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

**New Zealand**

The present report is a summary of fifteen stakeholders' submissions<sup>1</sup> to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. 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), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. Lack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the four-year periodicity of the first cycle of the review.

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\* The present document was not edited before being sent to the United Nations translation services.

## **I. BACKGROUND AND FRAMEWORK**

### **A. Scope of international obligations**

1. Amnesty International Aotearoa New Zealand (AIANZ) noted that New Zealand has yet to ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention Relating to the Status of Stateless People and the Convention for the Protection of All Persons from Enforced Disappearances.<sup>2</sup> A Combined Coalitions Submission by 25 non-governmental organizations (NGOs) (Joint Submission 1 - JS1) added that New Zealand should set a time frame to ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,<sup>3</sup> and NZEI Te Riu Roa (NZEI) recommended that it should ratify the Optional Protocol to International Covenant on Economic, Social and Cultural Rights.<sup>4</sup>

2. AIANZ and another Joint Submission (JS2) of 17 NGOs stressed that New Zealand was one of four countries to vote against the United Nations Declaration on the Rights of Indigenous Peoples at the General Assembly in 2007.<sup>5</sup> New Zealand has not ratified ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, as noted by NZEI.<sup>6</sup>

3. According to the Mental Health Foundation of New Zealand (MHFNZ), before ratifying the Convention on the Rights of People with Disabilities, New Zealand carried out a national interest analysis to identify domestic legislation not in compliance with the Convention. The Disability Act 2008 amended provisions in all legislation reflecting the stereotypical assumption that persons are unable to perform certain public or fiduciary roles because of mentally disorders.<sup>7</sup> The New Zealand Human Rights Commission (NZHRC) and MHFNZ further indicated that New Zealand has a good record of ratifying human rights treaties, after checking for any inconsistencies in domestic law.<sup>8</sup>

4. NZHRC also acknowledged work to review reservations to United Nations human rights treaties.<sup>9</sup> According to NZHRC and JS1, the State should withdraw its reservations to the Convention on the Rights of the Child (CRC).<sup>10</sup>

5. Noting that Tokelau is a non-self governing territory, JS1 expressed concern that the 600 children of Tokelau, who are New Zealand citizens, are not protected by CRC.<sup>11</sup>

### **B. Constitutional and legislative framework**

6. NZHRC was of the view that New Zealand's human rights protections are fragile, in the absence of a comprehensive constitutional document or entrenched legal provisions.<sup>12</sup> JS2 explained that the NZBORA and the Human Rights Act 1993 are not enforceable against the legislature meaning parliament can pass discriminatory legislation such as the Foreshore and Seabed Act 2004. There is no requirement for the government to modify or repeal discriminatory legislation,<sup>13</sup> which is a breach of the requirement to provide effective remedies and of the obligation to prevent a recurrence of any human rights violation, as noted by JS1 and JS2.<sup>14</sup> JS1 recommended reviewing domestic legislation to give NZBORA protected status.<sup>15</sup>

7. According to NZHRC, New Zealand is not fully consistent in incorporating international human rights standards in domestic law. It recommended explicit government commitment towards such incorporation in domestic legislation and policy development.<sup>16</sup>

8. AIANZ and JS1 expressed concern that the focus on civil and political rights and discrimination respectively in NZBORA and the Human Rights Act shows a general lack of

support at government level for the justiciability of economic, social and cultural rights.<sup>17</sup> NZHRC and MHFNZ further stressed that economic, social and cultural rights, at present mainly provided for through policy and practice, are particularly insecure.<sup>18</sup>

9. NZHRC, underlining that the Treaty of Waitangi is New Zealand's founding document and has major significance for human rights and harmonious race relations, recommended a review of constitutional arrangements to give greater effect to the Treaty.<sup>19</sup> As noted by JS2, the Treaty is not legally enforceable against the legislature either, and requires legislative incorporation to be enforced generally.<sup>20</sup> JS2 added that the government has refused to include references to the Treaty in new legislation, for example, the Policing Act 2008 and Climate Change Response (Emissions Trading) Amendment Act 2008; and has given directions that there will no longer be any direct references to the Treaty or its principles in new policy, actions plans or contracts in the health and disability sector.<sup>21</sup>

10. JS2 indicated that the Waitangi Tribunal's recommendations are not binding and are increasingly frequently dismissed and criticized by the government. The courts have refused to review the fairness of Treaty settlements on the basis that they are political matters.<sup>22</sup>

### **C. Institutional and human rights infrastructure**

11. NZHRC indicated that New Zealand established national preventive mechanisms to give effect to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>23</sup>

12. The budget of the Office of the Commissioner for Children has not been increased for three years, as indicated by JS1. The newly elected Government has proposed the Office should be subsumed in other entities, which, in the view of JS1, would be opposed by children's rights advocates.<sup>24</sup>

### **D. Policy measures**

13. NZHRC stated that its Action Plan for Human Rights has been an important catalyst for understanding human rights in New Zealand society and a valuable framework for civil society.<sup>25</sup> Noting that the Government has not formally endorsed the Action Plan, JS1 recommended that it do so.<sup>26</sup> For its part, NZHRC recommended that the government support the development of a further national plan of action for human rights for 2010-2015.<sup>27</sup>

14. The Women's Group of 21 NGOs (Joint Submission 3 – JS3) noted that the objectives and provisions of the Convention on the Elimination of All Forms of Discrimination against Women are not fully taken into account or articulated in the Action Plan for New Zealand Women. Furthermore, the Convention and its Optional Protocol are not widely known throughout the country, and are not sufficiently utilized in policy development or in bringing cases related to discrimination against women.<sup>28</sup>

15. There is no evidence of a policy for children and the Government does not have a comprehensive approach to the issues affecting children, according to JS1.<sup>29</sup>

## **II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

### **A. Cooperation with human rights mechanisms**

16. According to JS2, the Government has persistently and consistently belittled international institutions that have criticised its approach to indigenous peoples' rights, as for example when it was censured by the Committee on the Elimination of Racial Discrimination for discriminating against Maori when enacting the Foreshore and Seabed Act in 2004.<sup>30</sup>

17. NZHRC recommended the establishment of a comprehensive Universal Periodic Review and treaty body reporting process that includes engagement with civil society, greater integration across public agencies and clearer accountability for coordinating and publicising reports and following up on their recommendations.<sup>31</sup>

### **B. Implementation of international human rights obligations**

#### **1. Equality and non discrimination**

18. According to Cultural Survival (CS), race relations between Maori and European settlers have been tense since colonization. Despite efforts undertaken to improve their well-being, Maori are discriminated against in education, employment, housing, healthcare, and in numerous other ways. The media exacerbates the problem by perpetuating discriminatory stereotypes.<sup>32</sup>

19. JS1 also noted a range of indicators demonstrating that Maori and Pacific children are systemically disadvantaged.<sup>33</sup>

20. AIANZ underlined that both Maori people and migrant workers do not fully enjoy the right to non-discrimination, stressing in particular their limited access to healthcare and education.<sup>34</sup>

21. NZEI recommended reforming law to close the gaps in the protection of women against discrimination.<sup>35</sup> The Shakti Community Council Inc. (SCCI) noted that oppression, violence and discrimination against migrant and refugee women traditionally endorsed through culture, religious beliefs and society continue to prevail. There are examples of dowry, forced marriages, under-age marriages and polygamy in New Zealand. SCCI recommended that New Zealand be more proactive with regards to such abuse.<sup>36</sup>

22. MHFNZ noted that social exclusion and discrimination has been endemic for people with experience of mental illness.<sup>37</sup> NZHRC also noted that disabled people continue to face significant barriers to full participation in society.<sup>38</sup> According to JS1, many children with disabilities have limited opportunities to enjoy their rights, especially their rights to education.<sup>39</sup>

23. OUTline NZ and GenderBridge and NZHRC underlined the progress made by the Government regarding the human rights of the Gay, Lesbian, Bisexual, Transgender and Takataapui (GLBTT) community. OUTline NZ and GenderBridge acknowledged that the Civil Union Act and the Prostitution Law Reform Act are significant steps in this regard while stressing that more needs to be done. In particular, discrimination against GLBTT youth within their family as well from their peers leaves many of them isolated leading to depression and suicide. Minimal understanding or awareness of their needs from educational institutions leads to apathy and a lack of incentive to continue with their education or career. This situation is even more prevalent amongst transgender youth.<sup>40</sup>

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

24. AIANZ noted that one in three women in New Zealand experience physical and/or sexual abuse at the hands of a partner throughout their lifetime.<sup>41</sup> According to JS3, the number of cases appearing before the courts is still unacceptably high.<sup>42</sup> Stressing that significant government initiatives have been adopted to tackle domestic violence, NZHRC recommended inter alia that victim's rights be further strengthened, particularly in relation to participation in the criminal justice system and access to compensation.<sup>43</sup> JS3 recommended that refuge services be adequately funded for victims of domestic and sexual abuse.<sup>44</sup>

25. AIANZ welcomed the repeal of section 59 of the Crimes Act 1961 in 2007,<sup>45</sup> as also noted by NZHRC.<sup>46</sup> Explaining that the amendment removed the defence of reasonable force for parents who physically discipline their children, AIANZ was concerned however about plans for a referendum on this issue in 2009.<sup>47</sup> JS1, also welcoming this change in legislation, stressed that rates of violence against children remain high and that services are stretched.<sup>48</sup>

26. While noting some attempt to reform the use of seclusion of persons with mental illness, MHFNZ was of the view that this practice remains unacceptably high. It also noted that Maori are more likely to be secluded than others and that the use of seclusion varied widely according to geographic location.<sup>49</sup> In addition, MHFNZ indicated that in response to public concern over the use of electro-convulsive therapy (ECT), two reviews recommended that the Mental Health (Compulsory and Assessment Treatment) Act 1992 be amended to ensure that ECT is only administered with consent of the person or at the very least that more stringent controls are established either by ensuring a truly independent second opinion or developing an objective best interests test. To date this has not happened.<sup>50</sup>

27. According to Caritas Aotearoa New Zealand, revelations of prison abuse by guards in 2005, through an order for compensation to be paid to abused prisoners, did not result in a public outcry. CANZ further stressed that the Government introduced the Victims and Prisoners' Claims Act which restricted the ability of prison inmates to receive compensation for abuses received while in the care of the Crown.<sup>51</sup> CANZ noted that the 2008 Corrections Amendment Bill further restricted private communication, and proposed that prisoners could be detained past their release dates in case of civil emergency.<sup>52</sup>

## **3. Administration of justice and the rule of law**

28. NZHRC noted that inequalities persist in imprisonment rates despite some government initiatives. Though amounting to about 12.5 percent of the population aged 15 and over, 42 percent of all criminal apprehensions involve a person identifying as Maori, and Maori represent 50 percent of the prison population. According to NZHRC, this could be attributed to the lower social and economic circumstances of Maori, but there is an element of bias in the justice system which leads to Maori being more likely to be apprehended and more severely punished than non-Maori.<sup>53</sup> CS added that contributing factors include lack of employment, discrimination in arrest procedures, and a lower quality of legal representation, among others.<sup>54</sup> NZHRC recommended that the government commit to specific targets and timelines for reducing the high levels of imprisonment and the disproportionate number of Maori in prison.<sup>55</sup>

29. AIANZ recommended that the minimum age of criminal responsibility, currently at 10 for murder and manslaughter, be raised to an internationally acceptable level in accordance with the Human Rights Committee's 2004 recommendation.<sup>56</sup>

30. JS1 noted that there has been some progress made on separating boys under 18 years from adults in prisons.<sup>57</sup>

31. Friends World Committee for Consultation (Quakers) noted the adoption of the Corrections (Mothers with Babies) Amendment Act 2008, raising the age until which a baby can stay with the imprisoned mother from six months to two years, and opening this possibility to all women prisoners. It expressed concern however about the possible separation of mother and child during pre-trial detention.<sup>58</sup> Quakers recommended that New Zealand share their experience in relation to the drafting and application of this new legislation; and provide information on provisions made for mother and baby/child in prison and on how the principle of best interests of the child/baby is assessed.<sup>59</sup>

#### **4. Right to privacy, marriage and family life**

32. Sensible Sentencing Trust (SST) recommended protecting the privacy rights of victims of crimes, indicating that in the criminal justice process victims are sometimes required to disclose information to an unnecessarily intrusive extent.<sup>60</sup>

33. AIANZ noted that despite a Civil Union Act, same sex partners suffer from a discriminatory law not allowing them to marry.<sup>61</sup> OUTline NZ and GenderBridge added that that civil unions have not created equality in the area of parenting. A (heterosexual or homosexual) couple in a de-facto relationship or civil union couple can not adopt a child. The Adoption Law needs to be reformed to allow same-sex couples to adopt children.<sup>62</sup>

#### **5. Right to participate in public and political life**

34. NZHRC noted that significant progress has been achieved regarding the participation of women in the labour market, professional and public life, senior constitutional positions and in local and national politics. However, New Zealand suffers from enduring equity issues, including the very low percentage of women in corporate governance and in senior management in the public and private sectors.<sup>63</sup>

35. CS indicated that, in an effort to reflect the population's composition in Parliament, New Zealand established the Mixed Member Proportional system which assured Maori seven seats in Parliament. In 2005, the Maori formed their own political party, thereby gaining four additional seats, but this is still not a sufficient number to ensure that Maori rights are given the protection they deserve. In addition, less than 5 percent of members elected to local councils are Maori.<sup>64</sup>

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

36. NZHRC noted the systemic gender pay gap which disadvantages women and is significantly worse for Maori and Pacific Women.<sup>65</sup> Women, particularly Maori women workers, as noted by JS2, still remain clustered into industries and occupations that are low-earning and low-paying.<sup>66</sup> JS3 added that the gender pay gap is 12 percent with only marginal movement in the last decade. Gender pay gaps up to 30 percent have been identified in the public sector. Though there is a process for pay investigations and remedial settlements, there has been a slow uptake by Government departments to using pay and employment equity mechanisms.<sup>67</sup>

37. The extension of paid parental leave to 14 weeks brings New Zealand in line with the minimum duration recommended by ILO Maternity Protection Convention No. 183, as

underlined by JS3. But to fully comply with this Convention, eligibility needs to be extended to seasonal and contract workers, payment levels increased and breast feeding breaks must be paid.<sup>68</sup>

38. JS3 also noted that flexible working hours arrangements for workers with caring responsibilities came into force in July 2008.<sup>69</sup>

39. CS noted that from 1998 to 2005, Maori unemployment fell from 19 percent to 8.7 percent, which is a remarkable improvement, though this is still higher than the total population unemployment rate of 3.8 percent.<sup>70</sup>

40. People with mental illness also face significant barriers to employment and inadequate access to services and support to enable them to overcome the barriers, as indicated by MHFNZ.<sup>71</sup>

41. Migrant workers, especially in private business, are often paid lower than equally skilled mainstream counterparts, as indicated by SCCI. While seasonal work permits are encouraged, there is insufficient monitoring of the employment of seasonal workers and of their rights.<sup>72</sup>

42. CANZ referred to its surveys made in 2003 and 2007, which received wide media attention, relating to employment of children in breach of existing legislative protections. Examples included children working after 10 pm, or children under the age of 15 operating heavy machinery. Serious accidents and other health and safety concerns, extremely low pay rates, and very low levels of contract or union coverage were also areas of concern. While noting positive steps taken by the government, CANZ does not believe that working children are adequately protected by existing legislation and industrial relations framework.<sup>73</sup> New Zealand Work and Labour Market Institute of Auckland University of Technology (NZWLMI) and JS1 expressed similar concerns.<sup>74</sup>

43. CANZ expressed concern that the Government tends to lower its expectations of human rights standards, including labour standards, lived up to by its trading partners in such agreements.<sup>75</sup>

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

44. NZHRC indicated that while the government has introduced a range of measures to alleviate poverty, deteriorating economic circumstances, however, led to increasing numbers of people facing serious hardship. Eleven percent of New Zealanders live in poverty and a number of people have to seek assistance from food-banks.<sup>76</sup> AIANZ expressed concern about the low level of social welfare and benefit payments, which remain below minimum wages and are therefore highly deficient in the context of the right to an adequate standard of living.<sup>77</sup>

45. According to AIANZ, child poverty statistics remain alarmingly high.<sup>78</sup> International Presentation Association (IPA) added that a quarter of them are considered to be living in poverty.<sup>79</sup> NZHRC added that the proportion of children living in poverty in families totally reliant on welfare benefits has increased to 52 percent.<sup>80</sup>

46. NZHRC noted that there is no universally accepted poverty indicator in New Zealand. It recalled in 2003 the concern of the Committee on Economic, Social and Cultural Rights at the lack of clear indicators to estimate the effectiveness of measures to combat poverty.<sup>81</sup> NZHRC recommended that New Zealand adopt a national plan to combat poverty with targets and a

timeline and with clear indicators to assess its impact particularly on children, marginalised groups and Maori and Pacific people.<sup>82</sup>

47. Discrimination and socioeconomic disparity have resulted in significantly reduced access to affordable healthcare for Maori, as noted by CS, which stressed that life expectancy for Maori is 7.6 years shorter than for non-Maori. Furthermore, suicide rates for Maori are much higher than non-Maori, and mental health services for Maori children and youth are lacking. The most successful healthcare improvements have come from Maori initiatives. Today over 230 Maori healthcare providers serve Maori communities, but face severe funding and payment disparities.<sup>83</sup> MHFNZ noted that Maori continue to be hospitalised for mental disorders at much higher rates than non-Maori.<sup>84</sup>

48. SCCI noted that seasonal workers and temporary permit holders of less than two years and their family are not eligible for any health system subsidy.<sup>85</sup>

49. OUTline NZ and GenderBridge noted that many transgendered people stressed the need to educate health care providers to transgender issues, and that others have travelled overseas to get access to what they feel are more experienced surgeons.<sup>86</sup>

50. IPA noted that children and those disabled through an accident receive excellent support through the Accident Compensation Act 1974. All other people disabled from birth or with a medical condition do receive benefits but differences in the level of support available give cause for concern.<sup>87</sup>

51. CS noted that housing is a critical issue for Maori who are four times more likely to live in overcrowded homes than the national average. The Government has increased state housing with traditional Maori design elements, but rental prices often are prohibitive.<sup>88</sup>

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

52. The education system generally performs well, as noted by NZHRC. However, inequalities in access, participation and achievement indicate that the right to education is not fully realised for all students - particularly among Maori and Pacific students, children with disabilities and students from poor families.<sup>89</sup> In addition, according to NZEI, the increasing pressure for Government support by private education providers, in early childhood, the compulsory sector and tertiary education threatens to undermine a universal state education system based on inclusive human rights values.<sup>90</sup>

53. JS1 noted that the Immigration Bill 2007 proposes to exempt providers of compulsory education from liability should they provide educational services to children unlawfully in New Zealand.<sup>91</sup>

54. For decades Maori were taught in English to encourage their assimilation, and Maori language education has been slow to recover, as noted by CS. Maori language schools have increased participation rates, but alone cannot counterbalance the other societal problems that cause students to drop out of school. As of 2006, only 39 percent of Maori students remained in school to age 17 as compared to 61 percent of students of European extraction. Participation in higher education also remains lower for Maori than the average population.<sup>92</sup>

55. As noted by CS, Maori have the right to speak their language during legal proceedings, to have a translator provided by the court, and to have documents translated into Maori, but each



process requires extensive applications and timely notifications. As a result, few, if any, people use Maori in court.<sup>93</sup>

56. CS further noted that the Government has taken steps to develop and protect a trademark for authentic Maori artwork and products. In 1991, six Maori *iwi* brought a cultural property claim to the Waitangi Tribunal, accusing the Crown of failing to protect the indigenous plants and animals of New Zealand (a treasure protected under the Waitangi Tribunal). The claimants accuse the Crown of failing to protect Maori sovereignty over *mātauranga Maori* (Maori traditional knowledge) regarding the flora and fauna, and related arts, carvings, and health and medicine. While the Tribunal's final report has not yet been released, according to CS, the fact that this case has dragged on for a decade and a half illustrates how the government uses its legal bureaucracy to stall Maori development.<sup>94</sup>

57. SCCI noted that there is no proactive effort on part of the government body for the welfare of children from immigrant families to initiate a foster parent project within the immigrant communities so that children might continue to receive an upbringing that is consistent with their religion and culture.<sup>95</sup>

## 9. Minorities and indigenous peoples

58. According to NZHRC, despite its disagreement with some provisions of the Declaration on the Rights of Indigenous Peoples, the government should engage with Maori and the wider community to promote greater realisation of indigenous rights as set out in this instrument.<sup>96</sup>

59. According to JS2, the failure to recognise the right of self determination of Maori can be seen as the underlying foundation from which other human rights violations arise. These include, but are not limited to the right of Maori to be free from racial discrimination; the right to free, prior and informed consent on matters directly related to their rights and interests; the right to enjoy their own culture and to take part in cultural life; the right to protection of the law; and the right to own property alone, as well as in association with others, and not to be arbitrarily deprived of it.<sup>97</sup> In the view of CS, the government has consistently violated Maori rights to land and resources.<sup>98</sup>

60. In 30 years, as indicated by CS, the Waitangi Tribunal has registered 1,236 claims, 49 of which have been settled by the government and 35 others partially settled. In 2008, two land claims were resolved in a step towards recognizing community ownership, although some Maori groups claim the settlements did not adequately reflect original tribal ownership. Maori complainants are required to waive their legal right to the protection of the courts when entering into settlement negotiations.<sup>99</sup>

61. JS2 stated that a number of the Treaty of Waitangi settlements are manifestly unfair, as the Government will not address the issue of Maori self-government or self-determination nor the issue of Maori interests in oil and gas. The Government will only settle with "large natural groupings" and therefore often overlooks the specific claims of smaller groups; and it determines the entity it will negotiate with. In addition, the amount allocated to Treaty settlements is miserly, being approximately 2 percent of the original claims. In the view of JS2, this is particularly poor when compared to the value of what has been taken from Maori; and the requirement that all settlements include a clause stating it fully and finally extinguishes the claim.<sup>100</sup>

62. JS2 further stressed that a final arbitrary deadline of September 2008 was imposed for the submission of all historical claims to the Waitangi Tribunal. New Zealanders collective desire to "put Maori issues behind them" has an enormously negative impact on Maori because that undermines New Zealand's ability to face up to its history.<sup>101</sup>

63. AIANZ noted that the Foreshore and Seabed Act 2004 extinguished any Maori customary title to foreshore and seabed.<sup>102</sup> JS1 and JS2 indicated that this legislation breaches the Treaty of Waitangi and human rights of Maori, while CANZ highlighted its discriminatory character as the only title removed were customary rights.<sup>103</sup> JS2 also noted that the Government confiscated all Maori property interests in the foreshore and seabed allegedly to preserve non-Maori "rights" to access beaches, when access was not in fact at stake.<sup>104</sup> AIANZ urged New Zealand to follow the recommendations of the Special Rapporteur on human rights and fundamental freedoms of indigenous people to repeal the Act and to re-enter into negotiations with Maori on the matter.<sup>105</sup>

64. CS noted that lacking tribal lands, 83 percent of Maori have moved to urban centers in search of work, pushed onward by the Government's urban relocation program. Urbanization has broken down community ties and left Maori vulnerable to discrimination and poverty and associated criminal justice and health problems. The Government has promised to address Maori concerns in a manner fitting a newly urbanized population, but the Maori do not want to be permanently installed in cities and accuse the Government of using their plight as an excuse to avoid returning their traditional lands.<sup>106</sup>

## 10. Migrants, refugees and asylum-seekers

65. NZHRC highlighted notable developments, including hosting some of the world's most vulnerable refugees, and the development of a national settlement strategy and settlement action plan. In other respects, immigration policy has become less human rights compliant. People refused residency can be detained for lengthy periods if they refuse to sign papers permitting them to be deported.<sup>107</sup>

66. An Immigration Bill developed in 2007, is likely to become law, as indicated by NZHRC. Despite a comprehensive consultation process, the Bill and accompanying regulations have some serious deficiencies, including the special advocate mechanism that applies to people deemed to be a security risk, the lack of an explicit presumption in the Bill against detaining children and young people, the reluctance to consider granting residency to people with disabilities or their families if they are considered likely to be a burden on the health system, and a proscription against NZHRC becoming involved in immigration matters.<sup>108</sup> AIANZ added that the Bill does not strike an appropriate balance between the obligation to protect New Zealanders from the risk of harm, and the obligation to ensure that asylum seekers and others protected under international law are accorded a fair hearing and are not arbitrarily detained or returned to face persecution, torture or death.<sup>109</sup> AIANZ further noted that the Bill has provision to extend detention without a warrant for up to 96 hours. Of concern also are provisions prohibiting the Courts taking into consideration the length of detention of an individual held under any provision in the Bill when determining whether or not they should be released and ruling out bail for any offence under the Bill.<sup>110</sup>

67. CANZ expressed concern at the removal of citizenship rights for New Zealand born children of non-residents in the 2004 Identity Act, explaining that some children may end up stateless, as there was no obligation on the country of the parents' origin to grant citizenship, or certainty that parents would follow the necessary processes to register the birth of a child.<sup>111</sup>

## **11. Human rights and counter-terrorism**

68. According to NZHRC, counter-terrorism legislation contains ambiguous and poorly defined terms that allow for a degree of surveillance amounting to unwarranted intrusion into the rights to freedom of association and expression.<sup>112</sup> JS1 noted that the Terrorism Suppression Amendment Act 2007 eroded safeguards against inappropriate designation as a terrorist. It eliminated judicial review of terrorist designations and created the offence of committing a 'terrorist act', which could lead to human rights breaches.<sup>113</sup> CANZ noted with concern the removal of the possibility for organizations that inadvertently funded groups associated with terrorist violence to defend themselves by demonstrating that they intended to fund human rights advocacy or education work.<sup>114</sup>

69. The Immigration Act provides for the issuance of Security Risk Certificates concerning individuals suspected of terrorist activity, as noted by JS1. There is nothing in the legislation to prevent human rights abuses such as indefinite detention without charge or prolonged solitary confinement.<sup>115</sup>

70. JS2 noted that on 15 October 2007, a series of "anti-terrorism" dawn raids took place in different parts of New Zealand. While non-Maori were also affected by the raids, Maori were treated very differently. While the Police Commissioner subsequently expressed regret over the hurt caused to Maori, there has been no satisfactory explanation as to why the raids were conducted in a threatening and rights denying manner.<sup>116</sup>

### **III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS**

71. NZHRC noted that a wide range of human rights related initiatives and achievements were identified, including inter-alia policies designed to reduce poverty, improved access to primary health care, improvements in key social and economic indicators for Maori and Pacific peoples, introduction of a revised national curriculum for primary and secondary schools and introduction of 20 free hours of early childhood education for three and four year olds, positive developments in the promotion and use of the Maori language, initiatives to foster Pacific languages, settlement support initiatives for new migrants, and New Zealand's International Aid and Development Agency's integration of human rights into all development assistance policies, strategies, programming and organisational practices.<sup>117</sup>

### **IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS**

N/A.

### **V. CAPACITY-BUILDING AND TECHNICAL ASSISTANCE**

72. NZHRC recommended that the government ensure that its foreign affairs and trade policies, as with its international development assistance policies, incorporate and promote international human rights standards.<sup>118</sup>

*Notes*

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<sup>1</sup> The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: [www.ohchr.org](http://www.ohchr.org). (One asterisk denotes a non-governmental organization in

consultative status with the Economic and Social Council. Two asterisks denote a national human rights institution with “A” status)

*Civil society*

AIANZ	Amnesty International Aotearoa New Zealand*, Auckland, New Zealand
CANZ	Caritas Aotearoa New Zealand, Wellington, New Zealand
CS	Cultural Survival* Massachusetts, U.S.A.
IPA	International Presentation Association*,
JS1	NGO Combined Coalitions Submission (Action for Children and Youth Aotearoa; Human Rights Foundation, New Zealand Council of Trade Unions, Peace Movement Aotearoa, Women's International League for Peace and Freedom, Christian World Service, Pax Christi, Indonesia Human Rights Committee; Aotearoa Indigenous Rights Trust, Peace Movement Aotearoa, Foundation for Peace Studies Aotearoa-NZ Inc, INA (Maori, Indigenous & South Pacific) HIV/AIDS Foundation, Maori Party, Network Waitangi Otautahi, Ngati Kuri Trust Board, Ngati Raukawa Trust Board, Pacific Centre for Participatory Democracy, Pax Christi Aotearoa NZ, Quaker Treaty Relationships Group, Tamaki Treaty Workers, Tauwi Solutions, Te Runanga o Nga Kaimahi Maori o Aotearoa, Treaty Tribes Coalition, Wellington Treaty Educators Network, and Women's International League for Peace and Freedom (Aotearoa) supported by Christian World Service and Human Rights Foundation).
JS2	Joint submission by Aotearoa Indigenous Rights Trust; Peace Movement Aotearoa; Foundation for Peace Studies Aotearoa-NZ Inc; INA (Maori, Indigenous & South Pacific) HIV/AIDS Foundation; Maori Party; Network Waitangi Otautahi; Ngati Kuri Trust Board; Ngati Raukawa Trust Board; Pacific Centre for Participatory Democracy; Pax Christi Aotearoa NZ; Quaker Treaty Relationships Group; Tamaki Treaty Workers; Tauwi Solutions; Te Runanga o Nga Kaimahi Maori o Aotearoa; Treaty Tribes Coalition; Wellington Treaty Educators Network; and Women's International League for Peace and Freedom (Aotearoa), which is supported by Christian World Service and Human Rights Foundation
JS3	Women's Group (The New Zealand Council of Trade Unions; The National Council of Women of New Zealand; and The New Zealand Federation of Business and Professional Women).
MHFNZ	Mental Health Foundation of New Zealand
NZEI	NZEI Te Riu Roa, New Zealand
NZWLMI	New Zealand Work and Labour Market Institute, Auckland University of Technology, Auckland, New Zealand
OUTline NZ and GenderBridge	Joint submission, Auckland, New Zealand
SCC	Quakers Friends World Committee for Consultation (QUAKERS)*, Geneva, Switzerland
SST	Shaki Community Council Inc., Auckland New Zealand
	Sensible Sentencing Trust, Auckland, New Zealand

*National Human Rights Institution*

NZHRC	New Zealand Human Rights Commission,** New Zealand
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<sup>2</sup> AIANZ, p. 3

<sup>3</sup> JS1, para. 8.

<sup>4</sup> NZEI, p.1.

<sup>5</sup> AIANZ, p. 3 and JS2, para. 7. See also JS1, paras 33 and 52, and NZEI, p. 1

<sup>6</sup> NZEI, p. 1

<sup>7</sup> MHFNZ, para.6

<sup>8</sup> NZHRC, para. 14 ; MHFNZ, para. 4

<sup>9</sup> NZHRC, para. 13

<sup>10</sup> NZHRC, para. 12; JS1, para. 10.

<sup>11</sup> JS1, para. 13

<sup>12</sup> NZHRC, para. 16.

<sup>13</sup> JS2, para. 18.

<sup>14</sup> JS2, para. 18, JS1, para. 52.

<sup>15</sup> JS1, paras. 34-35.

<sup>16</sup> NZHRC, para. 14

<sup>17</sup> AIANZ, pp. 4 – 5; JS1, para. 35. See also JS2, para. 22 and NZEI, p. 1.

<sup>18</sup> NZHRC, para. 16; MHFNZ, para, 7.

<sup>19</sup> NZHRC, paras. 15 and 17.

<sup>20</sup> JS2, para. 20. See also CS, p. 2.

<sup>21</sup> JS2, para. 20.

<sup>22</sup> JS2, para. 21.

<sup>23</sup> NZHRC, para. 12

<sup>24</sup> JS1, para. 19

<sup>25</sup> NZHRC, para. 7.

<sup>26</sup> JS1, paras. 21, 22 and 36

<sup>27</sup> NZHRC, para. 8.

<sup>28</sup> JS3, para. 11

<sup>29</sup> JS1, para. 24

<sup>30</sup> JS2, para. 45

<sup>31</sup> NZHRC, para. 11.

<sup>32</sup> CS, executive summary and p. 2-3.

<sup>33</sup> JS1, para. 26

<sup>34</sup> AIANZ, p. 5

<sup>35</sup> NZEI, p. 1

<sup>36</sup> SCCI, p. 1 and 4.

<sup>37</sup> MHFNZ, para. 12

<sup>38</sup> NZHRC, para. 19

<sup>39</sup> JS1, para. 26

<sup>40</sup> OUTline & GenderBridge, p. 1-2

<sup>41</sup> AIANZ, p. 5. See also JS1, para. 44, JS3, paras. 22 – 23, NZEI, p. 1, NZHRC, para. 26, and OUTline & GenderBridge, p. 4

<sup>42</sup> JS3, para. 23.

<sup>43</sup> NZHRC, paras. 26-27.

<sup>44</sup> JS3, para. 22.

<sup>45</sup> AIANZ, p. 7

<sup>46</sup> NZHRC, para. 4

<sup>47</sup> AIANZ, p. 7

<sup>48</sup> JS1, paras. 2 and 8

<sup>49</sup> MHFNZ, para. 18

<sup>50</sup> MHFNZ, paras. 20-22.

<sup>51</sup> CANZ, para. 23

<sup>52</sup> CANZ, para.24.

<sup>53</sup> NZHRC, paras. 21-22.

<sup>54</sup> CS, p. 3.

<sup>55</sup> NZHRC, paras. 21-22.

<sup>56</sup> AIANZ, pp. 6 – 7

<sup>57</sup> JS1, para. 5

<sup>58</sup> Quakers, paras. 4-6.

<sup>59</sup> Quakers, p. 2. See also NZEI, p. 1

<sup>60</sup> SST, p. 3.

<sup>61</sup> AIANZ, p. 5

<sup>62</sup> OUTline & GenderBridge, p. 1. See also p. 4

<sup>63</sup> NZHRC, para. 23

<sup>64</sup> CS, p. 1

<sup>65</sup> NZHRC, para. 23

<sup>66</sup> JS2, para. 30

<sup>67</sup> JS3, para. 15. See also NZHRC, para. 23

<sup>68</sup> JS3, para. 9

<sup>69</sup> JS3, para. 21

<sup>70</sup> CS, p. 4. See also JS2, para. 29

<sup>71</sup> MHFNZ, para. 24

<sup>72</sup> SCCI, p. 3

<sup>73</sup> CANZ, p. 3

<sup>74</sup> NZWLMI, pp. 4 – 5 and JS1, para. 6

<sup>75</sup> CANZ, para. 20.

<sup>76</sup> NZHRC, para. 28.

<sup>77</sup> AIANZ, p. 5

<sup>78</sup> AIANZ, p. 5

<sup>79</sup> IPA, para. 4. See also JS1, para. 30

<sup>80</sup> NZHRC, para. 29.

<sup>81</sup> NZHRC, para. 29.

<sup>82</sup> NZHRC, para. 30.

<sup>83</sup> CS, p. 3

<sup>84</sup> MHFNZ, para. 26

<sup>85</sup> SCCI, p. 4

<sup>86</sup> OUTline & GenderBridge, p. 3

<sup>87</sup> IPA, para. 7

<sup>88</sup> CS, p. 3

<sup>89</sup> NZHRC, para. 32

<sup>90</sup> NZEI, p. 1.

<sup>91</sup> JS1, para. 7

<sup>92</sup> CS, pp. 3 – 4

<sup>93</sup> CS, p. 4.

<sup>94</sup> CS, pp. 4 – 5

<sup>95</sup> SCCI, pp. 2 and 4.

<sup>96</sup> NZHRC, para. 18.

<sup>97</sup> JS2, para. 15

<sup>98</sup> CS, p. 2.

<sup>99</sup> CS, p. 2.

<sup>100</sup> JS2, para. 37

<sup>101</sup> JS2, para. 26.

<sup>102</sup> AIANZ, p. 4

<sup>103</sup> CANZ, para. 4, JS1, para. 52, and JS2, para. 31. See also CS, p. 2

<sup>104</sup> JS2, p. 5

<sup>105</sup> AIANZ, p. 4

<sup>106</sup> CS, p. 2

<sup>107</sup> NZHRC, para. 35

<sup>108</sup> NZHRC, para. 36.

<sup>109</sup> AIANZ, p. 6. See also CANZ, para. 9

<sup>110</sup> AIANZ, p. 6. See also JS1, paras. 36 – 39 and NZHRC, para. 36

<sup>111</sup> CANZ, para. 16. See also SCCI, p. 2

<sup>112</sup> NZHRC, para. 37.

<sup>113</sup> JS1, para. 42

<sup>114</sup> CANZ, para. 12. See also NZHRC, para. 37

<sup>115</sup> JS1, para. 41.

<sup>116</sup> JS2, paras. 43 – 44

<sup>117</sup> NZHRC, para. 4

<sup>118</sup> NZHRC, para. 40.

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