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### **DRAFT REPORT OF THE WORKING GROUP ON THE UNIVERSAL PERIODIC REVIEW \***

**New Zealand**

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**CONTENTS**

|  | <i>Paragraphs</i> | <i>Page</i> |
|--|-------------------|-------------|
| Introduction.....  | 1 - 4             | 3           |
| I. SUMMARY OF THE PROCEEDINGS OF THE REVIEW PROCESS ...              | 5 - 80            | 3           |
| A. Presentation by the State under review .....                      | 5 - 24            | 3           |
| B. Interactive dialogue and responses by the State under review..... | 25 - 80           | 5           |
| II. CONCLUSIONS AND/OR RECOMMENDATIONS.....                          | 81 - 82           | 16          |

**Annex**

|                                    |  |    |
|------------------------------------|--|----|
| Composition of the delegation..... |  | 22 |
|------------------------------------|--|----|

## **Introduction**

1. The Working Group on the Universal Periodic Review (UPR), established in accordance with Human Rights Council resolution 5/1 of 18 June 2007, held its fifth session from 4 to 15 May 2009. The review of New Zealand was held at the 7th meeting on 7 May 2009. The delegation of New Zealand was headed by Hon. Simon Power, Minister of Justice of New Zealand. At its 11th meeting, on 11 May 2009, the Working Group adopted the present report on New Zealand.
2. On 8 September 2008, the Human Rights Council selected the following group of rapporteurs (troika) to facilitate the review of New Zealand: Italy, Mauritius and the Philippines.
3. In accordance with paragraph 15 of the annex to resolution 5/1, the following documents were issued for the review of New Zealand:
  - (a) A national report submitted in accordance with paragraph 15 (a) (A/HRC/WG.6/5/NZL/1);
  - (b) A compilation prepared by the Office of the High Commissioner for Human Rights (OHCHR) in accordance with paragraph 15 (b) (A/HRC/WG.6/5/NZL/2);
  - (c) A summary prepared by OHCHR in accordance with paragraph 15 (c) (A/HRC/WG.6/5/NZL/3).
4. A list of questions prepared in advance by Argentina, Denmark, Germany, Hungary, the Netherlands, Sweden and the United Kingdom of Great Britain and Northern Ireland was transmitted to New Zealand through the troika. These questions are available on the extranet of the UPR.

## **I. SUMMARY OF THE PROCEEDINGS OF THE REVIEW PROCESS**

### **A. Presentation by the State under review**

5. Hon. Simon Power, Minister of Justice, introduced the national report and recalled that New Zealand is a small diverse Pacific democracy that has always taken its human rights commitments seriously, notably its commitments to equal rights and equal opportunities for all.
6. Indigenous people, the Māori, are integral to the national identity and represent about 15 per cent of the population. Māori are a people with various political and tribal allegiances and individuals can choose to be recognized as Māori through a self-identification process.
7. The delegation highlighted that a very significant part of indigenous rights in New Zealand is the Treaty of Waitangi signed in 1840. The Treaty is a unique agreement between the indigenous people and the Crown or Government. The Treaty remains one of the core constitutional documents and is the basis for the continuing partnership between Māori and the Government. Since 1867 Māori have enjoyed continuous representation in New Zealand's Parliament. Seven seats are specifically allocated to Māori and there are currently 20 Members of Parliament who identify as Māori.
8. New Zealand adopted a system of "mixed member proportional representation" in national elections, which has resulted in a more diverse and representative in Parliament

including more women Members of Parliament, a range of ethnic identities and younger Members.

9. New Zealand is a party to almost all major international human rights instruments and is a strong supporter of humanitarian initiatives, as evidenced for example by its recent leadership on the Convention on Cluster Munitions.

10. The delegation added that civil and political rights receive protection primarily under the Bill of Rights Act and the Human Rights Act, while economic, social and cultural rights are protected and promoted through legislation and government policies.

11. New Zealand highlighted its engagement with the New Zealand Human Rights Commission and non-governmental organizations, as illustrated by the open and consultative process used for the UPR.

12. New Zealand made reference to the challenges it still faces. While Māori hold a unique place in the society, improvements are needed. The Government is committed to advancing the Treaty of Waitangi settlement process. The Government's goal is to achieve just and durable settlement of historical Treaty claims by 2014.

13. The Foreshore and Seabed Act 2004 encouraged a significant amount of debate in New Zealand. The Committee on the Elimination of Racial Discrimination and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people expressed concern that the Act would limit Māori customary rights. The new Government has entered into a formal agreement with the Māori Party, which provides for the two co-leaders of the Māori Party to hold ministerial office as part of the Executive and for the Māori Party to be consulted across the Government's legislative programme. Moreover, an expert and independent ministerial panel has been established to review the Foreshore and Seabed Act 2004 and is due to provide its written report to the Attorney-General by the end of June 2009.

14. Despite recent socio-economic improvements, disparities still persist for Māori in education, health, employment, crime statistics and income. The Government is seeking to remedy these inequalities through initiatives such as the 2009 Māori economic summit, Māori health action plans and the recently launched Māori education curriculum guidelines. The Māori language is an official language of New Zealand along with English and New Zealand Sign Language.

15. In 2007, the previous Government did not support the United Nations Declaration on the Rights of Indigenous Peoples because some of the Declaration's provisions were considered incompatible with New Zealand's legal and constitutional arrangements. The New Zealand Prime Minister has indicated that he would like to see New Zealand move to support the Declaration provided that New Zealand can protect the unique and advanced framework that has been developed for the resolution of issues related to indigenous rights. That framework has been developed in the context of New Zealand's existing legal arrangements and democratic processes.

16. New Zealand referred to its hard work to look after its most vulnerable citizens, especially those who cannot find work, are ill or are not able to work. New Zealand also referred to assistance delivered to families with children through the tax system.

17. New Zealand recalled that human rights are a central feature of its international aid and development programmes.
18. New Zealand remains committed to respecting all human rights obligations despite the economic global crisis. Currently, a three-year economic plan is being implemented. Following the Prime Minister's job summit in early 2009, the Government's Jobs and Growth Plan seeks to assist those affected by the economic recession.
19. New Zealand recalled that, in recent years, women had occupied senior constitutional positions and that it was the first country to give women the vote. Women are well represented in tertiary education programmes and in professional occupations. Thanks to a sophisticated legal and policy framework, equal rights of women are ensured in all areas of life. Nevertheless, more needs to be done to improve the number of women in senior positions and leadership roles across the public and the private sectors.
20. While highlighting the importance of children for the country, the delegation mentioned the number of children lacking opportunities and the cases of child abuse and neglect. The recently enacted Sentencing (Offences against Children) Amendment Bill will make sentences more severe for those adults found guilty of committing child abuse or neglect. Officials are working to bring sentences for crimes against children into line with penalties for crimes against adults.
21. New Zealand expects all young people to be in education or training, while those over the age of 16 also have the option to work. The Government's Youth Guarantee addresses the issue of large numbers of young New Zealanders leaving school without any qualifications.
22. A recent national meeting co-hosted by the Ministers of Justice and Māori Affairs on the "drivers of crime" focused on how to prevent crime in New Zealand. The meeting noted that disadvantaged people were more likely to be victims or repeat victims of crime. The Government is committed to incorporating these outcomes into a new policy approach to reducing crime.
23. New Zealand mentioned its recent ratifications of international instruments and its strong advocacy for abolition of the death penalty.
24. New Zealand ratifies an international treaty only when all existing legislation is compliant with the treaty. New Zealand tended to seek few reservations to the treaties it does ratify and was committed to progressively withdrawing them. New Zealand is committed to maintaining the integrity of the treaty system and was pleased to advise that it is up-to-date with all of its treaty body reporting requirements.

## **B. Interactive dialogue and responses by the State under review**

25. During the interactive dialogue, 36 delegations made statements. A number of them thanked New Zealand for its comprehensive national report, which highlighted efforts made and challenges faced, and was prepared in consultation with civil society. The readiness of New Zealand for an open and constructive dialogue through the UPR mechanism was also noted. Delegations welcomed New Zealand's commitment to human rights and its strong record in this area, and stressed that it has ratified most core international human rights instruments. They commended New Zealand for its active role in the promotion and protection of human rights at the regional and international levels, stressing in particular its constructive role within the Human Rights Council, specifically with regard to the rights of persons with disabilities.

26. Algeria, while welcoming the ratification of most international human rights instruments, noted that New Zealand's legislation does not cover all prohibited grounds of discrimination. It recommended taking appropriate measures to bring domestic law into full compliance with the International Covenant on Civil and Political Rights. Algeria noted references in the national report to incidents of religious intolerance and to the fact that a significant number of complaints involve racial discrimination. It recommended that New Zealand take further steps to eradicate all remaining expressions of racism, racial discrimination, xenophobia and related intolerance, and encouraged it to endorse the final outcome document of the Durban Review Conference in view of its unanimous adoption. Algeria noted the strategy on new migrants aiming at facilitating their integration in society and recommended strengthening this strategy by considering the possibility of ratifying the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. Algeria noted with satisfaction efforts made to protect the Māori population, achieve gender equality and protect children.

27. India lauded the achievements made in advancing women's rights. It supported New Zealand's initiatives on the process of reconciliation and accommodation with various indigenous and ethnic groups in the country. It welcomed the formal apology to the Chinese New Zealanders in 2002 for historical discrimination against them. It referred to the establishment of the Waitangi Tribunal and the Treaty of Waitangi, and to the positive notes of the Human Rights Committee and the Committee on the Elimination of Racial Discrimination on the contribution made to protect the human rights of Māori. However, concerns were acknowledged in the national report about constitutional weaknesses relating to the rights of Māori and the Treaty of Waitangi, as well as the persisting disparities between Māori and non-Māori with regard to education, employment, income, housing, health and criminal justice system. While noting the assurance by New Zealand that a group will be established by 2010 to consider constitutional issues, India requested information about the number of settled and outstanding claims before the Waitangi Tribunal and whether those settlements were binding on the Government.

28. Norway welcomed the significant progress made in the protection of Māori rights and the fact that strengthening the partnership between the Māori and the Government was a priority. Citing the 2007 observation by the Committee on the Elimination of Racial Discrimination that the Treaty of Waitangi is not a formal part of domestic legislation, Norway recommended that New Zealand continue the public discussion over the status of the Treaty of Waitangi, with a view to its possible entrenchment as a constitutional norm. It also recommended that New Zealand consider ratifying and implementing ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. Norway commended initiatives to improve women's rights and acknowledged progress made regarding their participation in the labour market, and public and professional life. However, women remain underrepresented in leadership and governance positions in the public and private sector. Norway recommended that New Zealand start discussions on introducing gender quotas on the board of public limited companies.

29. The Netherlands welcomed New Zealand's changed curriculum on human rights education and the Prostitution Law Reform Act. Noting that New Zealand does not explicitly incorporate human rights standards in domestic laws and policies, the Netherlands recommended taking further measures to ensure full and consistent protection of human rights in domestic law and policies, taking into account recommendations made by several United Nations human rights bodies in this regard. Recognizing that New Zealand is working hard to address the economic crisis, the Netherlands recommended that the Government further strengthen its actions to ensure

that the economic and social rights of vulnerable persons are protected, especially Māori, people with Pacific background and people with disabilities, and that special attention be given to these persons to include them fully in society. It noted that New Zealand acknowledged the concerns of some stakeholders regarding the consultation process, and recommended that civil society be regularly involved in consultations concerning the follow-up to the UPR recommendations.

30. Argentina noted progress made with respect to the Māori community. It noted that New Zealand has not supported the Declaration on the Rights of Indigenous Peoples. Despite social programmes, there are still disparities between Māori and non-Māori. Argentina enquired about policies being implemented or being planned by New Zealand to reduce them, with a particular emphasis on the situation of children. It recommended that New Zealand consider ratifying ILO Convention No. 169 and applying international standards with respect to the rights of indigenous peoples. While noting the increase in the proportion of women in Parliament, Argentina recommended that New Zealand implement active policies to speed up and increase women's representation in particular in local governments, in the judiciary and in the health sector. Argentina invited New Zealand to consider signing and ratifying the International Convention for the Protection of All Persons from Enforced Disappearance and accepting the competence of the corresponding Committee. Argentina recommended that New Zealand consider the possibility of signing and ratifying the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

31. The Republic of Korea appreciated the identification by New Zealand of challenges in maintaining its social integrity while guaranteeing cultural diversity, and the setting up of mechanisms addressing those challenges in close cooperation with minority groups and civil society. It noted with appreciation New Zealand's clear understanding that leveling the ground for each ethnic and cultural group with effective economic, cultural and social measures is the key for its success in dealing with the daunting tasks it faces. The Republic of Korea hoped that the current global economic plight would offer an opportunity to better recognize the urgent need to strengthen ongoing efforts. It recommended that New Zealand consider accepting the individual complaint procedure under article 14 of the International Convention on the Elimination of all Forms of Racial Discrimination. It enquired about policies and measures taken to respond to juvenile offences.

32. France enquired about measures envisaged by New Zealand to respond to the concerns of the Committee on the Elimination of Discrimination against Women and to ensure that both direct and indirect forms of discrimination against women are covered in domestic legislation; and about steps taken to ensure that the planned modifications in the anti-terrorist legislation are in accordance with international human rights standards. It recommended signing and ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.

33. The Islamic Republic of Iran shared the concern expressed by several United Nations mechanisms about, in particular, the situation of indigenous people, particularly the Māori, who are discriminated against in education, employment, housing and health care, while the media exacerbate the problem by perpetuating discriminatory stereotypes. The Islamic Republic of Iran asked about measures to address those concerns and redress and alleviate the suffering of the affected people. It regretted that New Zealand had voted against the Declaration on the Rights of Indigenous Peoples. It recommended that the Government revisit its decision with a view to protecting the rights of indigenous peoples in the country and engage with the Māori and the

wider community to promote the realization of indigenous rights, and that it ratify fundamental ILO conventions, in particular Convention No. 169. The Islamic Republic of Iran noted that New Zealand's human rights protection is fragile in the absence of a comprehensive constitutional document and that New Zealand is not fully consistent in incorporating international human rights standards in domestic laws. It noted with concern that migrant workers are often paid lower wages than equally skilled mainstream counterparts and recommended that New Zealand ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Counter-terrorism legislation contains ambiguous and poorly defined terms and lacks a reference to prevent abuses such as indefinite detention without charge or prolonged solitary confinement. The Islamic Republic of Iran noted with concern the growing trend of domestic violence and recommended promoting the very foundation of family and its associated values with a view to prevent domestic violence.

34. Ukraine welcomed New Zealand's standing invitation to the special procedures and noted that a number of national institutions are operating in the field of human rights. It asked whether the Government intend to withdraw its reservations to the Convention on the Rights of the Child. While welcoming efforts made to promote women's rights, Ukraine highlighted the concerns expressed by the Committee on the Elimination of Discrimination against Women in 2007 about the lack of a legal mechanism to address discrimination against women in the area of employment, particularly against Māori women. It enquired about measures undertaken by New Zealand to fulfill the recommendations of the Committee in this connection.

35. Azerbaijan commended New Zealand for its standing invitation to special procedures and its consistent financial support to OHCHR. It considered the Victims of Domestic Violence immigration policy, the Taskforce for Action on Sexual Violence and the establishment of Family Violence Courts and other related measures as efficient steps aimed at eliminating and eradicating domestic violence. Azerbaijan urged New Zealand to accelerate the ratification of Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Regarding priorities to reduce violence within families and to strengthen partnership with the Māori, Azerbaijan asked about measures implemented for their achievement.

36. Mexico understood that the task of building a diverse society, inclusive and respectful of intercultural relations, is not easy and paid tribute to achievements made by New Zealand. Mexico noted that New Zealand has committed itself to combating discrimination, racism and xenophobia and, regretting that it did not participate in the Durban Review Conference, recommended that it adopt the text approved during that Conference. Mexico asked about the specific measures taken to implement the Convention on the Rights of Persons with Disabilities. It recommended that New Zealand join the favourable momentum generated by the adoption of the Declaration on the Rights of Indigenous Peoples and give its support to this instrument. It recommended ratifying the ILO Convention No. 169 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Consistent with the observations of the Committee on the Elimination of Racial Discrimination and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mexico recommended continuing the new dialogue between the State and the Māori regarding the Foreshore and Seabed Act 2004, in order to find a way of mitigating its discriminatory effects through a mechanism involving prior informed consent of those affected.

37. New Zealand thanked the delegations for their questions. It stated that it signed the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child



prostitution and child pornography in 2000 and that one further legislative amendment is required to enable ratification. It has no plans to ratify ILO Convention No. 169 but a number of specific laws take into account customs and methods of indigenous people. Moreover a broad constitutional review to be undertaken in 2010 is likely to cover such issues.

38. The delegation indicated that the Waitangi Tribunal recommendations were not binding but very authoritative and that successive Governments had had close regard to them. The Treaty settlements between the Māori and the Crown are essentially political agreements, so they are best negotiated rather than arbitrated. There have been many references to the Treaty in legislation and the constitutional status of the Treaty has been continually discussed and debated and will likely be part of the above-mentioned constitutional review.

39. Despite recent social-economic improvements, disparities persist for Māori. There are many governmental programmes designed to reduce these inequalities, especially in health and education. In addition to the recent Jobs Summit, the Government convened a Māori economic summit in January 2009 and a Māori Affairs Ministerial Taskforce on the Economy will be established. A key priority for the Government is to ensure that Māori are not disproportionately represented in the criminal justice system.

40. South Africa was encouraged by progress made in New Zealand but noted that significant challenges remained. South Africa asked how the Government intended to address inequalities related to Māori rights; inequalities related to access to education, health and housing for the disabled, undocumented migrants and minority groups, particularly in rural areas; and negative stereotyping and portrayals of minority women by the media. It noted the recommendations made by the Committee on the Elimination of Racial Discrimination and of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people regarding the 2004 Foreshore and Seabed Act and enquired about progress made in this regard. It also enquired about progress in reviewing legislation relating to the security-risk certificate and on support provided to victims of trafficking. South Africa recommended that the Government consider (a) integrating the provisions of the International Covenant on Economic, Social and Cultural Rights into domestic legislation to ensure the justiciability of these rights; (b) adopting its National Plan of Action for Human Rights; and (c) amending or repealing its legislation to close the gaps in the protection of women against discrimination.

41. Germany noted with interest the recommendations issued by the Committee on the Elimination of Discrimination against Women regarding access to free education, specifically for low-income families, and asked about measures taken in this regard. Germany asked about existing mechanisms to define priorities regarding the enjoyment of human rights by the Māori and to ensure that the views of the different Māori communities are taken into account. Germany recommended dropping the planned amendments to the Terrorism Suppression Act, which would broaden the definition of a terrorist act by reducing judicial oversight, allow courts to consider classified information without giving it to defendants and give the Prime Minister the sole responsibility for designating groups and individuals as terrorists.

42. Nepal noted that, New Zealand's respect of diversity and tolerance was noteworthy. It commended New Zealand's efforts to honor its international human rights obligations through domestic legislation, strong national institutions and effective judicial remedies. It appreciated New Zealand's approach to empower Māori indigenous people, women, persons with disabilities, migrants and asylum seekers as well as the comprehensive scheme of social security and social safety nets.

43. Morocco noted that the participatory approach adopted for the elaboration of the national report should be cited as a model. It encouraged New Zealand to ratify ICRMW. Morocco noted with appreciation the establishment of several human rights institutions, including the New Zealand Human Rights Commission. Stressing that New Zealand is a multi-ethnic and multi-faith country, it recommended that New Zealand strengthen and further improve existing measures and strategies and undertake, where necessary, actions to correct the inequalities that still exist between the various communities.

44. Canada encouraged New Zealand to continue efforts towards the full participation of Māori in society. In 2007, the Committee on the Elimination of Discrimination against Women highlighted the gap in health and educational indicators which persists among certain minority groups. Canada recommended that New Zealand establish targets for improving representation of women in senior management in the public service and set measurable targets toward realizing gender pay equality. Canada noted that Māori are significantly overrepresented as victims and perpetrators of domestic violence and asked about initiatives to address this situation. Noting the high rate of convictions and incarceration of indigenous people, Canada recommended that New Zealand commit itself to combating institutional bias that can result in the overrepresentation of specific groups in the criminal justice system. Canada enquired about plans and timelines set for the implementation of recommendations made by the New Zealand Human Rights Commission, regarding the adoption of a plan to combat poverty and the full realization of the right to education for all.

45. The United States of America, while appreciating that New Zealand recognizes and has good programmes to combat transnational human trafficking, noted that the separate laws prohibiting internal or domestic trafficking situations may not carry similarly stringent penalties. Therefore, it recommended that New Zealand adopt a more comprehensive definition of human trafficking.

46. Austria, while welcoming the substantial progress made regarding the situation of Māori, referred to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, who had highlighted remaining disparities between Māori and non-Māori. Austria recommended that New Zealand support the Declaration on the Rights of Indigenous Peoples. Referring to the concern expressed by the Committee on the Elimination of Discrimination against Women about the continued prevalence of violence against women, in particular Māori, Pacific and minority women, Austria asked about measures planned to raise the very low conviction rate in this regard. Regarding concerns expressed by the Committee on the Elimination of Discrimination against Women that no cases of trafficking in women had been prosecuted and about the exploitation of migrant women and girls in prostitution, Austria asked how the plan of action will raise public awareness and sensitize police forces to these problems.

47. Brazil welcomed the decriminalization of homosexuality in 1986. It enquired about the referendum on the use of physical force for the purposes of correction, to be held this year. Brazil recommended that New Zealand ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the core ILO conventions; reinforce women's rights within the labour market, regardless of age or ethnicity; insert the fight against xenophobia and racism into the education curricula; and accomplish progressively human rights goals as set forth in Human Rights Council resolution 9/12.

48. Pakistan stressed that New Zealand has a long history of respect for democracy and human rights, and noted that New Zealand acknowledged continued occurrence of acts of racism and

racial discrimination. According to Pakistan, New Zealand's participation in the Durban Review Conference would have been consistent with its commitment to eradicate the scourge of racism, racial discrimination, xenophobia and related intolerance. Pakistan recommended that New Zealand (a) in line with the concerns expressed by a number of treaty bodies, take action to provide constitutional protection to both the national and international human rights acts and standards; (b) seriously consider implementing the observations and recommendations of different treaty bodies; and (c) support and implement the Declaration on the Rights of Indigenous Peoples.

49. The United Kingdom encouraged New Zealand to look further into ways of improving attitudes of society and the media towards combating racism. It noted measures to address domestic violence, but also reports which identified information on the extent of domestic violence as inadequate for effectively addressing challenges. It recommended that New Zealand consider further action to fully understand the causes of inequality faced by indigenous peoples and take steps to minimize the effects; and look to identify a more accurate measure of the extent of domestic violence, thereby providing a tool to better measure the success of domestic violence prevention and conviction agencies and programmes. It joined the Committee on the Elimination of Racial Discrimination in recommending that New Zealand pursue means of recording complaints, prosecutions and sentences related to racially motivated crimes, and investigate how such issues are addressed through the criminal justice system.

50. Australia applauded New Zealand's ratification of Convention on the Rights of Persons with Disabilities and warmly welcomed its consideration of supporting the Declaration on the Rights of Indigenous Peoples. It encouraged New Zealand on its policies to reduce poverty, improve access to primary health care, and economic and social improvements for Māori and Pacific peoples. Australia requested further information on the efforts to reduce domestic violence rates and improve child health-care outcomes.

51. Sweden noted the concern expressed by the Committee on the Elimination of Discrimination against Women about the prevalence of violence against women, particularly among Māori, Pacific and other minority women, and about low rates of prosecution and convictions for such crimes. It recommended increasing efforts to combat all forms of violence against women. Sweden welcomed the State's presentation on equality and non-discrimination of Māori and noted measures taken to address these challenges but expressed concern about the overrepresentation of Māori and Pacific persons in prisons and in the criminal justice system at large. It recommended continuing efforts to ensure that people belonging to minority groups are not discriminated against in the criminal justice system.

52. New Zealand indicated that it was actively working to remove barriers to accessing education and to provide wider choices for parents and students, including investments in special education, expanding popular schools and making independent schools more affordable.

53. Trafficking in persons is a serious criminal offence in New Zealand. All reports on trafficking are thoroughly investigated. New Zealand took a lead in anti-trafficking work in the region. The Government is developing a whole-of-Government Plan of Action to Prevent People Trafficking, to further enhance anti-trafficking efforts already under way.

54. Since 2006, the Crimes Act 1961 includes a provision that makes it an offence to use people under the age of 18 years for sexual exploitation or any person in forced labour. It is also possible to prosecute any New Zealand citizen or permanent resident who arranges the provision

of, receives earnings from, or pays for commercial sexual services by a person under the age of 18 years in another country. New Zealand's laws dealing with extradition and mutual legal assistance support this focus to reduce illegal sexual exploitation of persons under 18 years of age in any country.

55. While New Zealand has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, it has various laws in place that protect the rights of all workers, including migrant workers, on an equal basis.

56. While the previous Government did not support the adoption of the Declaration on the Rights of Indigenous Peoples in September 2007, New Zealand noted that many of the rights in the Declaration have been enjoyed in New Zealand for many years. New Zealand has extensive consultation mechanisms and the Treaty settlement process is an unparalleled system of redress, accepted by Māori and non-Māori.

57. New Zealand made reference to reservations it would like to withdraw, such as that on article 37(c) of the Convention on the Rights of the Child. With respect to prisons, New Zealand already complies with article 37(c) but further work is required regarding other custodial facilities to ensure full compliance. The delegation also mentioned that New Zealand has made progress in respect of infant children of prisoners through the enactment of the Corrections (Mothers with Babies) Amendment Act. This allows a child up to the age of two years to remain with its mother, provided it is in the best interests of the child.

58. Nigeria commended efforts made in improving the rights of persons with disabilities and the ban on the use of corrective force on children. However, it noted the concerns expressed by the Committee on the Rights of the Child that children with disabilities are not fully integrated into all aspects of society and that services, particularly in the education sector, are often difficult to access for families with disabilities. It further highlighted the appreciation of CRC regarding New Zealand's concern about the prevalence of child abuse and its regret that services aimed at preventing abuse and providing assistance do not have sufficient resources and are insufficiently coordinated. Nigeria recommended that New Zealand commit more resources to the provision of services for children with disabilities and effectively coordinate its efforts at preventing child abuse as well as providing the needed assistance in that area.

59. Bangladesh expressed concern at the existing constitutional, legal and institutional gaps that allow for continued discriminatory treatment against the Māori and Asian and Pacific communities. It noted that the long-standing demand of the Māori to make the Treaty of Waitangi an integral part of constitutional arrangements remains unfulfilled. Bangladesh stressed the need for accelerating the Treaty Settlement Process with various Māori groups; expressed concern over the prevalence of domestic violence and racially-instigated crimes; and stressed the need to revisit the existing immigration policy. It commended New Zealand's proactive policies on refugees. Bangladesh recommended that New Zealand (a) continue to address all forms of political, economic and social discrimination against the Māori by meeting their various demands for constitutional and legal reforms and recognition; (b) take effective legal, institutional and awareness-building measures to combat domestic violence, racially-instigated crimes, and trafficking of women for sexual exploitation; and (c) protect the interest of migrants and minority groups, including Asian and Pacific peoples, from all forms of racial stereotyping and derogatory treatments.

60. The Russian Federation noted with appreciation that the New Zealand Human Rights Commission was accredited with A status in 2006. It asked however why the Human Right Plan of Action submitted by the Commission had not been approved by the Government, and whether New Zealand intended to support the preparation of another plan. It also asked why New Zealand had not responded to the questionnaires sent by special procedures since 2005. According to information from United Nations mechanisms, despite efforts made, Māori still experience problems regarding access to, inter alia, the labour market, health and education. The Russian Federation recommended that New Zealand pursue its efforts to improve Māori participation in all areas of social life, and endorse the final document of the Durban Review Conference.

61. Turkey noted a number of treaty bodies' concerns about the lack of an entrenched constitution protecting human rights. Turkey recommended that New Zealand continue to take targeted action to eliminate the socio-economic disparities that persist among its population, including those affecting Māori, Pacific, Asian and other groups. Turkey welcomed the review of the Foreshore and Seabed Act 2004 and hoped that the review panel, to be completed in 2009, would contribute to finding a durable solution taking into account all interests. Turkey commended New Zealand for its commitment to overcome the challenges that multicultural societies face.

62. Slovenia referred to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, who reported that despite social programmes in place, disparities remain between Māori and non-Māori. It asked whether New Zealand envisaged specific strategies or measures based on ethnicity to strengthen the social, economic and cultural rights of Māori. Slovenia, while welcoming the measures taken, referred to the concern expressed by the Committee on the Elimination of Discrimination against Women about the continued prevalence of violence against women, particularly within families. It asked whether New Zealand foresees any difficulties in implementing the Domestic Violence Bill.

63. Malaysia referred to the observations of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people regarding disparities between indigenous and other groups. It noted the continued prevalence of violence against women, particularly of Māori and minority women, and asked about measures envisaged to address the problem and to implement the recommendations of the Committee on the Elimination of Discrimination against Women and the Committee on the Elimination of Racial Discrimination on this matter. Malaysia recommended that New Zealand (a) accept the recommendation of the Committee on the Elimination of Racial Discrimination to study ways and means of assessing the extent to which complaints for racially motivated crimes are addressed in an appropriate manner within the criminal justice system; and (b) record and document cases of trafficking in women and children as well as exploitation of migrant women and girls in prostitution and share the information with other countries in the region to facilitate greater cooperation in combating this problem.

64. China noted measures taken to ensure that Māori people, women, people with disabilities, the elderly and sexual orientation minorities enjoy the same rights as other citizens. It also noted New Zealand's publicly funded health system, its free primary and secondary education, its vigorous efforts to promote social welfare and efforts to reduce domestic violence and protect young people. China understood that as a multicultural society, New Zealand faced challenges in protecting the rights of the indigenous people. It enquired about specific measures taken to reduce the negative impact of the global financial crisis on ethnic minorities. Noting that the

suicide rate for young people remains relatively high, China enquired on the reasons for such situation and on measures envisaged to address it.

65. Maldives noted that according to a number of non-governmental organizations, the Bill of Rights Act and the Human Rights Act are not enforceable against the legislature. It asked whether this was a correct analysis and whether New Zealand had considered ways to better assert the primacy of human rights in national law. It also noted the ongoing inequalities faced by the Māori and asked to what extent the discriminatory stereotypes in the media exacerbate the situation and what could be done.

66. Switzerland noted with great interest measures taken to combat all forms of discrimination, and encouraged New Zealand to pursue its efforts to combat all forms of discrimination, in particular those based on ethnic origin. While noting efforts made to accept the rights of indigenous people on traditional lands by concluding treaties, Switzerland recommended that New Zealand pursue its efforts to comprehensively settle land claims. Switzerland noted concerns about the vagueness of the anti-terrorist legislation and the alleged insufficiency of the control mechanism when cases of abuses are recorded. It recommended that New Zealand reinforce the procedural guarantees in the anti-terrorist legislation and encouraged it to ensure that measures provided for by the law be applied in the strict accordance with international human rights obligations.

67. Jordan noted the efforts of New Zealand in developing and strengthening its legislative and institutional framework, including through the establishment of the Human Rights Commission. Jordan welcomed New Zealand's continued cooperation with human rights mechanism as well as its support to OHCHR. It recommended that New Zealand (a) continue to address effectively the socio-economic inequalities for the Māori; (b) further incorporate, as appropriate, its international human rights obligations into domestic law; and (c) consider implementing, as appropriate, the recommendations of human rights treaty bodies and special procedures on indigenous people.

68. Japan welcomed the reduction of socio-economic disparities between the Māori and Pacific peoples and the rest of the population, as noted by the Committee on the Elimination of Racial Discrimination. It recommended that further measures be taken to correct the gaps in employment, salary, health care and education that exist between Māori and non-Māori peoples. Additionally, on the issue of privatization of prison management, Japan recommended that the need to guarantee the humane treatment of prisoners be kept in mind.

69. The Czech Republic noted that the Bill of Rights Act does not enjoy protected status. It recommended (a) that New Zealand ensure that the Bill of Rights Act appropriately reflects all New Zealand's international human rights obligations and that all subsequent legal provisions, including immigration laws, are in accordance with it, and cannot limit its scope; and (b) that the age of criminal responsibility be raised so that it complies with relevant international standards, that separate juvenile detention facilities be ensured for all juvenile offenders, and that further measures be taken to ensure more effective protection of children against abuse or neglect. The Czech Republic asked how the human rights perspective is introduced into the national education curriculums and suggested that New Zealand could share its good practices and challenges in this area.

70. Angola referred to the report stating that despite recent socio-economic improvements, inequalities still persist for Māori people in education, health, employment and income. Angola

inquired about strategies aimed at reversing this situation and at further improving the rights of the Māori people. It recommended finding appropriate ways to provide adequate compensation to Māori, in particular for their loss of land. Angola noted with appreciation that New Zealand is ranked high in international measurements of gender parity but noted that challenges remain, in particular in ensuring equal opportunities for women in those areas of the workforce where they are still poorly represented. Angola recommended that New Zealand continue to adopt policies in order to achieve full gender parity.

71. New Zealand stated that the Bill of Rights Act has been part of national law for nearly 20 years. All Bills introduced into the New Zealand Parliament, except appropriation bills, are considered under the Bill of Rights Act. Any bills that appear to be inconsistent with the Bill of Rights Act are subject to a report by the Attorney-General. Such a report is tabled in the House of Representatives. Individuals who consider that any of their rights under the Bill of Rights Act have been infringed upon may bring an action against the Government.

72. New Zealand is committed to implementing the Convention on the Rights of Persons with Disabilities and the New Zealand Disability Strategy. A Ministerial Committee on Disability Issues has been established and the Government will consider resourcing issues regarding provisions of services to children with disabilities.

73. The delegation recalled that New Zealand's previous experience of private prison management had produced some significant benefits and that the Government believed private providers would bring innovation and change. The delegation stated that draft legislation required private prison providers to meet international standards on the treatment and welfare of prisoners and to safeguard the rights of detained persons.

74. Regarding violence against children and family violence, New Zealand has introduced multiple initiatives with increased dedicated funding. Recently, sentencing laws on violence against children were amended. The New Zealand Law Commission is currently reviewing Part 8 of the Crimes Act 1961 with special regard to offences against children. This review might result in new legislation being introduced in Parliament.

75. New Zealand removed the legal protection that allowed parents to use reasonable force to discipline children. A referendum will take place on this matter in July and August 2009 as a legal requirement following the submission of a number of petitions.

76. The current minimum age for criminal responsibility is 10 years. However, with the exception of the offences of murder and manslaughter, children under the age of 14 cannot be prosecuted for offending. Offending by children aged 10 to 13 years (other than murder and manslaughter) may in certain circumstances be dealt with in the Family Court as a care and protection matter. Offending by young people aged 14 to 16 years is addressed by a specialist youth court. Work is ongoing to improve effective responses to children's offending and, where possible, to use alternatives to prosecution.

77. New Zealand took an active approach towards addressing family violence. Legislation was recently introduced to allow the police to issue on-the-spot protection orders to provide for the immediate safety of victims. The Government has also funded a national family violence campaign. A Taskforce for Action on Sexual Violence is currently developing recommendations on necessary legislative and procedural reforms to better support and protect victims as they go through the criminal justice system.

78. The delegation recalled that persons with disabilities are entitled to the full benefit of all general and specific laws. Legislation has been enacted requiring all refurbished buildings which the public can enter to be made accessible to persons with disabilities, and sign language is an official language. The delegation made also reference to the appointment of a Minister for Disability Issues, the establishment of the Office for Disability Issues and the development of national strategies to address mental health and other bodies.

79. The delegation highlighted the Government's commitment to strengthening the rights crime victims. In early 2009, the Government introduced legislation establishing a victims' compensation scheme.

80. The delegation's concluding comments stated that complacency cannot be tolerated in the field of human rights. More needs to be done to reduce the overrepresentation of Māori in negative statistics and the abuse and neglect of children. The Government is committed to breaking these trends despite the challenging economic times. The delegation recalled that New Zealand was open to constructive dialogue through treaty body monitoring and had issued a standing invitation to all special procedures. The delegation concluded that the international community has set the benchmark for human rights standards and implementation matters.

## **II. CONCLUSIONS AND/OR RECOMMENDATIONS**

81. The following recommendations will be examined by New Zealand, which will provide responses in due time. The responses to these recommendations will be included in the outcome report adopted by the Human Rights Council at its twelfth session:

1. Ratify (Islamic Republic of Iran, Mexico) / Consider the possibility of signing and ratifying (Argentina) the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW);
2. Strengthen the Government's strategy on new migrants by considering the possibility of ratifying ICRMW (Algeria);
3. Consider the possibility of signing and ratifying (Argentina) / Accelerate the ratification of (Azerbaijan) the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;
4. Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (Brazil);
5. Ratify International Labour Organization (ILO) fundamental conventions (Brazil, Islamic Republic of Iran), and in particular the Indigenous and Tribal Peoples Convention No. 169 (Islamic Republic of Iran);
6. Ratify (Mexico) / Consider ratifying and implementing the Indigenous and Tribal Peoples Convention No. 169 (Norway);
7. Consider ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries and applying international standards with respect to the rights of indigenous peoples (Argentina);



8. Support (Austria, Pakistan) and implement (Pakistan) the United Nations Declaration on the Rights of Indigenous Peoples;
9. Join the favourable momentum generated by the adoption of the United Nations Declaration on the Rights of Indigenous Peoples and give its support to this instrument (Mexico);
10. Revisit its decision not to support the United Nations Declaration on the Rights of Indigenous Peoples, with a view to protecting the rights of indigenous peoples in the country, and engage with the Māori and the wider community to promote the realization of indigenous rights (Islamic Republic of Iran);
11. Sign and ratify (France) / Consider signing and ratifying (Argentina) the International Convention for the Protection of All Persons from Enforced Disappearance; and consider accepting the competence of the Committee on Enforced Disappearances (Argentina);
12. Consider accepting the individual complaint procedure under article 14 of the International Convention on the Elimination of all Forms of Racial Discrimination (Republic of Korea);
13. Adopt (Mexico) / Endorse (Algeria, Russian Federation) the final outcome document approved during the Durban Review Conference, in view of its unanimous adoption (Algeria);
14. Accomplish progressively the human rights goals set forth in Human Rights Council resolution 9/12 (Brazil);
15. Further incorporate, as appropriate, its international human rights obligations into domestic law (Jordan);
16. Ensure that the Bill of Rights Act appropriately reflects all of New Zealand's international human rights obligations and that all subsequent legal provisions, including immigration laws, are in accordance with it and cannot limit its scope (Czech Republic);
17. Consider integrating the provisions of the International Covenant on Economic, Social and Cultural Rights into domestic legislation to ensure the justiciability of these rights (South Africa);
18. Take appropriate measures to bring domestic law into full compliance with the International Covenant on Civil and Political Rights (Algeria);
19. Take further measures to ensure full and consistent protection of human rights in domestic law and policies, taking into account recommendations made by several United Nations human rights bodies in this regard (Netherlands);
20. In line with the concern expressed by a number of treaty bodies, take action to provide constitutional protection to both national and international human rights acts and standards (Pakistan);

21. Continue the public discussion over the status of the Treaty of Waitangi, with a view to its possible entrenchment as a constitutional norm (Norway);
22. Consider adopting its National Plan of Action for Human Rights (South Africa);
23. Seriously consider implementing the observations and recommendations of different treaty bodies (Pakistan);
24. Consider implementing, as appropriate, the recommendations of human rights treaty bodies and special procedures on indigenous people (Jordan);
25. Pursue efforts to combat all forms of discrimination, in particular those based on ethnic origin (Switzerland);
26. Continue to take targeted action to eliminate the socio-economic disparities that persist among its population, including those affecting Māori, Pacific, Asian and other groups (Turkey);
27. Strengthen and further improve the existing measures and strategies and undertake, where necessary, actions to correct the inequalities that still exist between the various communities (Morocco);
28. Further strengthen its actions to ensure that the economic and social rights of vulnerable persons are protected, especially Māori, people with Pacific background and people with disabilities, and ensure that special attention is given to these persons with a view to including them fully in society (Netherlands);
29. Continue to address all forms of political, economic and social discrimination against the Māori by meeting their various demands for constitutional and legal reforms and recognition (Bangladesh);
30. Continue addressing effectively the socio-economic inequalities affecting the Māori (Jordan);
31. Take further measures to correct the gaps in employment, salary, health care and education that exist between Māori and non-Māori peoples (Japan);
32. Consider further action to fully understand the causes of inequality faced by indigenous people and take steps to minimize the effects (United Kingdom);
33. Commit itself to combating institutional bias that can result in the overrepresentation of specific groups in the criminal justice system (Canada);
34. Continue efforts to ensure that people belonging to minority groups are not discriminated against in the criminal justice system (Sweden);
35. Take further steps to eradicate all remaining expressions of racism, racial discrimination, xenophobia and related intolerance (Algeria);
36. Include the fight against xenophobia and racism in the education curricula (Brazil);

37. Protect the interest of migrants and minority groups, including the Asian and Pacific people, from all forms of racial stereotyping and derogatory treatment (Bangladesh);
38. Consider accepting the recommendation of the Committee on the Elimination of Racial Discrimination to study ways and means of assessing the extent to which complaints for racially motivated crimes are addressed in an appropriate manner within the criminal justice system (Malaysia);
39. As recommended by the Committee on the Elimination of Racial Discrimination, pursue means of recording complaints, prosecutions and sentences related to racially motivated crimes and investigate how such issues are addressed through the criminal justice system (United Kingdom);
40. Consider amending or repealing its legislation to close the gaps in the protection of women against discrimination (South Africa);
41. Establish targets for improving the representation of women in senior management in the public service and set measurable targets for realizing gender pay equality (Canada);
42. Continue to adopt policies in order to achieve full gender parity (Angola);
43. Start discussions on introducing gender quotas on the boards of public limited companies (Norway);
44. Reinforce the rights of women within the labour market, regardless of age or ethnicity (Brazil);
45. Implement active policies to speed up and increase the representation of women, in particular in local governments, the judiciary and the health sector (Argentina);
46. Commit more resources to the provision of services for children with disabilities (Nigeria);
47. On the issue of privatization of prison management, keep in mind the need to ensure the humane treatment of prisoners (Japan);
48. Raise the age of criminal responsibility so that it complies with relevant international standards (Czech Republic);
49. Ensure separate juvenile detention facilities for all juvenile offenders (Czech Republic);
50. Take further measures to ensure more effective protection of children against abuse or neglect (Czech Republic);
51. Effectively coordinate its efforts to prevent child abuse and provide the needed assistance in that area (Nigeria);

52. Promote the very foundation of family and its associated values with a view to preventing domestic violence (Islamic Republic of Iran);
53. Look to identify a more accurate measure of the extent of domestic violence, thereby providing a tool to better measure the success of domestic violence prevention and conviction agencies and programmes (United Kingdom);
54. Take effective legal, institutional and awareness-building measures to combat domestic violence, racially-instigated crimes and trafficking of women for sexual exploitation (Bangladesh);
55. Increase efforts to combat all forms of violence against women (Sweden);
56. Record and document cases of trafficking in women and children as well as exploitation of migrant women and girls in prostitution, and share the information with other countries in the region to facilitate greater cooperation in combating this problem (Malaysia);
57. Adopt a more comprehensive definition of human trafficking (United States);
58. Consistent with the observations of the Committee on the Elimination of Racial Discrimination and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, continue the new dialogue between the State and the Māori regarding the Foreshore and Seabed Act of 2004, in order to find a way of mitigating its discriminatory effects through a mechanism involving prior informed consent of those affected (Mexico);
59. Pursue efforts to settle comprehensively land claims of the indigenous population (Switzerland);
60. Find appropriate ways to provide adequate compensation to Māori, in particular for their loss of land (Angola);
61. Pursue efforts to improve Māori participation in all areas of social life (Russian Federation);
62. Drop the planned amendments to the Terrorism Suppression Act, which would broaden the definition of a terrorist act by reducing judicial oversight, allow courts to consider classified information without giving it to defendants and give the Prime Minister the sole responsibility for designating groups and individuals as terrorists (Germany);
63. Reinforce the procedural guarantees in the anti-terrorist legislation and ensure that measures provided for by the law are applied in strict accordance with international human rights obligations (Switzerland);
64. Ensure regular consultation with civil society in the follow-up to the UPR recommendations (Netherlands).

82. All conclusions and/or recommendations contained in the present report reflect the position of the submitting State(s) and /or the State under review thereon. They should not be construed as endorsed by the Working Group as a whole.

## **Annex**

### **COMPOSITION OF THE DELEGATION**

The delegation of New Zealand was headed by Hon. Simon Power, Minister of Justice, and composed of 11 members:

H.E. Mr. Don MacKay, Ambassador, Permanent Representative, New Zealand Permanent Mission to the United Nations, Geneva, Delegate;

Ms. Wendy Hinton, Deputy Permanent Representative, New Zealand Permanent Mission to the United Nations, Geneva, Delegate;

Mr. Nicholai Anderson, Private Secretary to Hon. Simon Power, New Zealand, Delegate;

Ms. Cheryl Gwyn, Deputy Solicitor-General, Department of Crown Law, Wellington, New Zealand, Delegate;

Mr. Stuart Beresford, Policy Manager, Ministry of Justice, Wellington, New Zealand, Delegate;

Ms. Christine Hyndman, Principal Analyst, Immigration Policy, Department of Labour, Wellington, New Zealand, Delegate;

Mr. Paul Monk, Southern Regional Manager, Prison Services, Department of Corrections, Wellington, New Zealand, Delegate;

Mr. Richard Kay, Senior Policy Officer, Ministry of Foreign Affairs and Trade, Wellington, New Zealand, Delegate;

Ms. Amy Laurenson, Second Secretary, New Zealand Permanent Mission to the United Nations, Geneva, Delegate;

Ms. Lucy Cassels, Second Secretary, New Zealand Permanent Mission to the United Nations, Geneva, Delegate;

Ms. Natalie Perret, Executive Assistant, New Zealand Permanent Mission to the United Nations, Geneva, Advisor.

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