

Annex B: Civil and Political Rights

Deprivation of Liberty

[See NZHRC Recommendations 47-49]

1. Incarceration rates in New Zealand continue to steadily rise and are among the highest in the OECD.ⁱ As of 31 March 2018, New Zealand's prison population was 10,645, almost 30% of whom are on remand or awaiting trial.ⁱⁱ Ethnic disparities remain of great concern and have not been successfully addressed despite being evident for many years. Māori make up 15% of New Zealand's general population but constitute around 50% of all male prisoners and 60% of female prisoners.ⁱⁱⁱ The Waitangi Tribunal recently found that the Government had breached its Treaty obligations by not adequately prioritising the reduction of Māori reoffending.^{iv}
2. High incarceration rates have led to significant resources directed towards building new prisons and expedient practices such as double-bunking (where two prisoners share a cell) which continues to be prevalent. A May 2018 report by the Chief Ombudsman on Arohata Upper Prison, a prison closed in 2015 and reopened in 2017 due to the rising prison population, strongly criticised the Department of Corrections' February 2018 decision to introduce double-bunking despite the facilities being clearly unsuitable.^v Suicide rates in prisons have increased markedly between 2013 and 2016.^{vi}
3. Legislation enabling detention of children and young people in police cells, on remand, remains.^{vii} The practice is reserved for "last resort" cases where beds are unavailable in secure youth residences. The lack of available beds in these residences has been an ongoing problem for many years and has led to cases where young people have been detained in police cells for several days. Such cases have been viewed by the Courts as a breach of UNCRC.^{viii}

Right to Privacy

[See NZHRC Recommendations 50-51]

4. The Commission commends the Government's leading role in the Digital 7 international working group on digital rights and its commitment to ensuring the digital environment complies with human rights. The Commission notes the introduction of the Privacy Bill 2018 to update and replace the Privacy Act 1993.
5. The Commission notes that Ministry of Social Development has developed a Privacy, Human Rights and Ethics (PHRaE) Framework, that will be applied by Ministry officials to identify and mitigate privacy, human rights and ethical risks arising from data sharing initiatives, including predictive risk modelling programmes.^{ix} However, it is understood that the PHRAE framework is not intended to be vested under any specific legislative or regulatory provision.

Intelligence and security

6. New Zealand's intelligence and security legislation was subject to an extensive, high level independent review in 2015 and was subsequently amended in 2017. The Commission welcomed many aspects of the amendments, which consolidated the existing legislative framework into one statute, the Intelligence and Security Act 2017, and strengthened human rights assessments. The

legislation requires that periodic reviews of the intelligence and security legislation are undertaken every 5-7 years.^x However, there is no requirement that human rights matters are included within the terms of reference of these periodic reviews.

Right to be Free from Torture, and Other Cruel, Inhuman or Degrading Treatment

[See NZHRC Recommendations 52-54]

OP-CAT National Monitoring Mechanism

7. The Commission is one of the five monitoring organisations that make up the National Preventative Mechanism (NPM) under the Optional Protocol to the Convention against Torture (OPCAT). The Commission is concerned that NPMs do not receive sufficient resources to carry out their OPCAT functions, which in turn risks hindering progress on key issues.
8. The Commission published an independent review in 2016 which raised serious concern about the use of seclusion and restraint practices in prisons, health and disability facilities, youth justice and care and protection residences, and police cells.^{xi} The Commission has submitted a report on further issues as part of the NPM UPR report, which traverses these issues in more depth.

Historical Abuse in State Care

9. Between the 1950s and 1980s more than 100,000 vulnerable children and adults were taken from their families and placed in children's homes and mental health institutions. More than half of these children were Māori, with some state homes reporting that upwards of 80 per cent of their residents were Māori. High rates of disabled people were also institutionalised.
10. In response to the Commission's calls for an independent inquiry, in January 2018 the Government announced a Royal Commission of Inquiry into Historical Abuse in State Care. Presently, Cabinet is agreeing on the final terms of reference for the Royal Commission, following public consultation on the matter. The inquiry is expected to take about three years.^{xii}

ⁱ http://archive.stats.govt.nz/browse_for_stats/government_finance/central_government/nz-in-the-oecd/justice.aspx

ⁱⁱ As of 31 March 2018, New Zealand's prison population was 10 645, almost 30% of which are on remand or awaiting trial Department of Corrections, *Prison facts and statistics – March 2018* http://www.corrections.govt.nz/resources/research_and_statistics/quarterly_prison_statistics/prison_stats_march_2018.html

ⁱⁱⁱ Department of Corrections, *Over-representation of Māori in the criminal justice system* http://www.corrections.govt.nz/resources/research_and_statistics/over-representation-of-maori-in-the-criminal-justice-system/1.0-introduction/1.html

^{iv} Waitangi Tribunal, *Tu Mai Te Rangi: Report on the Crown and disproportionate re-offending rate, Pre-publication version*, WAI 2540, 2017

https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_121273708/Tu%20Mai%20Te%20Rangi%20W.pdf

^v Office of the Ombudsmen, *Report on an unannounced inspection of Upper Prison (Arohata) Under the Crimes of Torture Act 1989*, 22 March 2018

http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/2706/original/arohata_upper_prison_inspection_report.pdf?1522807575

^{vi} Department of Corrections, *Suicide in New Zealand Prisons – 1 July 2010 to 30 June 2016*, http://www.corrections.govt.nz/resources/research_and_statistics/journal/volume_5_issue_2_november_2017/suicide_in_new_zealand_prisons_-_1_july_2010_to_30_june_2016.html

^{vii} Oranga Tamariki Act 1989, s 238(1)(e)

viii *Police v BM*, Youth Court, Christchurch, 28 November 2016, Minute of Judge Murfitt at [6]

ix Ministry of Social Development, *The Privacy, Human Rights and Ethics (PHRaE) Framework*

<https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/initiatives/phrae/phrae-on-a-page.pdf>

x Intelligence and Security Act 2017, Section 235

xi S Shalev, *Thinking Outside the Box: A Review of Seclusion and Restraint Practices in New Zealand*,

<http://www.seclusionandrestraint.co.nz/>

xii <http://www.abuseinstatecare.royalcommission.govt.nz/>