INDIGENOUS JUSTICE CLEARINGHOUSE

A series of Research Briefs designed to bring research findings to policy makers

Self-determination in the criminal justice system

Doreen Chen
Written for the Indigenous Justice Clearinghouse

Research Brief 28, October 2020

Introduction

Self-determination is inherently fluid, shifting in meaning depending on its claimant and the relevant temporal context (Webb 2012). It follows that the meaning of self-determination for Indigenous people is for themselves to define, although a consistent theme is that it refers to 'increased Indigenous autonomy within the structures of the […] state' (Behrendt 2001).

Self-determination has long appeared in Indigenous criminal justice policy as a conceptual foundation underpinning policy applications. However, few policy discussions have focused on the contours of self-determination as a concept or legal right. This research brief accordingly seeks to do so, as well as to outline several current policy initiatives that demonstrate varied applications of self-determination in Australia and New Zealand.

Definition of self-determination

International law status

Self-determination is more than a theory; it is an international law right. Indeed, it is the first right enshrined in two human rights treaties: the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). They define self-determination as a people's right to 'freely determine their political status and freely pursue their economic, social and cultural development'. The UN, moreover, sees self-determination as an 'essential condition for the effective guarantee and observance of individual human rights' (UN Human Rights Committee 1984).

The right to self-determination gained prominence through decolonisation processes, which increasingly unfolded worldwide following World War I, creating independent countries established through claims to self-determination (Dessanti 2015). Consequently, this has historically sparked debate over whether subnational minority groups such as Indigenous peoples are also entitled to self-determination (Behrendt 2002); some countries have feared that this would be tantamount to endorsing a right to secession (Dessanti 2015).

From an Indigenous perspective, Indigenous self-determination can exist subnationally regardless of such debates; indeed, it can take on new, Indigenous-defined meanings domestically, irrespective of the applicability of international law (Behrendt 2002). However, the watershed passage of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 has clarified that the international framework does apply. UNDRIP confirms that Indigenous people enjoy the right to self-determination as defined in the ICCPR and ICESCR (see UNDRIP Article 3). Simultaneously, UNDRIP allays fears over self-determination's potential to encourage Indigenous secession (Davis 2012). As Article 46.1 states:

> 'Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act […] construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.'

UNDRIP does not merely confirm Indigenous enjoyment of the right to self-determination but situates the right as its centrepiece (ATSI Social Justice Commissioner 2011): the Declaration is permeated with both express and implicit references to concepts of self-determination, for instance in its goals, references to autonomy and self-government, and with respect to the right to Indigenous institutional structures (Xanthaki 2007). It also centralises aspects of the right previously dispersed across different international legal instruments (Cowan 2013; McMullan 2011; Round & Finkel 2019; Xanthaki 2007).

UNDRIP, self-determination and criminal justice

From a criminal justice perspective, several aspects of UNDRIP's definition of self-determination are relevant. For example, Article 34 empowers Indigenous peoples':

> 'right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs'.

Likewise, Article 35 protects Indigenous peoples' 'right to determine the responsibilities of individuals to their community'. Finally, Article 18 refers more broadly to Indigenous peoples':

> 'right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own [I]ndigenous decision-making institutions'.

Degree of legal force

FUNDRIP is a declaration. Declarations are generally non-binding, aspirational statements rather than treaties that create legal obligations. This has accordingly fuelled the question of how much legal force UNDRIP – and in turn, its definition of self-determination – possesses (see Barnabas 2017; Davis 2012; Dessanti 2015; McMullan 2011; Round & Finkel 2019; Xanthaki 2007).

Importantly, UNDRIP's self-determination protections do draw on binding instruments. Most relevantly for this brief, UNDRIP incorporates verbatim the ICCPR and ICESCR's definition of the right to self-determination. Other criminal justice-related provisions in UNDRIP also echo provisions in such binding treaties. The ICCPR's Article 27, for example, protects minorities' right to 'enjoy their own culture'; while, Article 25 confirms citizens' right 'to take part in the conduct of public affairs, directly or through freely chosen representatives'.

Therefore, although some of UNDRIP's provisions may reflect aspiration rather than binding law, those provisions that are based on binding legal instruments do create legal obligations for countries which are parties to the legal instruments in question. Concretely, this means that the right to self-determination is an internationally protected legal right in countries that are parties to the ICCPR and ICESCR, such as Australia and New Zealand. Accordingly, both are expected to guarantee the right to self-determination for all their citizens, including Indigenous people. In short, UNDRIP is indeed 'the international instrument that provides the most authoritative guidance to governments about how their binding human rights obligations apply to Indigenous peoples' (ATSI Social Justice Commissioner 2011).

Finally, there is also discussion as to whether aspects of the right to self-determination may enjoy customary international law status (Barnabas 2017; Davis 2012; Cowan 2013). Such status would imply that relevant aspects of the right are binding upon a country regardless of whether it agreed to codify that international instrument.

Self-determination in a domestic context

Australia and New Zealand have had an uneasy relationship with the concept of the right to self-determination. Both countries identified the right's protections within the UNDRIP as the reason why they were among only four countries in the world to initially vote against the Declaration (UN 2007). However, Australia and New Zealand did ultimately adopt the Declaration in 2009 and 2010, respectively (Macklin 2009; Power 2010).

Whatever the legal status of UNDRIP's protections, the right to self-determination does have some legal existence in both Australia and New Zealand. At a minimum, this owes to the fact that, as discussed above, aspects of the right to self-determination are protected under binding international instruments to which both Australia and New Zealand are parties. Both countries also have processes in place to assess the extent to which newly proposed legislation complies with

the countries' respective human rights obligations (Australia. Attorney General's Department nd; New Zealand. Ministry of Justice 2019).

Moreover, in New Zealand, the domestic legal status of self-determination is affected and may be reinforced by the existence of the Treaty of Waitangi, although the extent to which is subject to ongoing debate (McMullan 2011; Round & Finkel 2019). In principle, the Treaty promises the rights of Māori to 'develop and control their own institutions' as a form of 'tino rangatiratanga' or 'unqualified exercise of [chieftainship or] self-determination' (Te Uepu Hapai i te Ora 2019). Future protections for self-determination may also be affected by New Zealand's ongoing development of a national plan of action to assess its implementation of UNDRIP's objectives (UNDRIP Plan), including self-determination (New Zealand. Te Puni Kōkiri 2019a).

Self-determination in the criminal justice system

Current implementation

Past attempts to integrate Indigenous leaders as policy 'brokers, clients, champions, [and] decision makers' in Australia and New Zealand have had disappointing outcomes, with continued, endemic Indigenous over-representation among incarcerated populations (Putt & Yamaguchi 2015; Te Uepu Hapai i te Ora 2019). It has been suggested that this may owe to a piecemeal implementation of self-determination, and that its holistic implementation across criminal justice policy may be necessary for Indigenous criminal justice outcomes to improve (Law Council of Australia 2017; Stanley & Mihaere 2019; Te Uepu Hapai i te Ora 2019).

Nevertheless, even within the existing approach, several policy applications have explicitly or implicitly incorporated Indigenous self-determination as a principle. Whether they have implemented self-determination in practice, let alone in a way that establishes effective 'equal strategic relationships with joint decision-making about governance, funding, strategy, policies, programs, procurement, and evaluation' (Phillips 2019), remains another matter. In any event, approaches that currently incorporate self-determination in principle include Aboriginal Justice Agreements (Allison & Cunneen 2013), community night patrols, Aboriginal sentencing courts and behaviour change programs (Putt & Yamaguchi 2015), and justice reinvestment (Schwartz, Brown & Cunneen 2017).

This brief illustrates how self-determination is being incorporated into criminal justice policy in both countries through profiles of five policy approaches.

Initiatives advancing self-determination in Australia and New Zealand

Victorian Aboriginal Justice Agreement

Indigenous justice agreements (IJAs) are strategic agreements established by some Australian States and Territories in partnership with Indigenous leaders. They address 'delivery, funding, and coordination of Indigenous programs and services', and issues such as Indigenous over-representation in criminal justice systems (Allison & Cunneen 2013).

Driven by the Indigenous community and initially established in 2000, Victoria's Aboriginal Justice Agreement (Vic AJA) Burra Lotjpa Dunguludja (Yorta Yorta for 'senior leaders talking strong') represents the first and longest-standing IJA in Australia. It treats self-determination as defined in UNDRIP as its 'guiding principle'. Specifically, it envisions that 'Aboriginal people have access to an equitable justice system that is shaped by self-determination and upholds their human, civil, legal and cultural rights' (Vic. Government 2018).

The Vic AJA focuses on 'growing self-determination' through 'greater accountability for justice outcomes' and 'greater Aboriginal community leadership and strategic decision making'. It is expected that increasing self-determination will improve Indigenous criminal justice outcomes by:

- improving knowledge;
- increasing community buy-in and culturally appropriate solutions;
- building cultural sensitivity and competency; and
- using networks to facilitate inter-agency cooperation and engage individuals who would otherwise not participate (Vic. Government 2018).

It is implemented through a wide array of positions, programs, partnerships, and plans across the Victorian government. Central to these and the entire AJA are the Aboriginal Justice Forum (AJF) and Aboriginal Justice Caucus (AJC). The AJF convenes Indigenous leaders and government officials to monitor the AJA's implementation and promote both AJA principles among the Indigenous community and Indigenous participation in the leadership of the AJA and justice system (Vic. Government 2020b).

The AJC, meanwhile, includes Indigenous members of the AJF as well as other Indigenous community leaders. A self-determining body, the AJC aims 'to be a conduit between the Aboriginal community and the justice system' (Vic. Government 2020a). As part of its role in promoting 'community driven change and inspir[ing] the community to be self-determining' (Vic. Government 2020a), the AJC has defined self-determination in successive AJA iterations, and has been funded in this AJA cycle to increase Indigenous participation and leadership in 'government processes, policy and program design' (Vic. Government 2018).

Victorian Police data on Aboriginal justice indicators reveals that in the five years between 2014 and 2018, there have been consistent decreases in offences, recidivism, and bail breaches among Indigenous 10-17 year-olds (Vic. Crime Statistics Agency 2019), with similar decreases for Indigenous 18-24 year-olds in every respect, bar recidivism. However, for most offenders – those aged 25 and above – the rate of offending behaviour increased across all fronts in 2014-2018, with a 9.5 percent increase in recidivism. Moreover, across all ages, there has been a 1.9 percent increase in Indigenous persons being victims of a violent crime.

Likewise, evaluations of past Vic AJA phases acknowledge that challenges to Indigenous criminal justice outcomes, including over-representation, persist. However, they conclude that over-representation would have been even higher without the AJA (Vic. Government 2019b). They also note the AJA's other benefits: maturation of partnerships between government agencies and Indigenous communities; 'embedding cultural awareness and the adoption of an Aboriginal lens for the development of new strategies, policies and initiatives'; developing infrastructure to address over-representation; and, for example, $22-25 million in gross benefits to Victoria in 2011.

Moreover, the success of the AJA may be helping to catalyse broader and more holistic policy reforms in Victoria. For instance, from 2020, all Victorian government agencies must report on how they embed Indigenous self-determination in their work as part of the Self-Determination Reform Framework (Vic. Government 2019a). In addition, Indigenous self-determination has also been legally guaranteed, insofar as it relates to participation in Victoria's ongoing Treaty process, under the Advancing the Treaty Process with Aboriginal Victorians Act 2018 (Vic).

New South Wales OCHRE's Local Decision Making scheme

New South Wales' latest IJA was introduced in 2013 and is known as Opportunity, Choice, Healing, Responsibility, Empowerment (OCHRE). OCHRE's premise is that:

'Aboriginal communities are best placed to understand local needs and that service delivery can be compromised if distinct local conditions are overlooked in favour of a 'one size fits all' approach' (NSW. Government 2013).

OCHRE responds to criticisms of the previous IJA, which was found to '[lack] genuinely shared decision-making', and, 'despite significant investment over time – [result in] limited demonstrable improvement in the lives of Aboriginal people' (NSW. Government 2013).

Specifically, OCHRE introduces a 'Local Decision Making' model (LDM). The LDM operates in 70 communities, with nearly 100,000 Indigenous people (NSW. Ombudsman 2019). It promotes self-determination by seeking to increase Indigenous 'decision making powers through local management committees that will progressively be delegated greater [advisory, planning and implementation] powers' (NSW. Government 2013). Notably, these powers will include budgetary control. The LDM is grounded in 'international approaches that demonstrate that self-governance is intrinsic to empowerment and community wellbeing, including in terms of health, education and economic outcomes' (NSW. Ombudsman 2019).

From a criminal justice perspective, the introduction of the LDM has led to the signing of a three-year accord in 2019 between the NSW Government and LDM alliances to collaborate on decreasing Indigenous youth incarceration rates and recidivism (NSW. Government & NSW Coalition of Aboriginal Regional Alliances 2019). Under the accord, parties are to identify priorities, targets and timeframes, with collaboration based on principles of 'knowledge sharing, joint decision making, co-design and informed consent'.

Neither an evaluation of the accord nor relevant statistics following the accord's introduction are yet available. As for the LDM itself, the NSW Ombudsman has found that it has moved slowly due to its unanticipated popularity and the 'significance of the challenge for government in making necessary practical changes to share decision-making with Aboriginal communities'. Furthermore, the LDM's outcomes were untracked in its first five years. Nevertheless, the LDM appears to have slowly transformed government and Indigenous communities' relations through greater awareness, reflection, and collaboration (NSW. Ombudsman 2019).

OWA's Olabud Doogethu site

Olabud Doogethu (Kriol for 'everyone together') is Western

Australia's first justice reinvestment site. Situated in the Shire of Halls Creek in the Kimberley region, the project is being spearheaded through a partnership between the Shire's local government, its constituent Indigenous communities, and Social Reinvestment WA, a coalition of 23 NGOs (Social Reinvestment WA, Olabud Doogethu & Shire of Halls Creek 2019).

The project focuses on improving justice outcomes for the Indigenous people, who comprise over 75 percent of the Shire's population. Its core values include Indigenous self-determination and self-management, described as:

> '[Indigenous] people having full control over the management of their affairs so that the implementation of rights […] becomes achievable due to the removal of barriers, obstacles and injustices of the past' (Shire of Halls Creek Department of Youth and Community Development 2019).

These goals are to be achieved through approaches including service delivery 'that reflect[s] and champion[s] Indigenous Australians' world view and ways of being'; 'utilising local knowledge for local solutions'; and prioritising services for Indigenous people by Indigenous people (Shire of Halls Creek Department of Youth and Community Development 2019).

Olabud Doogethu models self-determination not only in its goals but in its development process. Through an 18-month Indigenous community consultation, individual communities co-formulated not only the overarching project framework and plan but their community's individual plan. For the latter, they determined priorities, strategies for achieving them, and responsible implementing parties (Shire of Halls Creek Department of Youth and Community Development 2019).

One early initiative implemented is the engagement of Youth Engagement Night Officers. These officers, who are Indigenous local community members, monitor Halls Creek's business district from 9pm-4am speaking to youth to deter risk-taking, anti-social behaviour, and ultimately crime by redirecting them to safe environments and learning why they are on the streets. They also provide feedback to service providers such as the police and Department of Child Protection and Family Support.

Although it is only in the early stages of implementation, there is some data surrounding Olabud Doogethu's impact. For example, over its first ten months, the Youth Engagement Night Officers and Parent Support program has led to a 61 percent reduction in crime when compared to the previous year, with an average of 38 fewer charges laid per month. Over $110,000 has been saved annually in asset protection (Shire of Halls Creek Department of Youth and Community Development 2019).

New Zealand's UNDRIP Plan

New Zealand's UNDRIP Plan, currently under development, is intended to be a nationwide plan that will measure New Zealand's progress on achieving UNDRIP's objectives (NZ. Te Puni Kōkiri 2019b). According to the Cabinet paper supporting the development of the plan, aims to address a recognised 'implementation gap' between formal commitments to upholding Indigenous rights - such as through supporting instruments like UNDRIP - and Indigenous peoples' lived realities (Office of Te Minita Whanaketanga Māori 2018).

The UNDRIP Plan further seeks to capitalise on the ad hoc advances already achieved. These include references to UNDRIP in New Zealand courts that consider how to observe principles in the Treaty of Waitangi. Government agencies have also made ad hoc references to UNDRIP, for instance, in evaluating their activities' fulfillment of the Declaration (Office of Te Minita Whanaketanga Māori 2018).

The plan, to be developed by a working group comprising government and non-government experts, will build on and coalesce such efforts. In doing so, it intends among other aims to 'contribute to enhancing the self-determination of Māori as the indigenous peoples of Aotearoa / New Zealand'. In practical terms, it will serve as a 'national plan of action, a strategy or some other tool that provides a map that demonstrates and guides progress across government'. It also intends to include 'time-bound, measurable actions' (Office of Te Minita Whanaketanga Māori 2018).

While the working group was due to report in November 2019 with a suite of initial options (NZ. Te Puni Kōkiri 2019b), an update on the plan's development has not yet been provided. This delay may owe to disruptions caused by the outbreak of Covid-19.

Rangatahi and Pasifika courts

Rangatahi and Pasifika youth courts have been instituted across New Zealand for just over a decade, with 15 Rangatahi and two Pasifika courts currently in operation. The program aims to improve criminal justice outcomes for Māori and Pasifika youth through heightened engagement and involving their families and communities in the process (NZ: Te Kōti Taiohi nd; IWI Chairs Forum nd). Open only to youth who have not denied the charges against them, the courts offer the same legal outcomes as youth courts but

adopt a culturally-adapted justice process.

Once a Family Group Conference has determined a plan for how the young person is going to take responsibility for their actions, Rangatahi and Pasifika courts will supervise the plan's implementation. Held in Māori marae or Pasifika churches or community centres, these courts offer a space for community elders to connect with young people, educating them about their cultural identity, protocols and customs, and providing encouragement and guidance (NZ: Te Kōti Taiohi nd; IWI Chairs Forum nd). Youth participants may also be instructed to undertake community work at those cultural sites.

A 2012 evaluation of Rangatahi courts suggested that the use of cultural venues and processes 'were critical success factors that increased the likelihood of positive engagement by rangatahi and whanau' (Kaipuke Consultants 2012). Some phrases youth participants have used to describe the courts include 'comfortable', 'empowering', 'far better', 'own' and offering 'more of a chance' (IWI Chairs Forum nd).

Conclusion

Indigenous self-determination has grown in prominence following the 2007 introduction of UNDRIP. Moreover, for countries that are parties to treaties from which UNDRIP rights are drawn, such as Australia and New Zealand, self-determination constitutes an international law right. In practice, self-determination is being featured in certain criminal justice policy applications in both countries at least in principle, although it is suggested that such implementation needs to become more holistic to impact criminal justice outcomes more significantly. At present, however, Indigenous people remain broadly over-represented in incarcerated populations and more prone to recidivism in both countries.

References

Allison A & Cunneen C 2013. Indigenous justice agreements. Indigenous Justice Clearinghouse Current Initiatives Paper 1. Sydney: IJC. https://www.indigenousjustice.gov.au/publications/#current-initiatives-papers.

Australia. Aboriginal and Torres Strait Islander Social Justice Commissioner 2011. Social Justice Report 2011. Sydney: AHRC. https://humanrights.gov.au/sites/default/files/content/social_justice/sj_report/sjreport11/pdf/sjr2011.pdf.

Australia. Attorney General's Department nd. Human rights scrutiny. Barton: AGD. https://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/Pages/default.aspx.

Barnabas S 2017. The legal status of the United Nations Declaration on the Rights of Indigenous Peoples (2007) in contemporary international human rights law. International Human Rights Law Review 6(2): 242-261. https://www.researchgate.net/publication/321749018_The_Legal_Status_of_the_United_Nations_Declaration_on_the_Rights_of_Indigenous_Peoples_2007_in_Contemporary_International_Human_Rights_Law_2017_6_2_International_Human_Rights_Law_Review_242-261.

Behrendt L 2001. Indigenous self-determination in the age of globalization. Balayi: Culture, Law and Colonialism 3: 1-7.

Behrendt L 2002. Self-determination and Indigenous policy: The rights framework and practical outcomes. Journal of Indigenous Policy 1: 43-58.

Cowan A 2013. UNDRIP and the Intervention: Indigenous self-determination, participation, and racial discrimination in the Northern Territory of Australia. Pacific Rim Law & Policy Journal 22(2): 247-310. https://digital.lib.washington.edu/dspace-law/handle/1773.1/1233.

Davis M 2012. To bind or not to bind: The United Nations Declaration on the Rights of Indigenous Peoples five years on. Australian International Law Journal 19: 17-42. http://www.austlii.edu.au/au/ journals/AUIntLawJl/2012/3.html.

Dessanti C 2015. Indigenous peoples' right to self-determination under international law. Intra Vires (Fall): 45-55. http://caid.ca/IndPeoRigSelDet2015.pdf.

IWI Chairs Forum nd. Rangatahi Māori and youth justice: Oranga rangatahi. https://iwichairs.maori.nz/wp-content/uploads/2018/02/RESEARCH-Rangatahi-Maori-and-Youth-Justice-Oranga-Rangatahi.pdf.

Kaipuke Consultants 2012. Evaluation of the early outcomes of ngā kooti rangatahi: Submitted to the Ministry of Justice. Wellington & Wairarapa: Kaipuke. https://www.justice.govt.nz/assets/Documents/Publications/Evaluation-of-Nga-Kooti-Rangatahi-FINAL-report-17-December-1.pdf.

Law Council of Australia 2017. Incarceration rates of Aboriginal and Torres Strait Islander peoples. Discussion Paper 84. Braddon: LCA. https://www.lawcouncil.asn.au/docs/0f08ee12-23ae-e711-93fb-005056be13b5/3349%20-%20Incarceration%20Rates%20of%20Aboriginal%20and%20Torres%20Strait%20Islander%20Peoples%20(Discussion%20Paper%2084).pdf.

Macklin J 2009. Statement on the United Nations Declaration on the Right of Indigenous Peoples. 3 Apr. Media release (Minister for Families, Housing, Community Services and Indigenous Affairs). https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/418T6/upload_binary/418t60.pdf;fileType=application%2Fpdf#search=%22media/pressrel/418T6%22.

McMullan S 2011. Māori self-determination and the Pakeha criminal justice process: The missing link. Indigenous Law Journal 10(1): 73-100. https://jps.library.utoronto.ca/index.php/ilj/article/download/27633/20364/.

New South Wales. Government & NSW Coalition of Aboriginal Regional Alliances 2019. NSW Coalition of Aboriginal Regional Alliances (NCARA) Local Decision Making Accord. https://www.aboriginalaffairs.nsw.gov.au/working-differently/local-decision-making/ncara-accord/NCARA-Accord-Final-Version-with-Signatures-(27-February-2019).PDF.

New South Wales. Government 2013. OCHRE: Opportunity, Choice, Healing, Responsibility, Empowerment. Sydney: NSW Government. https://www.aboriginalaffairs.nsw.gov.au/pdfs/OCHRE/AA_OCHRE_final.pdf.

New South Wales. Ombudsman 2019. OCHRE Review Report. Sydney: NSW Ombudsman. https://www.ombo.nsw.gov.au/data/assets/pdf_file/0005/74183/OCHRE-Report_October-2019.pdf.

New Zealand. Ministry of Justice 2019. Bill of rights compliance reports. Wellington: MOJ. https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/.

New Zealand: Te Kōti Taiohi nd. Rangatahi courts & Pasifika courts. https://youthcourt.govt.nz/about- youth-court/rangatahi-courts-and-pasifika-courts/.

New Zealand. Te Puni Kōkiri (Ministry of Māori Development) 2019a. Developing a plan on New Zealand's progress on the United Nations Declaration of the Rights of Indigenous Peoples. Wellington: TPK. https://www.tpk.govt.nz/en/a-matou-mohiotanga/cabinet-papers/develop-plan-on-nz-progress-un.

New Zealand. Te Puni Kōkiri (Ministry of Māori Development) 2019b. UN Declaration of the Rights of Indigenous Peoples. Wellington: TPK.

https://www.tpk.govt.nz/en/whakamahia/un-declaration-on-the-rights-of-indigenous-peoples.

New Zealand. Te Uepū Hāpai i te Ora (Safe and Effective Justice Advisory Group) 2019. He waka roimata: Transforming our criminal justice system. https://safeandeffectivejustice.govt.nz/assets/Uploads/fa55462d44/teuepureport_hewakaroimata.pdf.

Phillips G 2019. Australia must embrace 'cultural safety' if we are to close the gap. The Guardian. 16 May. https://www.theguardian.com/commentisfree/2019/may/16/australia-must-embrace-cultural-safety-if-we-are-to-close-the-gap.

Power S 2010. Ministerial statements: UN Declaration on the Rights of Indigenous Peoples: Government support. Hansard (New Zealand: Parliament). 20 Apr: (662) 10229. https://www.parliament.nz/en/pb/hansard-debates/rhr/document/49HansD_20100420_00000071/ministerial-statements-un-declaration-on-the-rights-of.

Putt J & Yamaguchi J 2015. The implementation of indigenous crime and justice policies and programs in Australia: Issues and challenges. Indigenous Justice Clearinghouse Research Brief 18. Sydney: IJC. https://www.indigenousjustice.gov.au/publications/#research-briefs.

Round O & Finkel J 2019. Ensuring Indigenous rights: New Zealand and UNDRIP (Honours thesis). Loyola Marymount University, Los Angeles, United States. https://digitalcommons.lmu.edu/honors- thesis/190/.

Schwartz M, Brown D & Cunneen C 2017. Justice reinvestment. Indigenous Justice Clearinghouse Research Brief 21. Sydney: IJC. https://www.indigenousjustice.gov.au/publications/#research-briefs.

Shire of Halls Creek Department of Youth and Community Development 2019. Olabud Doogethu project co-design and community consultation inclusion initiates: "How the community speak and act for their youth". Halls Creek: Shire of Halls Creek. https://www.hallscreek.wa.gov.au/repository/libraries/id:21ai12hft1cxby8qvwzx/hierarchy/Olabud/Olabud%20Doogethu%20Co%20Design%20Report%20Online%20PDF.pdf.

Social Reinvestment WA, Olabud Doogethu & Shire of Halls Creek 2019. WA's first justice reinvestment site: Olabud Doogethu. https://www.hallscreek.wa.gov.au/repository/libraries/id:21ai12hft1cxby8qvwzx/hierarchy/Olabud/Olabud%20Doogethu%20Brief%20WA%27s%20First%20Justice%20Reinvestment%20SIte.pdf.

Stanley E & Mihaere R 2019. The problems and promise of international rights in the challenge to Māori imprisonment. International Journal for Crime, Justice and Social Democracy 8(1): 1-17. https://www.crimejusticejournal.com/article/download/1045/718/.

UN 2007. General Assembly adopts Declaration on rights of Indigenous peoples; 'Major step forward towards human rights for all', says president. 13 Sep. Media release. https://www.un.org/press/en/ 2007/ga10612.doc.htm.

UN General Assembly 1966a. International Covenant on Civil and Political Rights. UN Treaty Series, vol. 999, p. 171. 16 Dec. https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx.

UN General Assembly 1966b. International Covenant on Economic, Social and Cultural Rights. UN Treaty Series, vol. 993, p. 3. 16 Dec. https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx.

UN Human Rights Committee 1984. General Comment No. 12: Article 1. The right to self-determination of peoples. UN Doc. No. HRI/GEN/1/Rev.9 (Vol. I). Geneva: United Nations. http://ccprcentre.org/page/view/general_comments/27804.

Victoria. Crime Statistics Agency 2019. Aboriginal justice indicators – Victoria police. Melbourne: Crime Statistics Agency. https://www.aboriginaljustice.vic.gov.au/outcomes/aboriginal-justice-indicators.

Victoria. Government 2020a. Aboriginal Justice Caucus. Melbourne: Victorian Government. https://www.aboriginaljustice.vic.gov.au/aboriginal-justice-caucus.

Victoria. Government 2020b. Aboriginal Justice Forum. Melbourne: Victorian Government. https://www.aboriginaljustice.vic.gov.au/about-the-partnership/the-aboriginal-justice-forum.

Victoria. Government 2019a. About the Framework. Melbourne: Victorian Government. https://www.aboriginalvictoria.vic.gov.au/self-determination-reform-framework/about-framework.

Victoria. Government 2019b. Outcomes. Melbourne: Victorian Government. https://www.aboriginaljustice.vic.gov.au/outcomes.

Victoria. Government 2018. Burra Lotjpa Dunguludja: Victorian Aboriginal Justice Agreement: Phase 4. Melbourne: Victorian Government. https://www.aboriginaljustice.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2018/09/9d/784c6e742/Victorian%20Aboriginal%20Justice%20Agreement%20Phase%204.pdf.

Webb J 2012. Indigenous peoples and the right to self-determination. Journal of Indigenous Policy 13: 75-102. http://www.austlii.edu.au/au/journals/JIIndigP/2012/7.pdf.

Xanthaki A 2007. Indigenous Rights and United Nations Standards: Self-Determination, Culture and Land. Cambridge: Cambridge University Press.

[i] The term Indigenous is used, respectfully, in this Brief to refer to First Nations peoples of both Australia and New Zealand, recognising the considerable diversity that exists both within and between different groups.

[ii] For example, the Reintegration Puzzle is an annual conference which rotates across Australia and New Zealand to provide opportunities to hear the latest information concerning programs and services which aim to assist people to successfully reintegrate back into the community after prison. See http://www.reintegrationpuzzle.com.au

ISSN 1837–6223 (print)

Logo and header by artist Garry Jones.
Layout and print by Breakout Media Communications.
www.breakout.net.au