz.co.nz/news/political/534389/no-mental-wellbeing-priority-in-government-s-latest-child-strategy>.

- d. progress on addressing the [concluding observations](#) of the Committee on the Convention on the Rights of the Child in relation to independent monitoring, data collection, allocation of resources, policy and strategy development
- e. youth justice reforms and repeal of s7AA
- f. evidence the Government relied on to commence and continue bootcamps for young people

## Electoral rights (article 25)

### Representation and participation

150. Māori membership of local government has been a long-standing human rights issue.<sup>309</sup>
151. Recently, Māori membership of both local<sup>310</sup> and central<sup>311</sup> government has improved. But overall ethnic diversity of Parliament declined at the last election.<sup>312</sup>
152. This growth has been supported by increased numbers of Māori wards /constituencies (Māori local government “seats”)<sup>313</sup> following changes to the law regarding establishment of these seats. A 2021 law change removed the requirement for referenda to establish Māori wards.<sup>314</sup>
153. In 2024, Government reinstated the requirement for a referendum (“poll”) to establish or continue Māori wards.<sup>315</sup> This was against the recommendation of the Waitangi Tribunal<sup>316</sup> and Local Government NZ, who noted that polls are not required to establish any other wards or constituencies.<sup>317</sup>
154. Representation by Pacific people in local<sup>318</sup> and central government is minimal, with no Pacific MPs in the current coalition Government.

<sup>309</sup> <https://tikatangata.org.nz/our-work/maori-representation-in-local-government> (2010); <https://teara.govt.nz/en/nga-mangai-maori-representation/page-5>.

<sup>310</sup> <https://d1pepq1a2249p5.cloudfront.net/media/documents/Elected-members-census-2022.pdf> survey data at p11.

<sup>311</sup> <https://www.parliament.nz/en/get-involved/features/record-number-of-maori-mps-elected-to-new-zealand-parliament/>.

<sup>312</sup> <https://theconversation.com/lost-voices-ethnic-diversity-in-the-new-zealand-parliament-will-decline-after-the-2023-election-217648>.

<sup>313</sup> <https://www.votelocal.co.nz/maori-wards-and-constituencies/> (website of local government peak bodies)

<sup>314</sup> <https://www.beehive.govt.nz/release/m%C4%81ori-wards-bill-passes-third-reading>.

<sup>315</sup> <https://www.beehive.govt.nz/release/government-restores-local-decision-making>.

<sup>316</sup> <https://www.waitangitribunal.govt.nz/mi/news-2/all-articles/news/maori-wards>

<sup>317</sup> <https://www.lgnz.co.nz/news/media-releases/changes-to-maori-ward-and-constituency-poll-provisions/>. See also [Commission submission](#).

<sup>318</sup> <https://www.lgnz.co.nz/news/publications/elected-members-census/>



155. Surveys show confidence in government agencies spiked following initial handling of COVID-19, but then returned to pre-COVID levels. Confidence in electoral processes followed that pattern.<sup>319</sup> Māori, young, and Pacific peoples, followed by Asian people, have lower confidence in the electoral system.<sup>320</sup> Many non-voters say barriers in the voting process (eg not knowing how) are among their reasons for non-voting.<sup>321</sup>

## Voting in prison

156. People in prison cannot vote in a General Election if they are serving a sentence of three years plus.<sup>322</sup>

157. The Human Rights Committee found NZ’s previous blanket ban on prison voting to be in breach of article 25(b), because of the lack of connection between the nature of convictions (e.g. voting fraud) and voting.<sup>323</sup>

158. In 2022, an independent panel of experts appointed to review NZ’s electoral framework recommended that all prisoners be able to vote. Government noted the Panel’s finding but decided to retain the restriction.<sup>324</sup>

## Voting age

159. The Supreme Court has issued a declaration that the minimum voting age of 18, set in electoral legislation, is inconsistent with the right to be free from discrimination based on age from the age of 16 onwards under NZBORA s19.<sup>325</sup>

### **XXIX. We recommend asking about:**

- a. Māori representation in local and central government, and the conduct of local government representation “polls”
- b. actions to promote participation and ensure electoral rights of Māori, youth, Pacific people, people in prison, and ethnic minority groups
- c. implementation of the Committee’s decision on Communication No. 3666/2019
- d. implementation of the Independent Electoral Review’s recommendations<sup>326</sup>
- e. response to Supreme Court decision in *Make It 16*

<sup>319</sup> <https://elections.nz/assets/2023-General-Election/voter-and-non-voter-survey-2023.pdf> p75 para2.

<sup>320</sup> <https://elections.nz/assets/2023-General-Election/voter-and-non-voter-survey-2023.pdf> p76.

<sup>321</sup> <https://elections.nz/assets/2023-General-Election/voter-and-non-voter-survey-2023.pdf> p73.

<sup>322</sup> <https://www.legislation.govt.nz/act/public/2020/0026/latest/whole.html#LMS314870>

<sup>323</sup> <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/human-rights/international-human-rights/international-covenant-on-civil-and-political-rights/>. Comm 3666/2019 at 7.5-7.6

<sup>324</sup> *Ibid*, Government response to Communication 3666/2019 at 15.

<sup>325</sup> <https://www.courtsofnz.govt.nz/cases/make-it-16-incorporated-v-attorney-general-1>.

<sup>326</sup> <https://www.beehive.govt.nz/release/independent-electoral-review-final-report-released>