

NEW ZEALAND 2017 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

New Zealand is a parliamentary democracy. Citizens chose their representatives in a free and fair multiparty election held most recently on September 23. The Labour Party formed a coalition government with the New Zealand First Party, with Green Party support. Labour Party leader Jacinda Ardern serves as prime minister. The new government signaled its intention to review priorities in a number of human rights-related areas, ranging from refugee admissions to prison conditions.

Civilian authorities maintained effective control over the security forces.

The most significant human rights issue was forced labor among foreign migrant workers.

The government has effective mechanisms for prosecuting officials who commit human rights abuses; there were no reports of such abuses during the year.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were no reports that the government or its agents committed arbitrary or unlawful killings.

b. Disappearance

There were no reports of disappearances by or on behalf of government authorities.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits such practices, and there were no reports government officials employed them. The Ombudsman's Office inspects places of detention such as prisons and mental health facilities to prevent cruel and inhuman treatment, in line with national standards and the country's international obligations.

Prison and Detention Center Conditions

Civil society and government watchdog groups highlighted the disproportionate rates of incarceration of indigenous peoples, excessive restraint and other treatment of prisoners who risked self harm, and prisoner-on-prisoner violence (see section 6, Indigenous People).

Physical Conditions: Persons accused of a crime who are 17 years or older are tried as adults and, if convicted, sent to adult prisons. Authorities held male prisoners younger than 17 years in four separate detention facilities operated by the national Child and Youth Welfare Agency. There was no separate facility for juvenile female prisoners because there were very few such prisoners. In March the Ombudsman's Office reported that the Department of Corrections had breached national legislation and the Convention Against Torture in restraining at risk prisoners by excessive use of tie-down beds and waist cuffs. As a result, the Department of Corrections is undertaking a review of its At Risk Prisoner program.

Transgender prisoners who had the gender on their birth certificates changed to reflect their preferred gender were generally housed in accordance with their preferred gender and may begin gender reassignment treatment/surgery while incarcerated.

Administration: Inmates could make uncensored complaints to statutory inspectors or the ombudsperson. The Ombudsman's Office reports to parliament annually on its findings about prison conditions. The law provides for specified rights of inspection, including by members of parliament and justices of the peace, and information was publicly available on complaints and investigations, subject to the provisions of privacy legislation.

Independent Monitoring: The government permitted monitoring visits by independent human rights observers.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention, and provides for the right of any person to challenge the lawfulness of his/her arrest or detention in court, and the government generally observed these requirements.

Role of the Police and Security Apparatus

The New Zealand Police, under the Ministry of Police, is responsible for internal security, and the armed forces, under the Ministry of Defense, are responsible for external security. Civilian authorities maintained effective control over police and the armed forces, and the government has effective mechanisms to investigate and punish abuse and corruption. There were no reports of impunity involving the security forces during the year.

Arrest Procedures and Treatment of Detainees

Police may arrest a suspect without a warrant if there is reasonable cause; however, a court-issued warrant is usually required. Police officers may enter premises without a warrant to arrest a person if they reasonably suspect the person committed a crime on the premises or found the person committing an offense and are in pursuit. Police must inform arrested persons immediately of their legal rights and the grounds for their arrest.

After arresting and charging a suspect, police may release the person on bail until the first court appearance. Except for more serious offenses, such as assault or burglary, bail is normally granted and frequently does not require a deposit of money. Suspects have the right to appear promptly before a judge for a determination of the legality of the arrest and detention. After the first court appearance, the judge typically grants bail unless there is a significant risk the suspect would flee, tamper with witnesses or evidence, or commit a crime while on bail. Authorities granted family members timely access to detainees and allowed detainees prompt access to a lawyer of their choice and, if indigent, to a lawyer provided by the government. The government did not detain suspects incommunicado.

Pretrial Detention: Approximately 25 percent of prisoners were held in custody on remand, while they await trial or sentencing. The number of prisoners held on remand increased three-fold in 20 years, primarily due to increased time required to complete cases, and stricter bail restrictions. The median duration of prisoners' time held in remand is approximately two months.

Detainee's Ability to Challenge Lawfulness of Detention before a Court: Arrested persons have additional legal protections, including the right to initiate habeas corpus proceedings to decide the lawfulness of their detention, to be charged and tried without "undue delay," and to obtain compensation if unlawfully detained.

e. Denial of Fair Public Trial

The law provides for an independent judiciary, and the government generally respected judicial independence and impartiality.

Trial Procedures

The law provides for the right to a fair public trial, and an independent judiciary generally enforced this right. Defendants enjoy a presumption of innocence and the right to counsel. By law authorities must inform defendants promptly and in detail of the charges, and provide adequate time and facilities to prepare a defense. Defendants cannot be compelled to testify or confess guilt, but they have the right to be present at their trial. Defendants also have the right to present witnesses and evidence, confront witnesses against them, appeal convictions, and receive free interpretation as necessary from the moment charged through all appeals. The government provides a lawyer at public expense if the defendant cannot afford counsel. The law extends these rights to all defendants.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

Individuals and organizations may seek civil judicial remedies for human rights violations, including access to the Human Rights Review Tribunal. There are also administrative remedies for alleged wrongs through the Human Rights Commission (HRC) and the Office of Human Rights Proceedings.

f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence

The law prohibits such actions, and there were no reports the government failed to respect these prohibitions.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including for the Press

The law provides for freedom of expression, including for the press, and the government generally respected these rights. An independent press, an effective

judiciary, and a functioning democratic political system combined to promote freedom of expression, including for the press.

Internet Freedom

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports the government monitored private online communications without appropriate legal authority. The internet was widely available and used.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

b. Freedoms of Peaceful Assembly and Association

The law provides for freedoms of peaceful assembly and association, and the government generally respected these rights.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at www.state.gov/religiousfreedomreport/.

d. Freedom of Movement

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights. The government cooperated with the Office of the United Nations High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, stateless persons, and other persons of concern.

Protection of Refugees

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees.

Durable Solutions: The country's refugee policy commits the government to resettling 750 refugees annually, and the government has consistently met or

exceeded that number. In 2015 the government committed to resettling an additional 750 Syrian refugees over the following two and one-half years, increasing refugee intake to approximately 1,000 during the year. In October the government started a pilot Community Organization Refugee Sponsorship category, covering an additional 25 refugees.

Temporary Protection: The government also provided temporary protection to individuals who may not qualify as refugees under the country's UN quota commitment. In September advocacy groups reported concern that approximately 100 annual asylum seekers did not receive the same level of governmental support as quota refugees, specifically with access to employment.

Section 3. Freedom to Participate in the Political Process

The law provides citizens the ability to choose their government through free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

Elections and Political Participation

Recent Elections: Following the most recent general election held on September 23, the former opposition Labour Party formed a coalition government with the New Zealand First Party, with Green Party support, led by Labour Party leader Jacinda Ardern as prime minister. Although the ruling National Party won the greatest number of seats in parliament, 58 of 120, it was unable to form a coalition and became the official parliamentary opposition.

Participation of Women and Minorities: No laws limit participation of women or minorities in the political process, and they did participate.

Voter turnout in the general election was 79 percent, while turnout in designated Maori electorates was lower and ranged from 60-69 percent. In South Auckland electorates with a high percentage of Pacific Island voters, turnout was 69 percent.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for official corruption, and the government generally implemented these laws effectively. There were no reports of government corruption during the year. The Serious Fraud Office and police investigate corruption matters. Allegations can be reported anonymously and the

law protects employees who make a report relating to their employers. Agencies such as the Office of the Controller, the Auditor-General, and the Office of the Ombudsman independently report on and investigate state sector activities, acting as watchdogs for public sector corruption. In July the Auditor-General resigned after a parliamentary report revealed that, during his tenure as chief executive of a government ministry, a former subordinate had committed fraud and mistreated whistleblowers.

Financial Disclosure: The law requires members of parliament, including all ministers, to submit an annual report of financial interests, including income and assets, which the government releases to the public. There were no reports of criminal or administrative sanctions against elected officials for noncompliance to financial regulations. Career civil servants are not subject to this requirement but are subject to ethics standards established by the State Services Commission.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were generally cooperative and responsive to their views.

Government Human Rights Bodies: The Ministry of Justice funded the HRC, which operates as an independent agency without government interference. The HRC had adequate staff and resources to perform its mission. The public considered the HRC effective, and it enjoyed high public confidence.

The Office of the Ombudsman, responsible to parliament but independent of the government, is charged with investigating complaints about administrative acts, decisions, recommendations, and omissions of national and local government agencies; inspecting prisons; and following up on prisoner complaints. The office enjoyed government cooperation, operated without government or party interference, had adequate resources, and was considered effective. The office produced a wide variety of reports for the government that were publicly available on its website.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

Women

Rape and Domestic Violence: According to a 2016 government report, one in three women reported having experienced physical and/or sexual intimate partner violence in their lifetime. The law criminalizes rape, including spousal rape. The maximum penalty is 20 years' imprisonment; however, indefinite detention may occur in cases where the parole board, during its annual review, believes the prisoner poses a continuing threat to society.

Domestic violence is a criminal offense under the law. Police were responsive to reported domestic violence incidents. The government partially funded women's shelters, psychosocial services, rape crisis centers, sexual abuse counseling, family-violence victim support networks, and violence prevention services. In September 2016 the government announced it would allocate NZ\$130 million (\$95 million) to support victims and prevent sexual violence. The package of measures includes more than 60 new police officers, tougher penalties for breaching protection orders, and "family violence" being marked on offenders' records for life. Victims' programs include a new crisis response scheme for victims in the 72 hours after a sexual assault; programs to reduce harmful sexual behavior, offending, and reoffending; programs focusing on adults who pose a risk to children; and services for male survivors of sexual abuse.

Sexual Harassment: The law prohibits sexual harassment and provides civil penalties. Sexual contact induced by certain threats may also fall under the criminal code, with a maximum 14-year prison sentence. The HRC published fact sheets on sexual harassment and made sexual harassment prevention training available to schools, businesses, and government departments on a regular basis.

Coercion in Population Control: There were no reports of coerced abortion, involuntary sterilization, or other coercive population control methods. Estimates on maternal mortality and contraceptive prevalence are available at: www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2015/en/.

Discrimination: The law provides for the same legal status and rights for women as for men, including under family, religious, personal status, labor, property, nationality, and inheritance laws. The law prohibits discrimination in employment and rates of pay for equal or similar work.

Children

Birth Registration: Children born in the country attain citizenship if either parent is a citizen or legal permanent resident of the country. Children born outside the country attain citizenship if either parent is a citizen born in the country. The law requires notification of births by both parents as soon as “reasonably practicable,” deemed as being within two months of the child’s birth, and most births were registered within this period.

Child Abuse: The number of substantiated cases of child abuse and neglect decreased by 10 percent from July 2016 to June. A disproportionately high number of reported cases of child abuse (more than 50 percent) involved Maori children. The government promoted information sharing between the courts and health and child-protection agencies to identify children at risk of abuse.

Early and Forced Marriage: The legal minimum age for marriage is 20 for both men and women, but persons between 16 and 19 years of age may marry with parental permission. Marriages involving persons younger than 18 years were rare.

Sexual Exploitation of Children: The law provides that any person who has a sexual connection with a person younger than 16 years is liable to a maximum prison sentence of 10 years. Further, the law makes it an offense punishable by seven years’ imprisonment to assist a person younger than 18 years in providing commercial sexual services; to receive earnings from commercial sexual services provided by a person younger than 18; or to contract for commercial sexual services from, or be a client of, a person younger than 18 years. The law also makes it an offense to traffic in persons younger than 18 years for sexual exploitation or for forced labor. The country’s courts may prosecute citizens who commit child sex offenses overseas.

Commercial sexual exploitation of children remained a concern; however, no recent data was available on its prevalence.

The law prohibits child pornography and provides for individual and corporate fines if a person produces, imports, supplies, distributes, possesses for supply, displays, or exhibits an objectionable publication. Penalties increase to a maximum of 10 years’ imprisonment or a substantially greater fine if such an act is committed with knowledge that the publication is objectionable. Simple possession of objectionable material is punishable by fines, while knowingly possessing objectionable material is punishable by a maximum of five years’ imprisonment and a larger fine. Knowingly making, trading, distributing, or displaying objectionable material can receive a maximum of 14 years’

imprisonment. In addition, a body corporate can be fined up to NZ\$200,000 (\$137,000). The Department of Internal Affairs Censorship Compliance Unit actively policed images of child sex abuse on the internet and prosecuted offenders.

International Child Abductions: The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's *Annual Report on International Parental Child Abduction* at travel.state.gov/content/childabduction/en/legal/compliance.html.

Anti-Semitism

The Jewish community numbered approximately 7,000, according to the 2013 census. Anti-Semitic incidents were rare.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip/rls/tiprpt/.

Persons with Disabilities

The law prohibits discrimination against persons with disabilities. The law prohibits the government from discriminating based on physical, sensory, intellectual, or mental disability, unless such discrimination can be "demonstrably justified." The government effectively enforced applicable laws. Most school-age children with disabilities attended school.

Approximately 20 percent of eligible voters had a disability and faced obstacles to exercising their electoral right. The Electoral Commission has a statutory obligation to administer the electoral system impartially and seeks to reduce barriers to participation by developing processes that enable citizens with disabilities to fully-access electoral services.

The government's Office for Disability Issues worked to protect and promote the rights of persons with disabilities. In addition, both the HRC and the Mental Health Commission continued to address mental disabilities in their antidiscrimination efforts.

National/Racial/Ethnic Minorities

Pacific Islanders, who comprised 7.4 percent of the population, experienced some societal discrimination and had the highest rates of unemployment (13.1 percent) and lowest labor-force participation (61 percent), compared to the rest of the population. Asians comprised 12 percent of the population and reported some societal discrimination.

The Ministry for Pacific Peoples had programs to identify gaps in delivery of government services to Pacific Islanders and to promote their education, employment, entrepreneurship, culture, languages, and identity. The Office of Ethnic Affairs within the Department of Internal Affairs focused on improving dialogue and understanding about minority communities among the wider population.

Indigenous People

Approximately 16 percent of the population claim descent from the indigenous Maori. The government bestows specific recognition and rights, enshrined in law, custom, and practice, to the indigenous Maori population.

Between July 2016 and June, the government enacted legislation that settled five claims by indigenous groups (“iwi”) relating to the 1840 Treaty of Waitangi, the country’s founding document. The government continued active negotiations with almost all iwi who were in various stages of the claims process.

The law prohibits discrimination against the indigenous population, but there were disproportionately high numbers of Maori on unemployment and welfare rolls, in prison, among school dropouts, with elevated infant mortality statistics, and among single-parent households.

Although Maori represented 16 percent of the country’s population, they comprised 50.4 percent of the prison population and 45.5 percent of persons serving community-based sentences. The government, along with Maori community partners and nongovernmental organizations (NGOs), continued to implement programs and services to reduce Maori recidivism and overrepresentation in the criminal justice system.

Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity

The law does not criminalize consensual same-sex sexual conduct between adults. The law prohibits abuse, discrimination, and acts of violence based on sexual orientation and gender identity, and the government generally enforced the law. From July 2016 to June, approximately three percent of discrimination complaints received by the HRC related to gender identity or sexual orientation.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the right of workers to form and join independent unions of their choice without previous authorization or excessive requirements, to bargain collectively, and to conduct legal strikes, with some restrictions. The law prohibits antiunion discrimination. While it does not require reinstatement of workers dismissed for union activity, the courts may order this at their discretion.

Police have the right to freedom of association and the right to organize and bargain collectively, but sworn police officers (including all uniformed and plainclothes police but excluding clerical and support staff) do not have the right to strike or take any form of industrial action.

Contractors cannot join unions, bargain collectively, or conduct strike action.

Workers may strike while negotiating the right to a collective bargaining agreement or over matters of health and safety. Strikes by providers of key services are subject to certain procedural requirements, including mandatory notice of three to 28 days, depending on the service involved. Key services include production, processing, and supply of petroleum products; production and supply of electricity, water, and sewer services; emergency fire brigade and police services; ambulance and hospital services; manufacturing of certain pharmaceuticals and dialysis solutions; operation of residential welfare or penal institutions; airport and seaport operations; dairy production operations; and animal slaughtering, processing, and related inspection services. The inclusion of some of these sectors was broader than international standards on the definition of “essential services.”

To bargain collectively, unions must be registered, independent, governed by democratic rules, and have at least 15 members. Unions may not bargain collectively on social or political issues.

The government respected these rights and effectively enforced applicable laws without lengthy delays. The law administers penalties for violations of freedom of association or collective bargaining protections and includes fines sufficient to deter violations. Cases were occasionally referred to the Civil Employment Court.

Nearly all unionized workers were members of unions affiliated with the New Zealand Council of Trade Unions (NZCTU), an independent federation that included unions representing various trades and locations. A few small, nonaffiliated unions also existed.

b. Prohibition of Forced or Compulsory Labor

The law prohibits and criminalizes all forms of forced labor. The government's efforts to enforce the law were not always effective. Penalties were not sufficiently stringent to deter violations because of the possibility that a fine can be imposed in lieu of imprisonment. Fines can also be imposed for labor violations that may be indicators of forced labor such as underpayment of wages and excessively long working hours.

Foreign migrant workers, including in agriculture, horticulture, viticulture, construction, hospitality, and as domestic workers were vulnerable to forced labor. Some foreign migrant workers were charged excessive and escalating recruitment fees, experienced unjustified salary deductions, non- or underpayment of wages, excessively long working hours, and restrictions on their movement. Some had their passports confiscated and contracts altered. Foreign migrant workers, primarily men, aboard foreign-flagged fishing vessels in the country's economic waters were subjected to forced labor, and in response, the government passed legislation enabling it to address that problem more effectively. Recruitment agencies based within the country that recruit workers from abroad must utilize a licensed immigration adviser. The government expanded partnerships with foreign governments to better monitor and regulate the recruitment of foreign migrant workers. The aim of these partnerships was to reduce the risk of exploitation by providing greater transparency in recruitment and compliance to employment and immigration requirements.

The government continued to pursue convictions under its trafficking law, including cases of forced labor, after an inaugural prosecution in 2015 and conviction in 2016.

Also see the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip/rls/tiprpt/.

c. Prohibition of Child Labor and Minimum Age for Employment

By law children younger than 16 years may not work between the hours of 10 p.m. and 6 a.m. The law also states that children enrolled in school may not work, even outside school hours, if such employment would interfere with their education. The law bans the employment of children younger than 15 years in hazardous industries such as manufacturing, mining, and forestry.

Inspectors from WorkSafe New Zealand, an independent crown agent with its own governance board created to reform the workplace health and safety system, effectively enforced these laws. The law outlines prison sentencing guidelines and fines for the most serious offenses. Penalties were adequate to deter violations.

Children from ages 16 to 18 years worked in some hazardous industries and occupations, such as the agricultural sector. The law requires them to be fully trained. Children younger than 15 years cannot drive a tractor or large vehicle, except children working in agriculture if they are older than 12 years and are fully trained or are being trained, or they live on the property. Concerns remained about the commercial sexual exploitation of children (see section 6, Children).

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at www.dol.gov/ilab/reports/child-labor/findings/ for information on the self-governing territories of New Zealand--Cook Islands and Niue--as well as the dependent territory, Tokelau.

d. Discrimination with Respect to Employment and Occupation

The law prohibits discrimination based on race, color, sex, religion, political opinion, national origin or citizenship, social origin, disability, sexual orientation, and/or gender identity, age, language, HIV-positive status, or other communicable diseases. The government effectively enforced these prohibitions.

The HRC had an equal opportunity employment team that focused on workplace gender-related problems. This team regularly surveyed pay scales, conducted a census of women in leadership roles, and engaged public and private employers to promote compensation equality. The Office of Ethnic Affairs continued to take measures to promote ethnic diversity in occupation and employment.

According to the NZCTU, Maori and Pacific Island people remained disadvantaged compared to the general population in terms of unemployment and wages.

e. Acceptable Conditions of Work

The minimum hourly wage was NZ\$15.75 (\$11.45). The “training minimum wage” and the “starting-out” wage for 16- to 19-year-old workers and new workers 20 years or older was NZ\$12.60 (\$9.16). There was no official poverty-level income figure, but researchers frequently used 60 percent of the median household income, NZ\$57,300 (\$41,700), as the unofficial poverty-level marker.

The law provides that work hours should be set in collective or individual agreements between employers and employees. Although a 40-hour workweek is traditional, employer and employee parties may contractually agree to a workweek of more than 40 hours.

Extensive laws and regulations govern health and safety issues. Employers are obliged to provide a safe and healthy work environment, and employees are responsible for their own safety and health, as well as ensuring that their actions do not harm others. The government mandates employers to provide health insurance for their seasonal workers. The law allows workers to refuse to perform work likely to cause serious harm and permits legal recourse if they believed an employer penalized them as a result.

The government proactively investigated labor conditions and in cases of noncompliance with labor law inspectors levied fines, required restitution of wages to workers, and revoked licenses of offenders.

The Ministry of Business, Innovation, and Employment enforces laws governing working conditions, including wages and hours, and occupational health and safety, the latter of which WorkSafe New Zealand is responsible for under the law. The department’s inspectors effectively enforced safety and health rules in all sectors including the informal economy, and they have the power to shut down equipment if necessary. The department normally investigated reports of unsafe or unhealthy working conditions within 24 hours of notification. Convictions for violations of the occupational health and safety law and the wages and hours law carry either monetary penalties or imprisonment. The law stipulates penalties for

employers who exploit migrant workers, including imprisonment, a fine, and deportation for noncitizen residents.

In 2016 the country saw 59 workplace-related fatalities. Agriculture is the country's most dangerous sector, with 20 persons killed while engaged in agricultural work. The majority of workplace assessments carried out by WorkSafe New Zealand's health and safety inspectors in 2016 targeted high-risk industries such as agriculture, forestry, construction, and manufacturing. WorkSafe New Zealand reported that 75 percent of surveyed employers had changed their workplace practices following its inspections. During 2016 WorkSafe New Zealand initiated 98 prosecutions following those inspections, and 91 percent of those prosecutions were successful.