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UNIVERSAL PERIODIC REVIEW

**Written statement* submitted by the International Indian Treaty Council (IITC),
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 August 2009]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

New Zealand¹

We note the New Zealand (NZ) government has generally engaged with its Universal Periodic Review (UPR) in a constructive manner, and it has accepted that in some areas more work needs to be done to ensure human rights are fully protected and promoted. However, NZ's response² to the Report of the UPR Working Group³ raises a number of concerns, especially in relation to the recommendations it has not accepted.

We draw the attention of Human Rights Council member and observer states (the Council) to the following concerns, some of general applicability but mostly focused on the human rights of indigenous peoples.

Recommendations 1, 2, 4, 5, 6 and 7

There is no valid reason for NZ to reject the recommendations that it ratify the human rights treaties listed. The argument put forward in 1 and 2 that NZ has adequate laws to protect the human rights of all workers, for example, is a nonsensical justification for its failure to ratify that Convention. There is similarly no justification for the argument put forward in 5, 6 and 7 with respect to the ILO Conventions, because state policy and practice is required to meet international human rights standards, rather than the reverse.

- We urge the Council to reiterate that NZ ratify the instruments listed in these recommendations.

Recommendations 8, 9 and 10

NZ has stated that it would like to move to support the UN Declaration on the Rights of Indigenous Peoples (the Declaration), but only if such support results in no changes being made to its domestic arrangements for resolving issues with Maori within its "legal arrangements and democratic processes". Thus it appears any potential change in position remains curtailed by domestic policy and practice.

NZ's failure to accept the Declaration as the international normative framework for indigenous peoples' rights and its continual focus on inconsistent domestic policy and practice, continue to pose major problems with regard to the human rights of Maori. Until there is a shift in perspective, indigenous peoples' rights in NZ will continue to be vulnerable and subject to political whim.

- We urge the Council to reiterate that NZ support the Declaration without reservation and that it reviews its current approach to the rights of Maori, including the arrangement for the settlement of historical injustices, to comply with the standards set out in both the Treaty of Waitangi (the Treaty) and the Declaration.

¹ Aotearoa Indigenous Rights Trust and Peace Movement Aotearoa (without consultative status) prepared this statement and shares in the views expressed herein.

² A/HRC/12/8/Add1/E[1]

³ A/HRC/12/8

Recommendations 16, 19 and 20

The Bill of Rights Act 1990 and the Human Rights Act 1993 are not enforceable as against the legislature meaning parliament can pass discriminatory legislation at will, a recent example being the Foreshore and Seabed Act 2004. If legislation is found to breach either Act, the only remedy is a declaration that it is inconsistent with the right to freedom from discrimination. There is no requirement for the government to modify or repeal discriminatory legislation. This lack of effective protection for human rights has been commented on by a number of treaty monitoring bodies⁴ and remains of concern given NZ's unwillingness to review its current constitutional arrangements to ensure full protection for all human rights.

Whilst NZ has stated in response to Recommendations 19 and 20 that it will “take action to provide constitutional protection to both national and international human rights acts and standards”, this is contradicted by its comments in relation to Recommendation 16, para. 13, that parliament's legislative powers cannot be limited by human rights legislation and instruments.

- We urge the Council to reiterate that NZ's current constitutional arrangements do not provide effective protection of human rights, and that constitutional change is therefore necessary to ensure this.

Recommendation 18

NZ's domestic laws are clearly not fully compliant with the ICCPR as not all rights articulated in the Covenant are included in legislation, for example, the right of self determination. Furthermore, there is no effective remedy for violations of Covenant rights arising from acts of parliament or actions of the executive, as outlined above.

- We urge the Council to reiterate that NZ's domestic laws must be made fully compliant with all of its international human rights obligations.

Recommendation 21

NZ must do more than merely encourage public discussion about the Treaty. The constitutional issues outlined above also apply to the Treaty - the Treaty is not enforceable against parliament, which has frequently breached its terms, and has to be incorporated into legislation to be enforceable against the government.

It is not acceptable for NZ to state that "it does not assume that the current mechanisms in place are inadequate" when they so obviously are. The lack of protection for the rights of Maori, whether confirmed in the Treaty or international human rights instruments, remain vulnerable to the whim of majoritarian governments as has been demonstrated yet again this week in relation to Maori seats on the new local authority being established to govern Auckland city.

Although the Royal Commission which reported on options for Auckland's governing body recommended there be provision for three dedicated Maori seats, the government announced on

⁴ See, for example, CERD/C/NZL/CO/17, para. 12; E/CN.4/2006/78/Add.3, para. 9; CCPR/CO/75/NZL, para 8; E/C.12/1/Add.88, para. 21; and CAT/C/NZL/CO/5.

24 August that there would be none⁵. It should be noted that this decision was made before the Select Committee that is considering public submissions on Auckland's governing body reported back to parliament (the report is due back on 4 September) - an indication that NZ is not even prepared to follow its usual "democratic processes" when it comes to the rights of Maori.

- We urge the Council to reiterate that NZ review its current mechanisms and ensure the Treaty of Waitangi is given full effect in NZ's constitutional arrangements.

Recommendations 23 and 24

As outlined in our submission to the UPR⁶, in recent years NZ has been hostile towards UN oversight in relation to Maori rights. Although there was a change of government last year, the current government includes politicians who were scathing of UN oversight while they were in opposition.

- We urge the Council to reiterate that NZ must act consistently with the recommendations of treaty monitoring bodies and Special Procedures.

Recommendation 29

We commend NZ on its stated commitment to address all forms of discrimination against Maori, although we have not yet seen evidence of this being put into practice. While NZ has agreed to establish a group to consider constitutional issues, there is as yet no indication of the terms of reference for the group, including whether or not its recommendations will be binding and how Maori will be involved in decisions about new constitutional arrangements.

- We urge the Council to recommend that NZ's consideration of constitutional issues must result in changes to give full effect to the Treaty of Waitangi and NZ's human rights obligations, and that Maori must be fully involved in decisions about how this can be achieved.

Recommendations 33 and 34

We note with concern NZ's rejection of the possibility that institutional bias may be a factor in the disproportionate representation of Maori in the criminal justice system. It is simply not credible that NZ is the only state in the world in which racism is not present in the criminal justice system.

- We urge the Council to remind NZ of the comments made by CERD with regard to racial bias and the administration of justice.⁷

⁵ See, for example, Rejection of Maori seats a mistake, NZ Herald, 25 August 2009 at http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=10592942

⁶ NGO Joint submission to the Universal Periodic Review of New Zealand: Indigenous Peoples' Rights and the Treaty of Waitangi, November 2008, at http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/NZ/JS3_NZL_UPR_S5_2009_PeaceMovementAotearoa_Etal_JOINT.pdf

⁷ CERD/C/NZL/CO/17, para 21

Recommendation 58

As NZ is currently considering its response to the recommendations of the Ministerial Review Panel on the Foreshore and Seabed Act, we will comment on this matter in our oral statement to the Council's twelfth session.

Recommendation 59 and 60

While we note NZ respectively accepts and agrees with these recommendations, there is no evidence of any change that will address the main concerns about the Treaty (as outlined in previous sections) nor the unfair policy and processes for settlements related to historical injustices against Maori⁸. It is difficult to understand how NZ can consider the current process to provide fair and durable redress given settlements are unjust as between iwi and hapu; and the amount allocated to settlements is miserly when compared with the value of what has been taken.

- We urge the Council to reiterate that the settlements process must be consistent with both the Treaty of Waitangi and NZ's international human rights obligations.

Recommendations 62 and 63

We note with concern NZ's belief that its anti-terrorism legislation meets the requirements of its international human rights obligations and draw the Council's attention to the Human Rights Committee's views on this⁹, and to Special Procedures' concerns about "anti-terrorist" raids¹⁰.

- We urge the Council to reiterate the requirement that all legislation and practice must be consistent with NZ's international human rights obligations.

⁸ For details, please refer to NGO Joint submission to the Universal Periodic Review of New Zealand: Indigenous Peoples' Rights and the Treaty of Waitangi, as above.

⁹ In, for example, CCPR/CO/75/NZL, para 11

¹⁰ See, for example, A/HRC/9/9/Add.1

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