



General Assembly

Distr.
GENERAL

A/HRC/WG.6/5/NZL/2
11 March 2009

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Working Group on the Universal Periodic Review
Fifth session
Geneva, 4-15 May 2009

**COMPILATION PREPARED BY THE OFFICE OF THE HIGH COMMISSIONER FOR
HUMAN RIGHTS, IN ACCORDANCE WITH PARAGRAPH 15 (B) OF THE ANNEX
TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1***

New Zealand

The present report is a compilation of the information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), other than those contained in public reports issued by OHCHR. It follows the structure of the general guidelines adopted by the Human Rights Council. Information included herein has been systematically referenced in endnotes. The report has been prepared taking into consideration the four-year periodicity of the first cycle of the review. In the absence of recent information, the latest available reports and documents have been taken into consideration, unless they are outdated. Since this report only compiles information contained in official United Nations documents, lack of information or focus on specific issues may be due to non-ratification of a treaty and/or to a low level of interaction or cooperation with international human rights mechanisms.

* Late submission.

I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations¹

| <i>Core universal human rights treaties²</i> | <i>Date of ratification, accession or succession</i> | <i>Declarations /reservations</i> | <i>Recognition of specific competences of treaty bodies</i> |
|--|---|---|--|
| ICERD | 22 November 1972 | None | Individual complaints (article 14): No |
| ICESCR | 28 December 1978 | Article 8 (withdrawn for the metropolitan territory) | - |
| ICCPR | 28 December 1978 | Articles 10 (2) (b), 10 (3), 14 (6), 20, 22 | Inter-State complaints (article 41): No |
| ICCPR-OP 1 | 26 May 1989 | None | - |
| ICCPR-OP 2 | 22 February 1990 | None | - |
| CEDAW | 10 January 1985 | None | - |
| OP-CEDAW | 20 September 2000 | Yes (for Tokelau) | Inquiry procedure (articles. 8 and 9): Yes |
| CAT | 10 December 1989 | Article 14 | Inter-State complaints (article 21): Yes Individual complaints (article 22): Yes Inquiry procedure (article 20): Yes |
| OP-CAT | 14 March 2007 | Yes (for Tokelau) | - |
| CRC | 6 April 1993 (extension to Tokelau only upon notification to the Secretary-General) | General; articles 32 (2), 37 (c) | - |
| OP-CRC-AC | 12 November 2001 | Binding declaration under article. 3: 17 years | - |
| CRPD | 25 September 2008 | Yes (for Tokelau) | - |
| <i>Core treaties to which New Zealand is not a party:</i> OP-ICESCR, ³ OP-CRC-SC (signature only, 2000), ICRMW (signature only, 2007), CRPD-OP and CED. | | | |
| <i>Other main relevant international instruments</i> | | | <i>Ratification, accession or succession</i> |
| Convention on the Prevention and Punishment of the Crime of Genocide | | | Yes |
| Rome Statute of the International Criminal Court | | | Yes |
| Palermo Protocol ⁴ | | | Yes |
| Refugees and stateless persons ⁵ | | | Yes, except 1954 Convention |
| Geneva Conventions of 12 August 1949 and Additional Protocols thereto ⁶ | | | Yes, except Protocol III |
| ILO fundamental conventions ⁷ | | | Yes, except No. 87 and No. 138 |
| UNESCO Convention against Discrimination in Education | | | Yes |

1. Recommendations were made to New Zealand to ratify ICRMW,⁸ OP-CRC-SC,⁹ ILO fundamental Conventions Nos. 87¹⁰ and 138,¹¹ ILO Conventions Nos. 117 (Social Policy - Basic Aims and Standards Convention),¹² 118 (Equality of Treatment - Social Security Convention),¹³ and 169 (concerning Indigenous and Tribal Peoples in Independent Countries),¹⁴ and the Convention relating to the Status of Stateless Persons.¹⁵

2. The Committee on the Elimination of Racial Discrimination (CERD) invited New Zealand to consider accepting the individual complaints procedure under article 14 of the Convention.¹⁶

3. The Committee on the Elimination of Discrimination against Women (CEDAW) commended New Zealand for the withdrawal of its last reservation to the Convention.¹⁷

4. The Committee on the Rights of the Child (CRC) recommended the withdrawal of reservations to the Convention, and continuation of discussions with Tokelau with a view to extending the application of the Convention to their territory.¹⁸ The Human Rights Committee (HR Committee) recommended the withdrawal of reservations to article 10 of the Covenant.¹⁹

B. Constitutional and legislative framework

5. In 2007, CERD was concerned that the New Zealand Bill of Rights Act (NZBORA) does not enjoy protected status and that the enactment of legislation contrary to the provisions of that Act is therefore possible.²⁰ Similar remarks were made in 2002 by the HR Committee, which also regretted that certain Covenant rights are not reflected in the NZBORA.²¹

6. The Committee on Economic, Social and Cultural Rights (CESCR) reminded New Zealand of its obligation to give full effect to the Covenant in the domestic legal order, providing for judicial and other remedies for violations of these rights.²²

7. While appreciating steps taken by the State, CEDAW was concerned in 2007 that the Convention has not been fully incorporated into domestic law.²³

8. In 2003, CRC recommended that New Zealand initiate a comprehensive review of all legislation affecting children and harmonize its legislation with the Convention.²⁴

9. Following his 2005 visit, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people explained that the inherent rights of Maori were not constitutionally recognized, nor were their own traditional governance bodies. This allowed Parliament to enact legislation by simple majority that modified the relationship between Maori and the Crown, a condition that the minority representation of Maori in the political process was unable to reform.²⁵ In 2007, CERD also noted that the Treaty of Waitangi is not a formal part of domestic law unless incorporated into legislation, making it difficult for Maori to invoke its provisions before courts and in negotiations with the Crown.²⁶

10. CERD encouraged continuing the public discussion over the status of the Treaty of Waitangi, with a view to its possible entrenchment as a constitutional norm,²⁷ as also recommended by the Special Rapporteur.²⁸ The latter added that a convention should be convened to design a constitutional reform to clearly regulate the relationship between the Government and the Maori people on the basis of the Treaty of Waitangi and the right of peoples to self-determination.²⁹ Both CERD and the Special Rapporteur recommended that the Waitangi Tribunal be granted legally binding powers to adjudicate Treaty matters and increased financial resources.³⁰

C. Institutional and human rights infrastructure

11. The New Zealand Human Rights Commission (NZHRC) was accredited with "A status" (in full compliance with the Paris Principles) in 1999, which was reconfirmed in 2006.³¹

12. The HR Committee and CESCR welcomed the Human Rights Amendment Act 2001,³² which transformed the Race Relations Office and Human Rights Commission into a new Human Rights Commission with a broader human rights mandate and was charged with developing a

national action plan for human rights.³³ CESCR recommended that the NZHRC take up economic, social and cultural rights as a comprehensive topic and ensure that those rights be duly reflected in the National Plan of Action for Human Rights.³⁴ Both CEDAW and the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO Committee of Experts) noted the appointment of an Equal Opportunity Commissioner by the NZHRC to focus on gender equality.³⁵ In 2007, CERD noted with satisfaction the increase of the budget provided to the NZHRC.³⁶

D. Policy measures

13. While noting that New Zealand has not formally endorsed the NZHRC's Action Plan for Human Rights, CERD encouraged the State to adopt, on the basis of the proposals made by the Commission, its own Action Plan.³⁷

14. In 2005, New Zealand adopted the United Nations Plan of Action (2005-2009) for the World Programme for Human Rights Education focusing on the national school system.³⁸ It informed OHCHR in 2006 that all schools are subject to the NZBORA and the Human Rights Act 1993. Human rights are a feature of the social studies curriculum that is available in English and Maori languages.³⁹

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. Cooperation with human rights mechanisms

1. Cooperation with treaty bodies

| <i>Treaty body⁴⁰</i> | <i>Latest report submitted and considered</i> | <i>Latest concluding observations</i> | <i>Follow-up response</i> | <i>Reporting status</i> |
|---------------------------------|---|---------------------------------------|---------------------------|---|
| CERD | 2006 | August 2007 | Sept. 2008 | Eighteenth to twentieth reports due in 2011 |
| CESCR | 2001 | May 2003 | - | Third report due overdue since 2008 |
| HR Committee | 2001 | July 2002 | - | Fifth report submitted in 2007, scheduled for consideration in 2009 |
| CEDAW | 2006 | August 2007 | - | Seventh report due in 2010 |
| CAT | 2002 | May 2004 | June 2005 | Fifth report submitted in 2007, scheduled for consideration in 2009 |
| CRC | 2001 | October 2003 | - | Combined third and fourth reports submitted in 2008 |
| OP-CRC- AC | 2003 | October 2003 | | Combined third and fourth reports submitted in 2008 |

15. In 2005, CERD adopted Decision 1(66), relating to indigenous issues, within the framework of its early warning and urgent action procedure.

16. In 2006, New Zealand provided comments to the Committee against Torture (CAT), on ratification and reservation issues.⁴¹

2. Cooperation with special procedures

| | |
|---|---|
| <i>Standing invitation issued</i> | Yes |
| <i>Latest visits or mission reports</i> | Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (16 to 26 November 2005). ⁴² |
| <i>Visits agreed upon in principle</i> | None |
| <i>Visits requested and not yet agreed upon</i> | None |
| <i>Facilitation/cooperation during missions</i> | The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people thanked the Government for its cooperation. |
| <i>Follow-up to visits</i> | - |
| <i>Responses to letters of allegations and urgent appeals</i> | 3 communications were sent during the period under review. The Government replied to all of them. |
| <i>Responses to questionnaires on thematic issues</i> ⁴³ | Of the 13 questionnaires sent by special procedures during the period under review, ⁴⁴ New Zealand responded to none within the deadlines. |

3. Cooperation with the Office of the High Commissioner for Human Rights

17. New Zealand contributed financially to OHCHR in 2005, 2006, 2007 and 2008.

B. Implementation of international human rights obligations

1. Equality and non-discrimination

18. Regretting that New Zealand does not consider it necessary to include in the prohibited grounds of discrimination all those stated in the Covenant, in particular language, the HR Committee recommended in 2002 that domestic law be brought into full conformity with the Covenant.⁴⁵

19. CEDAW was concerned in 2007 that domestic legislation contains no explicit and comprehensive definition of discrimination against women, in accordance with the Convention, encompassing direct and indirect discrimination.⁴⁶ The fact that women, especially minority women, continue to be portrayed in a negative, inferior and stereotypical manner in the media and society was also a matter of concern to CEDAW.⁴⁷ The Special Rapporteur on indigenous people expressed special concern about the findings of a 2004 study, according to which newspaper and television are fairly unbalanced in their treatment of Maori people and issues.⁴⁸

20. In 2002, the HR Committee welcomed the further progress made in the protection of the rights of Maori under ICCPR and in 2007, CERD appreciated the reduction of socio-economic disparities between Maori and Pacific peoples on the one hand, and the rest of the population on the other.⁴⁹ Following his 2005 visit, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people reported that despite social programmes put in place, disparities remain between Maori and non-Maori with regard to employment, income, health, housing, education, and in the criminal justice system. Although Maori collectives (*iwi*, *hapu*, *whanau*) are increasingly involved in the strategies designed to reduce these inequalities, actual self-governance mechanisms have not yet been devised. According to the Special Rapporteur, there appears to be a need for the continuation of specific measures based on ethnicity to strengthen the social, economic and cultural rights of Maori.⁵⁰ CERD, noting the re-targeting of some programmes and policies on the basis of need rather than ethnicity, recommended ensuring that concerned communities participate in the assessment and review of

special measures adopted for the advancement of groups, and that the public be informed about the nature and relevance of special measures.⁵¹

21. Concerned that there is no recording of complaints, prosecutions and sentences relating to racially motivated crime, CERD recommended that New Zealand study ways and means of assessing the extent to which complaints for racially motivated crimes are addressed in an appropriate manner within its criminal justice system.⁵²

22. The Office of the United Nations High Commissioner for Refugees (UNHCR) indicated that, in an effort to maintain a positive understanding of refugees and migrants and to combat xenophobia and racism, it would be important for the Government to ensure these issues are built into education curricula.⁵³

23. In 2003, CRC was concerned that children with disabilities are not fully integrated into all aspects of society and that services, in particular in the education system, are often difficult to access for families of children with disabilities.⁵⁴

2. Right to life, liberty and security of the person

24. Concerned at cases of prolonged non-voluntary segregation in detention (solitary confinement), CAT recommended that New Zealand reduce the time and improve the conditions of such detention.⁵⁵ New Zealand responded that it does not consider non-voluntary segregation in prisons to be the equivalent of solitary confinement.⁵⁶ CAT also expressed concern at the findings of the Ombudsman regarding investigations of alleged assaults by prison staff on inmates, in particular the reluctance to address such allegations promptly and the quality, impartiality and credibility of investigations.⁵⁷

25. The HR Committee noted with concern in 2002 that the management of one prison and prison escort services have been contracted to a private company. While welcoming the decision that all prisons would be publicly managed after the expiry of the contract in 2005 and that the contractors are expected to respect the United Nations Minimum Standards for the Treatment of Prisoners, it remained concerned about whether the practice of privatization in such area effectively meets the State's obligations under the Covenant and its accountability for violations. In addition, there did not appear to be any effective mechanism of day-to-day monitoring to ensure that prisoners are treated with humanity and further benefit from treatment directed to their reformation and social rehabilitation.⁵⁸

26. CRC shared the State's concern about the prevalence of child abuse, and regretted that services aimed at preventing abuse and providing assistance with recovery do not have sufficient resources and are insufficiently coordinated.⁵⁹

27. While noting measures taken, CEDAW expressed concern about the continued prevalence of violence against women, particularly Maori, Pacific and minority women.⁶⁰ CEDAW was concerned at the low rates of prosecution and convictions for such crimes; at the declining number of protective orders;⁶¹ and that violence against women within families and illegal practices relating to marriage take place within immigrant communities and may not be adequately addressed because of the dependency and isolation of the women concerned.⁶²

28. CEDAW was concerned that no cases of trafficking in women have been officially reported or prosecuted, despite indications of the existence of trafficking in women in New

Zealand. It was also concerned about the exploitation of migrant women and girls in prostitution.⁶³

3. Administration of justice and the rule of law

29. While welcoming efforts to expand eligibility requirements for legal aid, CEDAW requested New Zealand to analyze and remove impediments women may face in gaining access to justice, to provide legal aid services to all women in need and to raise awareness about how to utilize available legal remedies against discrimination, as well as to monitor the results of such efforts.⁶⁴ According to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, the Legal Services Act should be amended to ensure that legal aid is available to Maori *iwi* and *hapu* as bodies of persons.⁶⁵

30. The HR Committee found violations of ICCPR in two cases against New Zealand. In 2003, it found a violation of the right to have a court decide on the lawfulness of one's detention for preventive reasons.⁶⁶ Following the State's response that it amended its legislation to ensure that similar situations will no longer arise, the Committee closed the case.⁶⁷ In 2007, it found a violation of the right to an expeditious trial.⁶⁸ The State disputed these findings but indicated that initiatives had been set up to reduce the delay in such hearings, and the Committee considered the dialogue ongoing under the follow-up procedure.⁶⁹

31. CAT in 2004 and CRC in 2003 expressed concern at the low age of criminal responsibility and at the fact that juveniles are sometimes not separated from adult detainees and have been detained in police cells, in some cases for several months, as further underlined by CRC.⁷⁰

32. Expressing concern at the overrepresentation of Maori and Pacific people in the prison population and more generally at every stage of the criminal justice system, CERD recommended that New Zealand enhance efforts to address this problem and consider it as a matter of high priority.⁷¹

4. Freedom of movement

33. The HR Committee was concerned at information that permanent residents and, under certain conditions, some citizens, need a return visa to re-enter New Zealand, and recommended that the legislation be reviewed in that respect.⁷²

5. Right to participate in public and political life

34. According to a 2008 United Nations Statistics Division source, the proportion of seats held by women in the parliament increased from 28.3 per cent in 2004 to 33.1 in 2008.⁷³ While welcoming the recent ascent of women to the highest constitutional positions, CEDAW was concerned in 2007 that their number in local government and political decision-making positions was declining, and that women remained underrepresented in local government, district health boards, statutory boards and the judiciary.⁷⁴

35. Electoral reforms addressed the chronic underrepresentation of Maoris, as noted in a 2004 UNDP report. With the introduction of proportional representation in place of the winner-takes-all formula, Maori representation rose from 3 per cent in 1993 to 16 per cent in the 2002 elections, in line with their share of the population.⁷⁵ In 2007, CEDAW was concerned that

Maori, Pacific, Asian and other minority women are underrepresented at most levels of public and political life.⁷⁶

6. Right to work and to just and favourable conditions of work

36. The HR Committee and CESCR welcomed the Employment Relations Act of 2000,⁷⁷ which facilitates collective bargaining, strengthens the role of trade unions and introduces measures of protection against harassment and discrimination in the workplace.⁷⁸

37. In 2007, CEDAW expressed concern about the lack of legal mechanisms to address discrimination against women by private actors in the area of employment. The mechanisms for implementing the principle of equal pay for work of equal value in the private sector have been abolished and the Government lacks the authority to implement and enforce equal employment opportunity policies in this sector.⁷⁹ CEDAW was also concerned at the increasing wage gap between women and men,⁸⁰ (a matter already addressed by CESCR in 2003⁸¹), at the high levels of occupational segregation, the concentration of women in low-wage occupations and the very low rate of women's participation in management and decision-making positions in the private sector.⁸²

38. Concern about the disadvantaged situation of Maori, Pacific and minority women in employment was expressed by CEDAW.⁸³ In 2008, the ILO Committee of Experts reiterated its comments relating to existing labour market inequalities along ethnic lines, especially for Maori and Pacific people, while noting measures undertaken to improve their training and employment opportunities.⁸⁴ Also, while welcoming initiatives taken by the State, the ILO Committee remained concerned about the existing prejudices and stereotypical attitudes of employers vis-à-vis migrant workers.⁸⁵

39. The HR Committee and CESCR welcomed the introduction of new legislation providing for a Government-funded parental leave scheme.⁸⁶ While welcoming efforts to support women's participation in employment and achieving a work-life balance, CEDAW remained concerned at the rates of participation in the labour force for mothers of young children and single mothers. It urged New Zealand to strengthen parental leave programmes for men and to encourage men to share child-rearing responsibilities with women. It recommended acting expeditiously to amend eligibility criteria to ensure that seasonal and temporary workers are eligible for paid parental leave; assessing the barriers that rural and Maori, Pacific and minority women face in accessing childcare and parental leave; and implementing measures to reduce these barriers and increase their access to such services.⁸⁷

40. CRC was concerned that the protection of persons under 18 in employment does not fully conform to the Convention, and about the lack of a minimum age of admission to employment.⁸⁸ In 2008, the ILO Committee of Experts noted the Government's intention to prohibit hazardous work for employees aged under 16 years (raising the restriction from 15 years), and hoped this would be done soon.⁸⁹

41. As noted in a 2007 ILO report, age equality legislation has contributed to eliminating the most blatant forms of ageism, such as discriminatory employment advertisements, but has been less effective in tackling covert discrimination.⁹⁰

7. Right to social security and to an adequate standard of living

42. As noted by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, despite the Government's intention to reduce inequalities, persistent disparities between Maori and Pakeha continue to exist. Maori women still experience poorer economic, health and social outcomes than other women, but there has been progress.⁹¹ In 2003, CESCR noted with concern that nearly one in four persons lives in poverty,⁹² and CRC noted that single-parent families headed by women, as well as Maori and Pacific Island families, are disproportionately affected.⁹³

43. According to a 2008 World Health Organization report, health equity gaps between Aboriginal and non-Aboriginal populations have emerged as national political issues.⁹⁴ CESCR and CRC, in 2003, had expressed concern on this issue.⁹⁵ Following his 2005 visit, the Special Rapporteur on indigenous people noted that Maori life expectancy is significantly lower (almost 10 years) than that of non-Maori, although they recently have made significant gains.⁹⁶ In 2007, CEDAW expressed concern about the disparity in the life expectancies of women of European descent and women from other ethnic groups.⁹⁷

44. While noting with appreciation the availability of comprehensive health coverage and of free health services, CEDAW called on the State to improve the rates of access to health care and health-related services and information, especially for women who live in rural areas or who face cultural or language barriers in accessing health care.⁹⁸ CRC, while welcoming the adoption of the Child Health Strategy, was concerned in 2003 that immunization coverage was not universal and that rates of infant mortality were relatively high.⁹⁹ CRC was also concerned at the insufficient level of youth mental health services, particularly in rural areas and for Maori children and children in residential institutions.¹⁰⁰

45. CEDAW urged New Zealand to improve the provision of information on reproductive health and contraception and to promote widely sex education, with special attention to the prevention of sexually transmitted diseases and teenage pregnancy.¹⁰¹

46. While acknowledging the ongoing reform of the social welfare system, CESCR recommended that in targeting assistance more specifically to disadvantaged and marginalized groups, concerns to contain costs do not lead to a decrease in the level of effective social protection.¹⁰² It recommended disseminating accessible information on the system to all.¹⁰³

8. Right to education and to participate in the cultural life of the community

47. In 2007, while welcoming efforts to increase access to free education, CEDAW recommended funding schools adequately; ensuring that children from low-income families and families living in rural areas are not discriminated against in the provision of education; undertaking efforts to clarify and publicize the voluntary nature of payments requested by schools and monitoring the practices of schools regarding the collection of fees from parents.¹⁰⁴ CRC was concerned in 2003 that increasing hidden costs of education are limiting access to education.¹⁰⁵

48. CERD recommended that public educational institutions be open to all undocumented children, without restrictions.¹⁰⁶ New Zealand responded that the Immigration Bill will remove the offence for education providers to enrol children that are without the appropriate permit.¹⁰⁷

49. CRC recommended enforcing legislation on compulsory education and prohibiting exclusions on arbitrary grounds such as pregnancy, and ensuring that students of the age of compulsory education who have legitimately been excluded from a school are enrolled elsewhere.¹⁰⁸

50. According to the Special Rapporteur on indigenous people, despite progress, the schooling system has been performing on average less well for Maori.¹⁰⁹ Concern on this issue had been expressed by CESCR in 2003.¹¹⁰ The Special Rapporteur recommended that more resources be put at the disposal of Maori education at all levels, including teacher training programmes and the development of culturally appropriate teaching materials. Student fees should be lowered and allowances increased to stimulate the access of Maori to tertiary education.¹¹¹

9. Minorities and indigenous peoples

51. According to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, one of the more pressing current human rights concerns for Maori relates to land issues. Having been dispossessed of most of their lands and resources by the Crown, Maori had to accept sporadic and insufficient redress, only to be faced with accusations that they were receiving undue privileges.¹¹² He recommended that in all Treaty settlements, the right of Maori to participate in the management of their cultural sites according to customary precepts be specifically acknowledged. Existing settlement acts should be amended, and other such acts in the future should be framed, so as to enable *iwi* and *hapu* to self-determine an appropriate corporate structure for receipt and management of assets.¹¹³

52. The Special Rapporteur indicated that a crisis broke over the Foreshore and Seabed Act 2004.¹¹⁴ In its Decision 1 (66) of 2005, CERD considered that the Act appeared, on balance, to contain discriminatory aspects against the Maori, in particular in its extinguishment of the possibility of establishing Maori customary title over the foreshore and seabed and its failure to provide a guaranteed right of redress.¹¹⁵ As reiterated in its 2007 concluding observations, CERD recommended that a renewed dialogue between the State and the Maori take place with regard to this Act to seek ways of mitigating its discriminatory effects, including through legislative amendment where necessary; that the State continue monitoring closely the implementation of the Act; and that it take steps to minimize any negative effects, especially by way of a flexible application of the legislation and by broadening the scope of redress available to the Maori.¹¹⁶ The Special Rapporteur recommended that the Act be repealed or amended; and that the Crown engage in treaty settlement negotiation with Maori on the issue.¹¹⁷ New Zealand, in response to CERD, indicated that it continued to engage in dialogue with certain Maori groups concerning the Foreshore and Seabed Act and highlighted progress made in some negotiations.¹¹⁸

53. In 2007, while welcoming the progress achieved in the settlement of historical Treaty claims, CERD noted the 2008 cut-off date for the lodging of historical Treaty claims, and recommended ensuring that this will not unfairly bar legitimate claims. It also recommended pursuing efforts to assist claimant groups in direct negotiations with the Crown.¹¹⁹

10. Migrants, refugees and asylum-seekers

54. In 2004, CAT was concerned that the immigration legislation does not include the non-refoulement obligation provided for in article 3 of the Convention.¹²⁰ UNHCR welcomed in

2008 the intention to provide complementary protection to persons who do not satisfy the definition of refugees contained in the 1951 Refugee Convention but who nevertheless cannot return to their own countries because of the non-refoulement principle,¹²¹ as recommended by CAT.¹²²

55. CAT expressed concern at the significant decrease in the proportion of asylum-seekers who are immediately released without restriction into the community upon arrival and the detention of several asylum-seekers in remand prisons, who are not separated from other detainees.¹²³ New Zealand responded to CAT on this matter.¹²⁴ In 2007, CERD recommended putting an end to the practice of detaining asylum-seekers in correctional facilities.¹²⁵

56. In relation to the Immigration Bill 2007, UNHCR indicated that some aspects of the draft legislation could be improved with regard to certain aspects of the refugee and protected status determination process; the collection and use of classified information; the need to ensure that any introduction of biometric information should be accompanied by adequate and explicit safeguards that respect privacy; the need to include appropriate safeguards to ensure that international standards of reception and treatment are maintained for asylum-seekers; and the need expressly to preserve important elements of the 1951 Refugee Convention in regard to the expulsion and exclusion of claimants to refugee status.¹²⁶

11. Human rights and counter-terrorism

57. The HR Committee was concerned in 2002 about possible negative effects of new legislation adopted following Security Council resolution 1373 (2001) and practices on asylum-seekers, including by "removing the immigration risk offshore", and in the absence of monitoring mechanisms with regard to the expulsion of those suspected of terrorism to their countries of origin which, despite assurances that their human rights would be respected, could pose risks to the personal safety and lives of the persons expelled. The HR Committee requested that New Zealand ensure that the definition of terrorism does not lead to abuse and is in conformity with the Covenant.¹²⁷

58. CAT recommended in 2004 that New Zealand ensure at all times that the fight against terrorism does not lead to a breach of the Convention and impose undue hardship on asylum-seekers, and that it establish a time limit for the detention of and restrictions on asylum-seekers. It recommended reviewing the legislation relating to the security-risk certificate, whereby a person deemed to constitute a threat to national security may be removed or deported, in order to ensure that appeals can effectively be made against decisions to detain, remove or deport a person, extend the time given to the Minister of Immigration to adopt a decision and ensure full respect of article 3 of the Convention against Torture.¹²⁸ New Zealand responded in 2005 that it was reviewing legislation relating to security-risk certificates.¹²⁹

59. In 2007, the Special Representative of the Secretary-General on the situation of human rights defenders, together with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism raised the issue of the arrest of 17 Maori social activists suspected of terrorism-related offences. Concern was expressed that the Government was looking at broadening the definition of a terrorist act, reducing judicial oversight, allowing courts to consider classified information without giving it to defendants, and giving the Prime Minister sole responsibility for designating groups and

individuals as terrorists. The planned amendments to the Terrorism Suppression Act, if adopted and implemented, would not be in accordance with international human rights standards.¹³⁰

III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

60. The HR Committee noted with satisfaction that in the determination of cases the New Zealand courts take account of the Covenant and of its general comments.¹³¹

61. CERD welcomed the importance given to the principle of self-identification when gathering data on the ethnic composition of the population; the adoption of the 2004 New Zealand Settlement Strategy and the Settlement National Plan of Action; the New Zealand Diversity Action Programme; and the significant increase in the number of adults, including non-Maori, who can understand, speak, read and write the Maori language.¹³²

62. CEDAW commended New Zealand for its commitment to cooperation and partnership with non-governmental organizations.¹³³

63. CAT welcomed, inter alia, the cooperation undertaken with UNHCR and the willingness to comply with its guidelines and recommendations.¹³⁴ In the view of UNHCR, New Zealand maintains a positive refugee protection climate and implementation of existing refugee policies, legislation and jurisprudence are liberal and progressive.¹³⁵ It is a positive model for international refugee protection in the region and globally. However, UNHCR considered it important for the Government to have strategies to ensure the sustainability of the positive refugee protection environment. It is important to ensure that resettled refugees receive adequate support to settle.¹³⁶

IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS

Specific recommendations for follow-up

64. In 2004, CAT requested follow-up information within one year on anti-terrorism; security-risk certificate; conditions of non-voluntary segregation; and investigations of assaults by prison staff on inmates.¹³⁷ New Zealand responded in June 2005.¹³⁸

65. CERD requested information to be submitted by August 2008 on the follow-up given to its recommendations with respect to the State's proposal to remove statutory references to the Treaty of Waitangi through the Principles of the Treaty of Waitangi Deletion Bill (2006); on the follow-up given to its Decision 1 (66); on the inclusion of references to the Treaty of Waitangi in the final version of the New Zealand curriculum; and on unrestricted access to public educational institutions to undocumented children.¹³⁹ The State has submitted its replies to CERD.¹⁴⁰

V. CAPACITY-BUILDING AND TECHNICAL ASSISTANCE

N/A.

Notes

¹ Unless indicated otherwise, the status of ratifications of instruments listed in the table may be found in *Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 2006* (ST/LEG/SER.E.25), supplemented by the official website of the United Nations Treaty Collection database, Office of Legal Affairs of the United Nations Secretariat, <http://treaties.un.org/>.

² The following abbreviations have been used for this document:

| | |
|------------|---|
| ICERD | International Convention on the Elimination of All Forms of Racial Discrimination |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| OP-ICESCR | Optional Protocol to ICESCR |
| ICCPR | International Covenant on Civil and Political Rights |
| ICCPR-OP 1 | Optional Protocol to ICCPR |
| ICCPR-OP 2 | Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty |
| CEDAW | Convention on the Elimination of All Forms of Discrimination against Women |
| OP-CEDAW | Optional Protocol to CEDAW |
| CAT | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| OP-CAT | Optional Protocol to CAT |
| CRC | Convention on the Rights of the Child |
| OP-CRC-AC | Optional Protocol to CRC on the involvement of children in armed conflict |
| OP-CRC-SC | Optional Protocol to CRC on the sale of children, child prostitution and child pornography |
| ICRMW | International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families |
| CRPD | Convention on the Rights of Persons with Disabilities |
| OP-CRPD | Optional Protocol to Convention on the Rights of Persons with Disabilities |
| CED | International Convention for the Protection of All Persons from Enforced Disappearance |

³ Adopted by the General Assembly in its resolution 63/117, in which it recommended that a signing ceremony be organized in 2009. Article 17, para. 1 of OP-ICESCR states that “The present Protocol is open for signature by any State that has signed, ratified or acceded to the Covenant”.

⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

⁵ 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 1954 Convention relating to the status of Stateless Persons and 1961 Convention on the Reduction of Statelessness.

⁶ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention); Convention relative to the Treatment of Prisoners of War (Third Convention); Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II); Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III). For the official status of ratifications, see Federal Department of Foreign Affairs of Switzerland, at www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html.

⁷ International Labour Organization Convention No. 29 concerning Forced or Compulsory Labour; Convention No.105 concerning the Abolition of Forced Labour, Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize; Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively; Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Convention No. 111 concerning Discrimination in Respect of Employment and Occupation; Convention No. 138 concerning Minimum Age for Admission to Employment; Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

⁸ CERD/C/NZL/CO/17, para. 27; CEDAW/C/NZL/CO/6, para. 44.

⁹ CRC/C/15/Add.216, para. 52.

¹⁰ E/C.12/1/Add.88, para. 25.

¹¹ CRC/C/15/Add.216, para. 48.

¹² E/C.12/1/Add.88, para. 25.

¹³ Ibid..

¹⁴ CERD/C/NZL/CO/17, para. 27; E/CN.4/2006/78/Add.3, para. 103.

¹⁵ CERD/C/NZL/CO/17, para. 27; CAT/C/CR/32/4, para. 7. See also UNHCR submission to the UPR on New Zealand, p. 3.

¹⁶ CERD/C/NZL/CO/17, para. 29.

¹⁷ CEDAW/C/NZL/CO/6, para. 4.

¹⁸ CRC/C/15/Add.216, para. 7.

¹⁹ CCPR/CO/75/NZL, para. 15.

²⁰ CERD/C/NZL/CO/17, para. 12. See also E/CN.4/2006/78/Add.3, para. 91.

²¹ CCPR/CO/75/NZL, para. 8.

²² E/C.12/1/Add.88, para. 21.

²³ CEDAW/C/NZL/CO/6, para. 12.

²⁴ CRC/C/15/Add.216, para. 9.

²⁵ E/CN.4/2006/78/Add.3, para. 78.

²⁶ CERD/C/NZL/CO/17, para. 13.

²⁷ Ibid., para. 13.

²⁸ E/CN.4/2006/78/Add.3, para. 85.

²⁹ Ibid., para. 84.

³⁰ CERD/C/NZL/CO/17, para. 18; E/CN.4/2006/78/Add.3, paras. 89-90

³¹ For the list of national human rights institutions with accreditation status granted by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), see A/HRC/10/55, annex I.

³² CCPR/CO/75/NZL, para. 6 (b); E/C.12/1/Add.88, para. 5.

³³ E/C.12/1/Add.88, para. 5.

³⁴ Ibid., para. 23.

³⁵ CEDAW/C/NZL/CO/6, para.14; ILO Committee of Experts on the Application of Conventions and Recommendation, doc. No. (ILOLEX) 062006NZL111, para.6.

³⁶ CERD/C/NZL/CO/17, para. 10.

³⁷ Ibid., para. 11.

³⁸ See General Assembly resolution 59/113B, and Human Rights Council resolution 6/24. See also letters from the High Commissioner for Human Rights dated 9 January 2006 and 10 December 2007, accessible at <http://www2.ohchr.org/english/issues/education/training/Summary-national-initiatives2005-2009.htm>.

³⁹ See the information received by the Office of the United Nations High Commissioner for Human Rights (OHCHR) from the Ministry of Education in 2006, concerning their activities to implement the Plan of Action for the first phase (2005-2009) of the World Programme for Human Rights Education (WPHRE), available at <http://www2.ohchr.org/english/issues/education/training/Summary-national-initiatives2005-2009.htm>.

⁴⁰ The following abbreviations have been used for this document:

| | |
|--------------|--|
| CERD | Committee on the Elimination of Racial Discrimination |
| CESCR | Committee on Economic, Social and Cultural Rights |
| HR Committee | Human Rights Committee |
| CEDAW | Committee on the Elimination of Discrimination against Women |
| CAT | Committee against Torture |
| CRC | Committee on the Rights of the Child |

⁴¹ CAT/C/NZL/CO/3/Add.2.

⁴² E/CN.4/2006/78/Add.3.

⁴³ The questionnaires included in this section are those which have been reflected in an official report by a special procedure mandate holder.

⁴⁴ See (a) report of the Special Rapporteur on the right to education (A/HRC/4/29), questionnaire on the right to education of persons with disabilities sent in 2006; (b) report of the Special Rapporteur on the human rights of migrants (A/HRC/4/24), questionnaire on the impact of certain laws and administrative measures on migrants sent in 2006; (c) report of the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/4/23), questionnaire on issues related to forced marriages and trafficking in persons sent in 2006; (d) report of the Special Representative of the Secretary-General on human rights defenders (E/CN.4/2006/95 and Add.5), questionnaire on the implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms sent in June 2005; (e) report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (A/HRC/6/15), questionnaire on the human rights of indigenous people sent in August 2007; (f) report of the Special Rapporteur on trafficking in persons, especially in women and children (E/CN.4/2006/62) and the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2006/67), joint questionnaire on the relationship between trafficking and the demand for commercial sexual exploitation sent in July 2005; (g) report of the Special Rapporteur on the right to education (E/CN.4/2006/45), questionnaire on the right to education for girls sent in 2005; (h) report of the Working Group on mercenaries (A/61/341), questionnaire concerning its mandate and activities sent in November 2005; (i) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/4/31), questionnaire on the sale of children's organs sent on July 2006; (j) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2005/78), questionnaire on child pornography on the Internet sent in July 2004; (k) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/7/8), questionnaire on assistance and rehabilitation programmes for child victims of sexual exploitation sent in July 2007; (l) report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (A/HRC/4/35/Add.3), questionnaire on human rights policies and management practices; (m) report of the Special Rapporteur on the right to education (A/HRC/8/10), questionnaire on the right to education in emergency situations sent in 2007.

⁴⁵ CCPR/CO/75/NZL, para. 9.

⁴⁶ CEDAW/C/NZL/CO/6, para. 12.

⁴⁷ *Ibid.*, para. 22.

⁴⁸ E/CN.4/2006/78/Add.3, para. 66.

⁴⁹ CERD/C/NZL/CO/17, para. 7. CCPR/CO/75/NZL, para. 7. See also E/C.12/1/Add.88, para. 6.

⁵⁰ E/CN.4/2006/78/Add.3, para. 80. See also para. 101.

⁵¹ CERD/C/NZL/CO/17, para. 16.

⁵² *Ibid.*, para. 25.

⁵³ UNHCR submission to the UPR on New Zealand, p. 2.

⁵⁴ CRC/C/15/Add.216, para 39.

⁵⁵ CAT/C/CR/32/4, paras. 5 (d) and 6 (d).

⁵⁶ CAT/C/CR/32/4/RESP.1, para. 25.

⁵⁷ CAT/C/CR/32/4, paras. 5 f).

⁵⁸ CCPR/CO/75/NZL, para. 13.

⁵⁹ CRC/C/15/Add.216, para. 27.

⁶⁰ CEDAW/C/NZL/CO/6, para 24.

⁶¹ Ibid., para. 24.

⁶² Ibid., para. 26.

⁶³ Ibid., para. 28.

⁶⁴ Ibid., paras. 40 and 41.

⁶⁵ E/CN.4/2006/78/Add.3, para. 88.

⁶⁶ *Rameka et al.*, Communication no. 1090/2002, Views adopted on 6 November 2003.

⁶⁷ A/59/40 (Vol. II).

⁶⁸ E.B, Communication no. 1368/2005, Views adopted on 16 March 2007.

⁶⁹ A/63/40.

⁷⁰ CAT/C/CR/32/4, para. 5 e); CRC/C/15/Add.216, paras. 20 and 49.

⁷¹ CERD/C/NZL/CO/17, para.21.

⁷² CCPR/CO/75/NZL, para.12.

⁷³ United Nations Statistics Division coordinated data and analyses, available at: <http://mdgs.un.org/unsd/mdg/Data.aspx>.

⁷⁴ CEDAW/C/NZL/CO/6, para 30.

⁷⁵ UNDP, Human Development Report 2004, New York, 2004, p. 7, available at http://hdr.undp.org/en/media/hdr04_complete.pdf.

⁷⁶ CEDAW/C/NZL/CO/6, para. 30.

⁷⁷ E/C.12/1/Add.88, para. 7, CCPR/CO/75/NZL, para 6 (c).

⁷⁸ E/C.12/1/Add.88, para. 7. See also ILO Committee of Experts on the Application of Conventions and Recommendations, doc. No. (ILOLEX) 062006NZL098.

⁷⁹ CEDAW/C/NZL/CO/6, para. 18.

⁸⁰ Ibid., para. 34.

⁸¹ E/C.12/1/Add.88, para. 14.

⁸² CEDAW/C/NZL/CO/6, para. 34.

⁸³ Ibid., para. 34.

⁸⁴ ILO Committee of Experts on the Application of Conventions and Recommendations, doc. No. (ILOLEX) 062008NZL111, para. 1.

⁸⁵ Ibid., para. 3.

⁸⁶ E/C.12/1/Add.88, para. 8; CCPR/CO/75/NZL, para. 6 (a).

⁸⁷ CEDAW/C/NZL/CO/6, paras. 7 and 36-37.

⁸⁸ CRC/C/15/Add.216, para. 47.

⁸⁹ ILO Committee of Experts on the Application of Conventions and Recommendation, doc. No. (ILOLEX) 092008NZL059.

⁹⁰ ILO, *Equality at work: tackling the challenges*, Geneva, 2007, para. 152, available at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms_082607.pdf.

⁹¹ E/CN.4/2006/78/Add.3, para. 70.

⁹² E/C.12/1/Add.88, para. 17.

-
- ⁹³ CRC/C/15/Add.216, para. 41.
- ⁹⁴ World Health Organization, *The World Health Report 2008, Primary Health Care, Now More Than Ever*, Geneva, 2008, p. 32, available at <http://www.who.int/whr/2008/en/index.html>.
- ⁹⁵ E/C.12/1/Add.88, para. 18 and CRC/C/15/Add.216, para 35.
- ⁹⁶ E/CN.4/2006/78/Add.3, para. 71.
- ⁹⁷ CEDAW/C/NZL/CO/6, para 38.
- ⁹⁸ *Ibid.*, paras. 38-39. See also E/C.12/1/Add.88, para. 19.
- ⁹⁹ CRC/C/15/Add.216, para 35.
- ¹⁰⁰ *Ibid.*, para 37.
- ¹⁰¹ CEDAW/C/NZL/CO/6, para. 39.
- ¹⁰² E/C.12/1/Add.88, para. 28.
- ¹⁰³ *Ibid.*, para. 29.
- ¹⁰⁴ CEDAW/C/NZL/CO/6, paras. 32-33.
- ¹⁰⁵ CRC/C/15/Add.216, para. 43.
- ¹⁰⁶ CERD/C/NZL/CO/17, para. 23.
- ¹⁰⁷ CERD/C/NZL/CO/17/Add.1, para. 26.
- ¹⁰⁸ CRC/C/15/Add.216, para. 44 (b).
- ¹⁰⁹ E/CN.4/2006/78/Add.3, para. 64.
- ¹¹⁰ E/C.12/1/Add.88, para. 20.
- ¹¹¹ E/CN.4/2006/78/Add.3, paras. 97 and 98.
- ¹¹² *Ibid.*, para. 79.
- ¹¹³ *Ibid.*, paras. 93-94.
- ¹¹⁴ *Ibid.*, para. 79.
- ¹¹⁵ A/60/18, para. 18.
- ¹¹⁶ CERD/C/66/NZL/Dec.1; CERD/C/NZL/CO/17, para. 19.
- ¹¹⁷ E/CN.4/2006/78/Add.3, para. 92.
- ¹¹⁸ CERD/C/NZL/CO/17/Add.1, paras 5-22.
- ¹¹⁹ CERD/C/NZL/CO/17, para. 17.
- ¹²⁰ CAT/C/CR/32/4, para. 5 (a).
- ¹²¹ UNHCR submission to the UPR on New Zealand, p. 2 and 3.
- ¹²² CAT/C/CR/32/4, para. 6 (a).
- ¹²³ *Ibid.*, para. 5 (b).
- ¹²⁴ CAT/C/CR/32/4/RESP .1, paras. 4-6.
- ¹²⁵ CERD/C/NZL/CO/17, para. 24.
- ¹²⁶ UNHCR submission to the UPR on New Zealand, pp. 2-3.
- ¹²⁷ CCPR/CO/75/NZL, para. 11.
- ¹²⁸ CAT/C/CR/32/4, paras. 6 (b) and (c).
- ¹²⁹ CAT/C/CR/32/4/RESP .1, para. 8.
- ¹³⁰ A/HRC/7/28/Add.1, paras. 1519-1523.

¹³¹ CCPR/CO/75/NZL, para. 5.

¹³² CERD/C/NZL/CO/17, paras. 4, 5, 6, and 8.

¹³³ CEDAW/C/NZL/CO/6, para. 10.

¹³⁴ CAT/C/CR/32/4, para. 4 (b).

¹³⁵ UNHCR submission to the UPR on New Zealand, p. 1.

¹³⁶ Ibid., pp. 1-2.

¹³⁷ CAT/C/CR/32/4, para. 9.

¹³⁸ CAT/C/CR/32/4/RESP.1.

¹³⁹ CERD/C/NZL/CO/17, para. 31.

¹⁴⁰ CERD/C/NZL/CO/17/Add.1.
