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REPLIES TO THE LIST OF ISSUES (CCPR/C/NZL/Q/5) TO BE TAKEN UP IN CONNECTION WITH THE CONSIDERATION OF THE FIFTH PERIODIC REPORT OF NEW ZEALAND (CCPR/C/NZL/5)*

[24 December 2009]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

List of Issues to be taken up in connection with the consideration of the Fifth Periodic Report of New Zealand (CCPR/C/NZL/5)

New Zealand Government Response

CONSTITUTIONAL AND LEGAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED (ARTICLE 2)

Question 1.

Concrete measures to ensure consistency of legislation

The New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act') applies to other legislation in four respects. First, all Government policy proposals, including legislative proposals, are assessed for their consistency with the Bill of Rights Act. [1] Secondly, all Bills introduced into New Zealand Parliament are assessed for consistency with the Bill of Rights Act. Any Bill that appears to be inconsistent with the Bill of Rights Act is brought to the attention of the House of Representatives by the Attorney-General. It is then for Parliament to consider the Attorney-General's opinion. Thirdly, all legislation must, so far as possible, be interpreted consistently with the rights affirmed by the Bill of Rights Act. A meaning that is inconsistent with that Act will be followed only where no other reasonable meaning is available. Fourthly, all administrative decisions and all secondary legislation (including regulations and local authority bylaws) must be consistent with the Bill of Rights Act unless the inconsistency is clearly authorised by the empowering legislation.

Implementation of Covenant rights

Certain Covenant rights are not directly reflected in the Bill of Rights Act but are given effect by other legislation and by common law. For example, the Privacy Act 1993, together with the common law tort of privacy, provides for rights of personal privacy (although these are also in part addressed through the right against unreasonable search and seizure). Similarly, the Children, Young Persons and their Families Act 1989, the Care of Children Act 2004 and other related legislation give effect to the rights of families and children. These legislative provisions are complemented by the well-established principle of New Zealand law that, wherever possible, legislation is to be interpreted consistently with the Covenant and other international human rights obligations.

The prohibited grounds of discrimination in the Human Rights Act 1993 encompass sex, marital status, religious and ethical beliefs, colour, race, ethnicity, disability, age, political opinion, employment status, family status and sexual orientation, but do not expressly cover language, social origin and property, as provided for in the Covenant. The Government notes, in response to earlier queries by the Committee, that issues of discrimination involving language have fallen within race or ethnicity.

Awareness of Covenant Rights

Members of Parliament

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[1] See *Cabinet Guide* "Human Rights Implications", available at http://cabguide.cabinetoffice.govt.nz/procedures/papers/sections-in-papers

As noted above, the Bill of Rights Act provides for the provision of advice to parliamentarians on the consistency or otherwise of legislation with affirmed rights. Parliamentarians also receive public and other submissions, including submissions from the Human Rights Commission and Privacy Commissioner, among others, in respect of matters that involve human rights issues.

The Judiciary

Training of the judiciary is undertaken by the Institute of Judicial Studies. The current curriculum provides for consideration of domestic human rights legislation, such as the Bill of Rights Act, and international human rights instruments.

Mechanism to ensure full compatibility of domestic law with the Covenant

Under New Zealand's present constitutional structure, it remains open to Parliament to legislate contrary to the Bill of Rights Act and the other legislative protections set out above and so to the Covenant. In its response to the Universal Periodic Review lodged in July 2009, the New Zealand Government noted that it had agreed to consider further constitutional protection of human rights.

Question 2.

Measures taken to respond to indications of inconsistency

As advised in the State report, the New Zealand courts do, from time to time, comment on the consistency of legislation with human rights standards. The Government takes such comments seriously and does consider whether any legislation that is the subject of comment should be reviewed or amended.

For example, and as noted at paragraphs 14 to 16 of the state report, in *R v Hansen* [2007] 3 NZLR 1 the Supreme Court indicated, by a majority, that section 6(6) of the Misuse of Drugs Act 1975 was unjustifiably inconsistent with the presumption of innocence affirmed in section 25(c) of the Bill of Rights Act. Section 6(6) creates a presumption that a person possessing a certain quantity of prohibited drugs does so for the purposes of supply and sale. Soon after that decision, the Attorney-General advised the Parliament that the Misuse of Drugs (Classification of BZP) Amendment Bill, which extended the scope of the Act to a new drug, was inconsistent with section 25(c). The Attorney-General relied on the judgment of the Court in Hansen in his report. This matter has also been included in the terms of reference for a review of the Misuse of Drugs Act by the New Zealand Law Commission, an independent statutory law reform body.

Formal declarations of inconsistency

The New Zealand courts have discussed, but have not determined, whether there is a formal power to issue a declaration that legislation is inconsistent with the Bill of Rights Act. Such declarations are possible under the Human Rights Act in the context of discrimination law. One declaration has been made to date in respect of age discrimination. That decision is currently under appeal. However, once the appeals process has been exhausted, and if the declaration of inconsistency is upheld by the appellate courts, the Government is obliged to make a formal response in Parliament within four months.

Question 3.

Remedies for breach of protected rights

Paragraphs 12 to 19 of the Fourth Periodic Report describe remedies available under the Bill of Rights Act, including the ability to award damages (see also paragraphs 57 and 58 of the Fifth Periodic Report). Recent developments include affirmation by the Supreme Court of the damages remedy[2] and also of the availability of stay of prosecution as a remedy for trial delay.[3]

Judicial decisions making reference to the Covenant

In the past decade, over 2,500 decisions have referred to the Bill of Rights Act. There have been 156 decisions of the superior courts, which have referred to the Covenant, including:

- *Taunoa*, above, which cited the Covenant and decisions and General Comments of the Committee at length both in respect of the general right to a remedy under Article 2 and also more specifically in considering unacceptable prison conditions under Articles 7 and 10;
- *Hansen*, above, which cited the Covenant and the relevant General Comment in respect of derogation from rights and fair trials;
- *Hosking v Runting* [2005] 1 NZLR 1 (CA), which referred to the Covenant and to Committee General Comments and decisions in developing a tortious cause of action for breach of privacy.
- *Attorney-General v Zaoui (No 2)* [2006] 1 NZLR 289 (SC), which referred to the Covenant and Committee decisions in applying the right against non-refoulement of persons at risk under Articles 6 and 7; and
- *R v Mist* [2006] 3 NZLR 145 (SC), which referred to the Covenant and Committee dicta in respect of the non-retroactive application of sentencing law.

Question 4.

New Zealand has provided a detailed response to the views of the Committee.[4] For the reasons given there, the Government does not agree with the Committee's conclusion that undue delay occurred in Police and other investigations.

It is important to note that only 5-6% of Family Court cases require a defended hearing, with the vast majority of cases either settled privately or during or after counselling. Cases requiring a defended hearing are often the most complex of cases, where parties have deeply entrenched views or there are serious allegations of violence or abuse. The Government is committed to improving the efficiency of the Family Court and the remainder of this response outlines efforts to reduce delay.

Parenting Hearings Programme

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[2] See, most recently, *Taunoa v Attorney-General* [2008] 1 NZLR 429 (SC).

[3] See *Williams v R* [2009] 2 NZLR 750 (SC).

[4] http://www.justice.govt.nz/publications/global-publications/n/new-zealand-response-to-the-views-of-the-united-nations-human-rights-committee-communication-no-1368-2005/publication

The Government's response to the views of the Committee noted that the pilot of the Parental Hearing Programme was one way New Zealand is trying to reduce delay in the Family Court. The Parenting Hearings Programme aimed to be less adversarial and to assist parents to identify and address the issues that are relevant to their children's needs and best interests. However, the evaluation of the pilot found that, although cases under the pilot settled more speedily than other proceedings, they returned to court at a higher rate than other cases. The Parental Hearing approach may be appropriate in some cases, but it appears that some arrangements were reached too quickly and were not enduring.

Family Court Caseflow Analysis

The Ministry of Justice is currently undertaking an analysis of case-flow in the Family Court. The analysis will enable the Ministry to identify key areas of delay, determine the underlying causes for delays and develop changes in practice. The analysis will initially focus on applications made under the Care of Children Act 2004 as these make up the highest volume of applications to the Court.

Family Court Rules Committee

The Family Court Rules Committee consists of the Ministry of Justice, Family Court Judges (including the Principal Family Court Judge), Family Law Section of the New Zealand Law Society and the Parliamentary Council Office (which has responsibility for drafting legislation). The Committee has responsibility for reviewing Family Court rules to reduce delay. For example, it recently amended the Family Court rules to enable judges to make decisions earlier in proceedings where counsel have failed to take agreed steps or have failed to appear.

Other Ways of Reducing Delay

There are other measures that the Ministry of Justice is considering in order to reduce delays, including electronic filing of court documents and the use of remote audio-visual links if participants do not need to be physically present in court.

Question 5.

Limitations on the award of compensation

Under the Prisoners' and Victims' Claims Act 2005 ('the Act'), prisoners who have suffered a breach of their rights remain entitled to receive an effective remedy. However, the Act establishes preconditions for courts dealing with claims for compensation by persons under the control of supervision of the State (prisoners). The Act provides that compensation may only be awarded where:

- the prisoner has made reasonable use of all available internal and external complaints mechanisms to complain about the alleged breach, but has not received effective redress; and
- another remedy, or combination of remedies cannot provide effective redress.

Neither limit precludes an award of compensation where it is necessary in order to provide an effective remedy.

Procedure when compensation is awarded

When compensation is awarded, the Act sets a priority order for the use of that money, and provides a simplified special claims procedure for victims of the prisoner's offences to make civil claims against that compensation. The compensation must be paid to the Secretary for Justice, who first uses the money to pay any legal aid debts, fines or outstanding reparations owed by the offender. The surplus is then paid into a trust account.

Victims of offences by the prisoner are notified when money is paid into the trust account. Victims have six months to bring a claim against the money. Claims are decided by a Victims' Special Claims Tribunal, which, if a claim is upheld, orders a payment from the trust account. The balance of the trust account payment is returned to the prisoner once any victims' claims have been determined.

The effect of these provisions is that a prisoner who is awarded compensation may be prevented from receiving some or all of the amount awarded and, in any event, the payment of compensation will be delayed.

The deduction of amounts from compensation is consistent with the right to an effective remedy. The fact that a prisoner may not receive the benefit of some or all of a judgment sum because it is used to discharge his or her debts or other liabilities does not render the judgment ineffectual as a vindication of the right breached. The delay in payment is limited to what is reasonably necessary to enable a victim to seek civil redress for the damages suffered as a result of the prisoner's offending.

Question 6.

Paragraphs 82 to 88 of the state report address the development of the New Zealand Action Plan for Human Rights (NZAPHR) as well as the Government response. In July 2007, the Government directed government agencies to consider the priorities for action contained in the NZAPHR as part of their normal business. Departments are expected both to respond to requests from the HRC for relevant information in a timely manner and to identify work meeting the NZAPHR priorities in their Statements of Intent, Annual Reports, and other organisational documents. The aim is continuing dialogue between the HRC and government departments.

In 2008, the Commission conducted a "mid-term" review of progress in achieving the priorities identified in the NZAPHR. The Commission noted that significant challenges remain to fully realising human rights for everyone in New Zealand; however it also identified a wide range of achievements, including:

- actions to reduce violence against children & young people including the replacement of section 59 of the Crimes Act (which allowed the use of reasonable force for the purposes of correction);
- action to reduce poverty including increases in the minimum wage;
- introduction of paid parental leave;
- ratification of the Convention on the Rights of Persons with Disabilities;
- recognition of New Zealand Sign Language as an official language;
- ratification of the Optional Protocol to the Convention against Torture providing for preventive visits to all places of detention; and

- greater recognition of the right to equality of gay, lesbian, bisexual and transgender people including the Civil Union Act 2005.

The Commission has also expressed concern at the length of time it took the Government to respond and has signalled its intention to comprehensively update its review of Human Rights in New Zealand Today with a view to publishing a second Action Plan for 2011-2015. The Commission has welcomed the identification of major human rights priorities by the Ministry of Justice for its future program.

COUNTER-TERRORISM MEASURES AND RESPECT OF COVENANT GUARANTEES

Question 7.

New Zealand is required to balance international legal obligations, including those relating to both the protection of human rights, and those responding to terrorism. In particular, New Zealand is obliged under the UN Charter to give effect to mandatory resolutions adopted by the UN Security Council under Chapter VII of the Charter. Two key Chapter VII resolutions (UNSCR 1267 and UNSCR 1373) impose specific obligations on UN member states to take action against individuals and organisations involved in terrorism.

The Terrorism Suppression Act 2002 contains the framework allowing for designation of terrorist entities. It has been amended several times, most recently in 2007. The primary purpose of the Terrorism Suppression Amendment Act 2007 ('the Amendment Act') was to ensure New Zealand's compliance with its obligations under UNSCR 1267 and 1373. Under the Amendment Act, individuals and entities on the UNSCR 1267 list are automatically designated as terrorist entities under New Zealand law. The Amendment Act also provides for such designations to remain in force until such time as the individuals and entities are removed from the UN list.

The Terrorism Suppression Act also contains the framework for New Zealand to make its own terrorist designations. The power to make designations lies with the Prime Minister. Any designation decision made by the Prime Minister remains subject to judicial review.

The Amendment Act provides for the Prime Minister to review each non-UN list designation at three-yearly intervals. In undertaking the review, the Prime Minister must apply the same test as for the original designation. Furthermore, to ensure transparency in the exercise of the Prime Minister's powers, a new section 35(3A) was added, which requires the Prime Minister to report to Parliament's Intelligence and Security Committee on the renewal of any non UN list designation.

Although the Terrorism Suppression Act allows New Zealand to make its own terrorist designations, as at 1 December 2009 it has not yet done so. The entities currently designated under the Act are therefore those found on the UN 1267 list.

Question 8.

The Police "Operation 8" investigation undertaken in October 2007 did not involve any derogation of rights under Article 4 of the Covenant. While the Police investigations concerned

potentially very serious criminal offending and so required, for example, the involvement of specifically trained armed Police officers, the Police investigation and subsequent proceedings were all subject to normal legal and other requirements.

The New Zealand Government cannot comment in detail while court proceedings and independent investigations are still underway; however, it can provide an update on the status of those proceedings.

Court Proceedings

Those facing charges under the Arms Act will be accorded all fair trial rights, in accordance with international human rights obligations. The hearing of the charges will involve careful scrutiny of the evidence of the activities alleged by the Police. It will be also be open to those charged to challenge the lawfulness, including the consistency with human rights obligations, of the actions of Police in conducting the investigation, searches and arrests.

Also, the conduct of the investigation, searches and arrests in the Ruatoki area have been the subject of a claim for compensation and other redress by people said to have been unlawfully treated or otherwise adversely affected. Lawyers representing a number of such people have indicated that civil proceedings for compensation and other remedies may be pursued in the courts. The claim may include claims under civil law and under the Bill of Rights Act. In any case, these proceedings will, again, involve scrutiny of the lawfulness and reasonableness of the actions of the Police.

Complaints to Independent Bodies

In addition to court proceedings, the actions of the Police have also been the subject of claims or complaints to two independent official bodies:

First, the Independent Police Conduct Authority is conducting an investigation into any misconduct or neglect of duty on the part of the Police, including in response to complaints made by lawyers acting for people in the Ruatoki area and by others. Secondly, the Human Rights Commission has received a number of complaints under the Human Rights Act alleging discrimination and other breaches of human rights standards and is able to conduct investigations and/or assist claimants in seeking to resolve the complaints. The complaints can, in turn, pursued as civil proceedings before the Human Rights Review Tribunal.

Police Engagement with Ruatoki Community

There is ongoing engagement by the Commissioner of Police and the wider New Zealand Police with Iwi on the operation and the surrounding issues. Any unintended negative consequences of these operational requirements on the wider community are being addressed through that engagement. The process was agreed to by both parties.

PRINCIPLE OF NON-DISCRIMINATION (ARTICLES 2 AND 26)

Question 9.

In March 2009, the Government established a panel to review the Foreshore and Seabed Act 2004 ("the Act"). The terms of reference for the review sought independent advice on matters including:

a. whether the Act effectively recognises and provides for customary or aboriginal title and public interests (including Māori, local government and business) in the coastal marine area; and

b. if the Panel has reservations that the Act does not provide for the above, outline options on the most workable and efficient methods for recognising and providing for customary and public interests in the foreshore and seabed.

The terms of reference required the Panel to undertake consultation with Māori and the general public through a series of public meetings and to receive written submissions.

As part of the public consultation process the Panel met with 30 nationally significant interest groups and all of the Māori groups who had been in foreshore and seabed negotiations with the government prior to the announcement of the review. The Panel also travelled nationwide and held 21 public meetings where they received written and oral submissions from the public.

The Panel received 580 written and oral submissions from the public.

After undertaking this consultation process, the Panel presented their report to the government on 30 June 2009. The Panel's report stated that the Act should be repealed and the process of balancing Māori property rights in the foreshore and seabed with public rights and expectations should be started again. The Panel also recommended that the Government undertake further public consultation in order to identify an alternative foreshore and seabed regime.

On 2 November 2009, the Government announced that it is likely that the Foreshore and Seabed Act would be repealed. No decisions have been made about what will replace it.

Question 10.

Measures to protect immigrants, asylum seekers and refugees from all forms of racial stereotyping and discrimination have been taken by the Department of Labour, Police and the Office of Ethnic Affairs.

Department of Labour

The Government has implemented the New Zealand Settlement Strategy since 2004. The strategy is a whole-of-government approach, led by the Department of Labour, with a number of initiatives to support newcomers to settle and integrate into New Zealand. The strategy also has initiatives to make newcomers feel safe expressing their ethnic identity and be accepted by and become part of the wider host community. The Department's engagement with the settlement of newcomers is founded on the Government's immigration policies. These strategies are focused on collaborative and inclusive interventions to support newcomers.

Police

Police recruits receive training on dealing with racially motivated crime. In February 2005, the New Zealand Police launched the Ethnic Strategy for working together with ethnic communities. One of the objectives of the strategy is to improve Police knowledge and skills in working with ethnic people in a culturally appropriate way so that Police are trusted by communities. The trust

and relationships help Police understand the dynamics of racial discrimination and deter violence motivated by racism, racial discrimination and related intolerance. Measures taken to implement the strategy include:

- specific emphasis on recruitment of police from ethnic communities;
- publication of a police guide to religious diversity;
- publication of a multilingual phrase book for frontline police;
- establishment of a multilingual website for ethnic communities;
- appointment of Asian liaison officers; and
- the introduction of the Police Sikh uniform to accommodate Sikh background police members.

Office of Ethnic Affairs

The Office of Ethnic Affairs was established in 2001 to raise awareness about New Zealand's ethnically and culturally diverse communities and their contributions to New Zealand; promoting intercultural understanding, respect for differences and connections between communities and enabling diverse ethnic communities to participate fully in all aspects of New Zealand life.

Question 11. .

The New Zealand Government does not have targets for improving the representation of women in political and public life, the Judiciary or senior positions in the public service.

However, increasing the number of women in public and private sector boards is one of the priorities for the Minister of Women's Affairs. The Ministry of Women's Affairs supports the Minister by providing policy advice and recommends suitably qualified women for positions on state sector boards through its nominations service. The Ministry of Women's Affairs compiles an annual stock-take of women's representation on state sector boards and committees. In December 2008, the number of women on the existing 411 Statutory Boards stood at 1153 (42.3%) out of a total of 2723.

Following the recent appointment round in October 2009, the percentage of women serving on Boards of State-owned Enterprises increased from 33% to 35%. This included the appointment of two women to Chair positions in two of the largest companies (Rt Hon Dame Jenny Shipley to Genesis Power Ltd and Joan Withers to Mighty River Power).

New Zealand is obligated to encourage the participation of women in political and public life on equal terms with men under Article 7 of the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW). The most recent statistics show:

- representation of women on district health boards has increased slightly. An increase of 1.34% puts women's representation at 43.4% in 2007;[5]
- less than a quarter (23%) of public service chief executives are female despite the high proportion (59%) of women employed in the state sector. Women continue to be under-

[5] *New Zealand Census of Women's Participation, 2008*, Human Rights Commission

represented at senior levels, with 38% of senior managers in the public service being women;[6]

- women make up 41.5% of ministerial appointees on state sector boards and committees as at December 2007; and
- women leaders remain scarce in the private sector with women making up 8.65% of board members of NZSX Top 100 companies in 2007.[7]

Data from New Zealand's Quarterly Employment Survey shows that between 1989 and 2008 there has been a relatively constant gap between the median hourly earnings for males, compared with the median hourly earnings for females. Female median hourly earnings are 88.7% of male earnings (June 2008).

Following the 2008 general election, women make up 41 out of 122 current Members of Parliament. Six of the 20 current Cabinet Ministers (eight of the 28 Ministers of the Crown) are women, including New Zealand's first Asian woman Minister. Women have also been appointed to traditionally male ministerial portfolios (e.g. the Minister of Police).

The current Chief Justice is a woman; however, there are no other women in the five-member Supreme Court. As at December 2007, two out of the nine Court of Appeal Judges (22%) were women and there were 33 High Court Judges, of whom seven (21%) were women. There were 135 District Court Judges of whom 37 (27%) were women. These figures include Environment Court, Family Court and Youth Court Judges, and the Chief Coroner. There were 45 District Court Judges who hold Family Court warrants, of whom 17 (38%) were female.

Question 12.

Outcomes of the Taskforce for Action on Sexual Violence

The Taskforce for Action on Sexual Violence (the Taskforce) was established in 2007 for a two year period to identify the actions required to better prevent and respond to sexual violence in New Zealand. The Taskforce reported to the New Zealand Government on 31 July 2009 in the form of a final report. The Taskforce report is publicly available on the Taskforce website.[8]

The Taskforce comprised 10 government agencies and representatives from the sexual violence community sector. A key outcome from the Taskforce has been the formation of a strong collaborative relationship between government and the community sector.

Over twenty projects were undertaken across the six priority areas set out in the Taskforce Terms of Reference:

- prevention strategies and services incorporating attitudinal change and education;
- early intervention and response to acute and chronic sexual abuse and assault;

[6] Ibid
[7] Ibid
[8] http://www.justice.govt.nz/sexual-violence-taskforce

- recovery and support services for those who have experienced sexual violence;
- treatment and management of offenders aiming to reduce re-offending and increase community safety;
- the effectiveness of the criminal justice system responses to sexual offending (including reporting, investigation, legislation, evidential procedures, prosecution and conviction); and
- the responsiveness of the justice system to victims and improving outcomes for victims.

Research was undertaken to develop a clearer picture of the sexual violence related services and initiatives being delivered in New Zealand and to identify where improvements could be made. This work has facilitated the gathering of evidence to inform policy development and decision-making in the area of sexual violence.

The report completed the work of the Taskforce and included recommendations on future action in the areas of prevention, services for victims and offenders and the criminal justice system. Recommendations were also made for continued leadership and governance across the government and community sectors.

The Government is now carefully considering the report and work is being undertaken across the education, health, social and justice sector agencies to analyse the recommendations and to develop a formal response to the report. This work is expected to be completed in the first quarter of 2010.

Sexual Violence Legislation

New Zealand's sexual violence-related legislation was considered through the work of the Taskforce. A discussion document *'Improvements to Sexual Violence Legislation'* was released in August 2008. The discussion paper sought views on three proposed changes to the Crimes Act 1961 and the Evidence Act 2006:

- whether the law of consent should include a definition of consent;
- whether the court should be required to take into account any steps the defendant took to discover whether the complainant was consenting when a defence of reasonable belief in consent is raised; and
- whether the law that protects complainants from being questioned about their sexual history (the rape shield) should be extended to questions about their sexual history with the defendant.

The proposed amendments are intended to:

- provide a fairer balance of rights and protections for both defendants and complainants in these types of cases;
- allow for more effective resolution and recovery for victims;
- send an important message about what society and the law deems as acceptable standards of behaviour and emphasise that reasonable care must be taken to ascertain that consent is present; and
- increase trust and confidence in the criminal justice system and the way it deals with cases of sexual violence and ultimately improve reporting and conviction rates for sexual offences.

The discussion document was provided to over 400 individuals and organisations with an interest in sexual violence-related law, the criminal justice process and advocacy for women victims of violence. Views on the proposed legislative amendments were specifically sought from the Human Rights Commission and Amnesty International Aotearoa New Zealand. Both organisations support the proposed amendments.

Seventy-six submissions were received in total. There was majority support from submitters for the legislative amendments. Sixty-five submitters provided views on the proposed legislative changes, 44 of which supported all three proposals, 11 supported some of the proposals (or support at least one but gave no indication of support or opposition to the others), and 10 opposed all three.

In recognition of the impact on victims of the adversarial nature of the criminal justice system, the discussion document also sought views on alternative approaches to addressing sexual violence such as restorative justice and specialist prosecution units. Strong support was received in submissions for exploring alternative approaches and measures to address the specific needs victims of sexual violence. The Minister of Justice has subsequently invited the New Zealand Law Commission to undertake work on alternative approaches in 2010.

RIGHT TO LIFE AND PROHIBITION OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT AND TREATMENT OF PRISONERS (ARTICLES 6, 7 & 10)

Question 13.

Access to Judicial Review for persons detained on mental health grounds

Section 16 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 ('the Act') allows patients or other specified persons[9] to apply for a judicial review of their condition prior to the determination of a compulsory treatment order. The patient's responsible clinician must notify the patient and specified persons of their right to apply to the Court for a review of the patient's condition. Further, the courts must in any case review continuing detention on a periodic basis.

[9] Specified persons who can apply for judicial review are: any welfare guardian of the patient, the applicant for assessment, the patient's principal caregiver, the medical practitioner who usually attended the patient immediately before the patient was required to undergo assessment and treatment under this Part of this Act, a district inspector or an official visitor.

Consistency of inspection systems with United Nations Principles

The Minister of Health appoints district inspectors (legal professionals who are employed as mental health ombudsmen). Every district inspector and official visitor must visit each of the local hospitals and services. Inpatient services must be visited at least once a month and outpatient services visited at least four times a year at regular intervals and when the Director of Mental Health directs.

Patients have the right to make a complaint about an alleged breach of their rights. If the district inspector or official visitor is satisfied that the complaint has substance, they must report the matter to the Director of Area Mental Health Services, together with such recommendations as they see fit. If the patient or other complainant is not satisfied with the outcome of the complaint to the district inspector or the official visitor, he or she may refer the case to the Review Tribunal for further investigation.

In New Zealand, the Ombudsmen are designated as a National Preventive Mechanism under the Crimes of Torture Act 1989 for the purposes of examining and monitoring the conditions of detention and the treatment of detainees in health and disability places of detention including mental health services. The Ombudsmen can make recommendations for improving the conditions of detention, the treatment of detainees or for preventing torture and other cruel, inhuman or degrading treatment or punishment in places of detention.

Addressing number of persons with mental health problems in prisons

The mental health of all prisoners is assessed by a registered nurse during their first 24 hours in prison. Prisoners identified as having a primary mental health need may be referred to the prison Medical Officer, provided with appropriate medication, education and support. They are referred to forensic psychiatric services including in-patient services, if required.

Prisoners assessed as being at risk of self harm or suicide are placed in an At Risk Unit and a management plan is developed. All prisoners identified with serious mental health needs are referred to the relevant District Health Board Regional Forensic Psychiatry Service for further assessment and treatment. Secondary level services for severe mental illness are provided either in prison or in secure inpatient care by the Regional Forensic Psychiatry Service.

The Ministry of Health has regularly reviewed forensic services to improve regional collaboration and co-ordination with other agencies. Work is ongoing to continue to develop comprehensive, multidisciplinary forensic services that are responsive to the needs of forensic populations. The Ministry of Health is also working on developing pathways to recovery for people who are able to transition from forensic mental health services to primary mental health care (in prison) and general mental health services (in the community).

Funding for additional forensic staff to liaise with general mental health services was approved in the 2008 Budget. Further funding from the 2009 Budget may also be allocated to forensic services.

Question 14.

Adjusted for population, Māori have remained approximately seven times overrepresented in the prison population over the last 18 years. Māori women make up nearly 60% of the female prison population; however, it is important to note that women make up a very small proportion of the

total prison population (480 out of a total population of 8, 379).[10] Recent Government action is targeted at addressing the underlying causes of offending, which effect both men and women.

Drivers of Crime

In April 2009, the Minister of Justice and Minister of Māori Affairs jointly hosted a Ministerial Meeting on the "Drivers of Crime". The meeting bought together a wide cross-section of groups involved in the criminal justice sector, including representatives of government and non-government agencies, Māori leaders, judges, police, academics, church leaders, and Members of Parliament from across the political spectrum.

The meeting signalled a change in emphasis, toward preventing crime from occurring in the first place, rather than focussing on the effects of crime. The Government recognises that the drivers of crime are complex, inter-generational, and require early intervention. Many of the tools to address the drivers of crime are in other sectors, such as health, education, parenting support, housing, recreation, and economic, social and community development. The Government also recognises that Māori community-based approaches and initiatives are an important element of preventing offending and victimisation.

On 17 December 2009, the Government announced four priority areas for addressing the drivers of crime:

- antenatal, maternity, and early parenting support;
- programmes to address behavioural problems in young children;
- reducing the harm caused by alcohol; and
- alternative approaches to managing low-level offenders, and offering pathways out of offending.

The focus in these areas is on improving services for those at risk of being offenders or victims, and their families. Addressing the drivers of crime for Māori will be a priority in all aspects of the work.

While at this stage no specific targets or timelines have been set for reducing the relatively high proportion of Māori in prison, the Drivers of Crime work programme will involve development of measures of effectiveness of interventions for Māori including reducing recidivism and the prison population.

Department of Corrections

The Department of Corrections established a Māori Services Team in January 2009 and is in the process of strengthening reintegration opportunities for offenders completing their sentences. In addition, the Department provides a number of programmes and services specifically aimed at reducing re-offending through the use of tikanga Māori (customary Māori) concepts and values. These programmes and services include:

[10] As at 6 December 2009.

Specialist Māori Cultural Assessment: This is a motivational assessment (undertaken by independent assessors) that identifies the cultural needs and strengths of Māori offenders. It is a pilot initiative that currently operates in Waikato and Auckland only. An evaluation indicated that the assessment has positive results in motivating offenders to strengthen their cultural identity, and to address their offending. The Department is investigating ways in which it can be better integrated into sentence management.

Tikanga Māori Programmes: These programmes are tailored for all offenders who identify as Māori and have been sentenced to imprisonment, supervision, intensive supervision, home detention, and release on conditions, parole, and community work. They use customary concepts and values to equip participants with a willingness and motivation to address their rehabilitation, specifically focusing on their offending behaviour. An evaluation undertaken during 2007/08 found moderate improvements across assessed participant responses. Improvements were either still evident or had increased at three months after course completion.

Māori Therapeutic Programmes: The Māori Therapeutic Programmes are tailored specifically for Māori male high-risk offenders. They are based on cognitive behavioural therapy integrated with tikanga Māori and are delivered in the Department's five Māori Focus Units and the Northland Region Corrections Facility. An evaluation of these programmes was completed early in 2009 in conjunction with an evaluation of Māori Focus Units (see below).

Māori Focus Units: Five 60-bed Māori Focus Units for male prisoners use tikanga Māori to motivate and rehabilitate prisoners within a therapeutic community in a custodial environment. Corrections staff work closely with hapū (larger extended family) and iwi (tribe) programme providers to support prisoners in working towards a responsible and pro-social life in the community. An evaluation of these units has just been completed in conjunction with an evaluation of Māori Therapeutic Programmes. The evaluation shows that participants acquire new knowledge in relation to tikanga Māori and are displaying positive change in terms of attitudes and beliefs related to criminal lifestyles. The evaluation also found small positive changes in terms of reconvictions and re-imprisonments rates.

Whānau Liaison Workers: There is a Whānau Liaison Worker attached to each Māori Focus Unit. They play a critical role in establishing links between prisoners, their whānau (family), hapū, iwi (tribe), and the local Māori community prior to release. Whānau Liaison Workers work directly with an offender's whānau by putting in place strategies to resolve or manage identified reintegrative issues.

Kaitiaki: Kaitiaki (Guardians) are Māori groups from the areas in which four new regional corrections facilities have been established. Kaitiaki are contracted to ensure that effective and responsive services are provided to Māori prisoners. Kaitiaki are actively involved in supporting the reception, rehabilitation and reintegration of Māori prisoners, including the involvement of prisoners' families. Kaitiaki also take part in the recruitment and training of staff.

Kowhiritanga: The Kowhiritanga (making choices) programme is designed to help women offenders examine the causes of their offending and develop specific skills to prevent them re-offending. The programme is based on Western therapies and is designed to be responsive to Māori women.

Question 15. .

The Corrections (Contract Management of Prisons) Amendment Act 2009 was passed in November 2009. There are a number of different ways in which the Act protects the rights of prisoners held at prisons managed under contract:

The principles and purpose of the Corrections Act 2004

The Act amends the Corrections Act 2004 and as a result the provisions regarding prisons managed under contract are governed by the purpose and principles set out in sections 5 and 6 of that Act:

- Offenders remain within the legal custody of the Chief Executive at all times (he Chief Executive is ultimately accountable for everything that happens to prisoners during their incarceration, whether in a public prison or in a prison managed under contract); and

- Public safety and safe, secure, humane and effective containment remain the paramount considerations in decisions about the management of offenders.

Certain matters must be included in the contract

The Act says that certain matters *must* be included in the prison management contract. These include:

- the requirement to comply with all relevant international obligations and standards and significant domestic law including the Human Rights Act and the Bill of Rights Act;
- the appointment and training of suitable managers and staff; and
- the provision of rehabilitation and reintegration programmes and initiatives to provide employment and skills development for prisoners;

Failure to comply adequately with any of the required terms would give the Chief Executive authority to terminate the contract.

Reporting Obligations

The contractor must regularly report on a number of matters, including all prisoner complaints and how they were resolved, all incidents of violence or self-harm and all disciplinary proceedings taken against prisoners or staff, including the reasons and the outcomes.

The contractor must also regularly report on the rehabilitative programmes provided, along with rates of attendance and completion, and the operation of all random drug testing programmes in the prison.

In addition, whenever there is an escape or attempted escape, or a death in custody, the contractor must provide a prompt written report to the Chief Executive and to the prison monitor.

Prison Monitors

As a part of its compliance framework, the Act establishes the role of prison monitors. They are resident within each contract managed prison and oversee compliance with the terms of the contract. The Act provides for general prison monitors who must report to the Chief Executive at least every four months. They may make any recommendations to the Chief Executive on any

matter at any time. The Chief Executive may also appoint specialist prison monitors to undertake special investigations. Monitors are accountable to the Chief Executive and have free and unfettered access to all parts of the contract prison, its prisoners, records and working staff at all times.

Independent oversight by the Ombudsman

The Ombudsmen is the National Preventive Mechanism for prisons under the Optional Protocol to the Convention Against Torture. The Ombudsmen will have independent oversight of all prisons managed under contract, and all prisoners have guaranteed rights of access to the Ombudsmen if they wish to raise any complaint. Information held by contract managed prisons will be accessible to the public in the same way as information held by the Department.

Question 16.

Police Trial of Tasers

Between 1 September 2006 and 12 August 2007 New Zealand Police trialed the use of the taser weapon in New Zealand. A comprehensive evaluation report of the taser trial, entitled Operational Evaluation of the New Zealand Taser Trial was published in August 2008.[11]

During the trial period, 128 incident reports involving the taser were submitted by staff and the taser was discharged on 19 occasions. The majority of discharges were for violent offending such as intimidation, threats and family violence. On each occasion the person was assessed afterwards by a medical practitioner. No serious injuries were recorded as a consequence of the discharge of the taser. The report concluded that the deployment of the taser at the incidents was successful.

Re-introduction of Tasers

Tasers have now been reintroduced to those districts involved in the trial and will be introduced to other districts in 2010. Police will have 681 operational tasers nationally. Tasers will not be routinely carried and only trained and certified staff are allowed to use them, and such use must be in accordance with stringent operational guidelines (outlined below).

Each taser will also be equipped with a camera that automatically records audio and video of an incident. Furthermore, after using any tactical option, staff are required to complete a detailed tactical options report outlining the nature of the event and use. This information is incorporated within a tactical options reporting database.

Following the re-introduction of tasers, the Police have continued to monitor the deployment and their use at regular intervals. During the first six months of reintroduction, tasers were deployed 45 times (vs 67 times during the first 6 months of the trial) while they were discharged 5 times (vs 19 times during the first six months of the trial).

Due to the low frequency of taser use, it is difficult to detect trends on ethnic or gender make up of subjects. Of the eight people upon whom tasers were deployed during the first 9 months of reintroduction, 4 were Māori, 2 Pacific People and 2 Europeans. All subjects were male. In all

[11] http://www.police.govt.nz/resources/2008/operational-evaluation-of-nz-taser-trial/operational-evaluation-of-nz-taser-trial-2008.pdf

cases, police believed that the subject was armed and in 7 of 8 cases the subject used a weapon. Reporting on taser incidents does not include assessment of long term effects. In only one case were any immediate injuries observed (a minor barb wound).

General guidelines

Constables can only carry a taser if they are qualified and trained to use it, when their perceived cumulative assessment of a situation is that it is necessary; and with the approval of a supervisor above the level of sergeant.

To use a taser, Constables must have an honest belief that the subject is capable of carrying out the threat posed. Constables may then only apply a taser where a less forceful means would not be sufficient to:

- defend themselves or others from physical injury;
- arrest or prevent the escape of an offender if they believe on reasonable grounds that the offender poses a threat of physical injury;
- resolve an incident where a person is likely to physically injure themselves; or
- deter attacking animals.

The Police Instructions outline restrictions to the use of tasers:

- they are not to be used against people offering only passive resistance
- they must not be carried by Constables policing demonstrations;
- they must not be used where the subject is believed to be doused with or close to an accelerant or explosives; and
- they should not be used against females known to be or expected to be pregnant, except as a last resort;

The taser is one of a number of police use of force options and its use must be reasonable, proportionate, and necessary in the circumstances. Under no circumstances is the device to be used to induce compliance of an uncooperative but otherwise non-aggressive person. Police employees are individually criminally responsible for the use of any excess force during the course of their duties. They may also be subject to internal disciplinary action for any excess use of force.

A tactical options report must be completed in all cases where a taser is deployed.

Care after Taser use and caution about rights

Where a person is exposed to the application of a taser in the operational environment, the deploying member must ensure that the individual is provided with the appropriate level of care and is constantly monitored until examined by a medical practitioner. The caution about a person's rights must be repeated after the person has sufficiently recovered from the effects of a taser application, and when they are capable of understanding the statement.

TRAFFICKING IN PERSONS (ARTICLE 8)

Question 17.

In July 2009 the New Zealand Government released its Plan of Action to Prevent People Trafficking (Plan of Action) to meet its international obligations and commitments under the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. The plan sets out a range of work for government agencies to complete in the short, medium and long term, with a specific focus on preventing trafficking, protecting victims and prosecuting offenders. In brief the work focuses on implementing training and raising awareness of people trafficking; developing policies to deliver comprehensive support and assistance to any identified trafficking victims; and implementing measures to empower victims to participate in the criminal justice process against their traffickers. A full overview of the Plan of Action, including details of action items, is available at http://www.dol.govt.nz/publications/research/people-trafficking/index.asp.

The development of the Plan of Action was informed by submissions received during public consultation in 2008 and by research on international best practice. It represents a formalised response to trafficking and equips New Zealand with the tools to help the fight against this international crime. It also assists the Government to prepare for any cases that may arise, in a coordinated and transparent manner.

The Plan of Action is co-ordinated by the Department of Labour (the Department) on behalf of the Inter-agency Working Group (IWG) on People Trafficking. The IWG comprises the Department of Prime Minister and Cabinet, the Ministries of Foreign Affairs and Trade, Justice, Social Development, Women's Affairs, Health, the New Zealand Police and the New Zealand Customs Service.

Given that the Plan of Action has been newly released, New Zealand is in the early stages of implementation. The IWG will continue to convene to discuss and monitor the implementation of the Plan of Action. The IWG meetings will be a tool to evaluate the Plan of Action, as well as an opportunity for information-sharing and inter-agency consultation. New Zealand has yet to prosecute or detect a case of people trafficking. Should a victim of trafficking be identified, the IWG meetings will also provide an opportunity to assess the victim support programme under the Plan of Action. The Department will record each case and inform the Minister of Immigration immediately should any cases arise. More formalised measures to record and document any cases of people trafficking are being developed. The Department will also compile an annual report on progress for the Minister of Immigration.

RIGHTS OF ALIENS (ARTICLE 13)

Question 18.

The "screening process" refers to a risk targeting programme used by the Department of Labour to identify persons who present a risk and those who do not meet immigration requirements, prior to boarding a plane to New Zealand. In utilising over 10 different profiling systems, some of which provide advance passenger information, the Department aims to ensure only authorised persons travel to New Zealand. The systems are not designed to impede or circumvent the asylum and protection process. Rather they facilitate efficient and effective processing of all passengers on entry to, and through, New Zealand.

The risk profiles utilised are generic and non-discriminatory. They are informed through the analysis of trends, inter-agency information sharing, intelligence gathering and international

research. They do not prejudice particular foreign nationals or identify passengers who are potential asylum claimants. This is because the focus is on security and bona fides. Where there is opportunity and depending on the nature of the interaction, persons prevented from travelling to New Zealand through the screening process may be advised to contact the nearest office of the UNHCR if they are seeking to claim asylum.

New Zealand takes care in meeting its non-refoulement obligations. For example, a person may, at any time, claim asylum in New Zealand with the right to have that claim heard. The Department also undertakes humanitarian interviews in New Zealand prior to the proposed removal of each foreign national. This provides a mechanism to ensure that New Zealand does not contravene international requirements around non-refoulement, ensuring a person who is in New Zealand and who is owed New Zealand's protection, receives it.

RIGHT TO A FAIR TRIAL AND EQUALITY BEFORE THE LAW (ARTICLES 14 & 26)

Question 19.

Drug Possession

As noted above, the review referred to in paragraphs 14 to 16 of the State report is being conducted by the New Zealand Law Commission. The Law Commission is an independent organisation which reviews areas of the law that need updating, reforming or developing. Final reports of the Law Commission are tabled in Parliament and the Government is required to respond to any recommendations within six months.

The Government has asked the Law Commission to undertake a first principles review of the Misuse of Drugs Act 1975. The terms of reference for the review require the Law Commission to make proposals for a new legislative regime consistent with New Zealand's international obligations concerning illegal and other drugs. The terms of reference also explicitly require the Law Commission to consider whether to retain the existing statutory presumption that possession above a certain amount is proof of an intent to supply.

The Commission is expected to release a public discussion document seeking views from the public about a new regime for illegal and other drugs shortly.

Terrorism

The Terrorism Suppression Act 2002 does not contain any provisions which reverse the burden of proof. While some of the offence provisions use the term "without lawful justification or reasonable excuse", the prosecution is first required to establish that the accused person acted "willfully" with "intention" or "knowledge" in relation to the core elements of the offence.

RIGHT TO PRIVACY, FREEDOM OF SPEECH AND FREEDOM OF ASSOCIATION (ARTICLES 17, 19 & 21)

Question 20.

On 10 February 2009, the Attorney-General tabled a report under section 7 of the Bill of Rights Act stating that the Criminal Investigations (Bodily Samples) Amendment Bill appeared to be inconsistent with the right against unreasonable search and seizure in section 21 of the Bill of Rights Act. In particular, he considered that the Bill did not provide a sufficiently specific basis for the taking of samples or require prior independent approval of the taking of the sample.

The Attorney-General's concerns will be partly addressed by the development of operational guidelines for Police to follow when exercising the powers conferred on them by the Bill. These guidelines use statistical modelling to prescribe criteria that can be used to identify which individuals are most likely to provide samples that match with an unsolved crime scene. They provide that Police officers can choose to take a sample if the particular circumstances or nature of the current offence, or of the particular suspect, give the officer reasonable grounds to suspect that:

- the individual has committed other offending; and
- the other suspected offending is the type of offending where DNA evidence would be relevant.

A number of other measures in the Bill minimise its intrusion on individuals' rights:

- new criminal offences penalising the misuse of DNA profile information, which will complement existing legal remedies under the Bill of Rights Act and the Privacy Act;
- mandatory time limits for the retention of profiles;
- retention of limited DNA profile information only, rather than a full DNA profile containing all the material determining a person's genetic makeup; and
- deletion of profile information on acquittal or discontinuance of proceedings;

Question 21.

The decision of the High Court in *Police v Beggs* [1999] 3 NZLR 615 affirmed and, in finding for the claimants, relied upon the rights of assembly and expression. The decision followed a protest conducted by about 300 tertiary students on the grounds of Parliament on 25 September 1997. The Court summarised the facts of the case as follows:

> Upon entering the grounds at Parliament they [the students] assembled behind crowd-control barriers erected in anticipation of their arrival. The group protested loudly, but peacefully. They demanded that the Minister of Education address them from the steps of Parliament. When this did not occur one of the leaders advised the students to take "one small peaceful step forward" for every minute the Minister did not appear. After the protesters had been in Parliament grounds for approximately 60 minutes a member of the staff of the Speaker of the House of Representatives (the Speaker) who had been delegated the task of overseeing protests in the grounds, considered it was appropriate for the protest to end. He decided the protesters should be told they were required to leave Parliament grounds, and warned that if they did not do so they would be treated as trespassers. The police, and a member of the protesting group, were asked to convey that to the protesting group, and that was done on five occasions. When large numbers of the group did not disperse the police arrested 75 of them for trespass.

The Speaker of the House of Representatives is effectively the "occupier" of the grounds of Parliament. The Speaker may exercise the powers of an occupier under the Trespass Act 1980 or delegate those powers. That includes directing any person to leave the grounds of Parliament under pain of committing the offence of trespass.[12]

The Court in *Police v Beggs* observed that the exercise of the powers of an occupier by the Speaker could limit the freedom of expression and right of peaceful assembly. Those rights are affirmed in sections 14 and 16 of the Bill of Rights Act, respectively, as well as Articles 19 and 21 of the Covenant. The Court held that, in exercising the powers of an occupier, the Speaker must act in a manner consistent with the rights affirmed in the Bill of Rights Act. The decision of the Court is therefore entirely consistent with that Act and the Covenant.

The Court held that, in exercising the powers of an occupier, the Speaker must act reasonably and, in particular, so that the rights and freedoms affirmed in the Bill of Rights Act are limited only to the extent reasonably necessary. The Speaker would be acting reasonably in directing people to leave if an assembly were unlawful or individuals behave in a disorderly manner, or breach or threaten to breach the peace, or unreasonably infringe the rights of others, or create a civil nuisance. The Court cited Article 21 of the Covenant which permits restrictions on the right to peaceful assembly "in conformity with the law and which are necessary in democratic society in the interest of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others".

The Court stated expressly that it would not be reasonable to exercise the rights of an occupier in a discriminatory manner by permitting entry to groups sympathetic to the government (or the opposition), whilst excluding those who wished to protest against the actions or policy of the government.

The Court did not express a view as to whether the direction to the protesters was reasonable in the circumstances of this case. Nevertheless, it formed the view that, taking all the circumstances into account, the prosecutions for trespass should not proceed. That consideration included the length of time between the events in question and the date of the judgment (about 20 months). Accordingly, the Court ordered a stay in the prosecutions.

Some of those arrested pursued compensation claims, which have recently been the subject of a financial settlement.

RIGHTS OF THE CHILD (ARTICLE 24)

Question 22.

A citizen-initiated referendum on the question "Should a smack as part of good parental correction be a criminal offence in New Zealand?" took place by postal ballot between 31 July 2009 and 21 August 2009. The referendum was conducted under the Citizens Initiated Referenda Act 1993, which requires a referendum to be conducted on a particular question if 10% of registered voters sign a petition presented to the House of Representatives. Citizens

[12] *Police v Walker* [1977] 1 NZLR 355

Initiated Referenda are "non-binding" referenda. A non-binding referendum does not require the result to be acted upon or implemented by the Government.

The referendum followed the repeal and replacement of section 59 of the Crimes Act 1961. The previous section 59 provided a defence to a charge of assault for parents using "reasonable force" against a child for the purposes of correction. The new section 59 removed that defence.

Voter turnout for the referendum was 56.09%.[13] The results are as follows:

Votes	**Votes Received**	**Percentage of Total Valid Votes**
Yes	201,541	11.98 %
No	1,470,755	87.4%
Informal votes[14]	10,421	0.62%
Total valid votes	1,682,717	100%

The Government will continue to monitor the way the law is being implemented but has no plans to change the law at this time as it appears to be working as intended. Under the new section 59(1), every parent of a child and every person in the place of a parent of the child is justified in using force if the force used is reasonable in the circumstances and is for the purpose of:

- preventing or minimising harm to the child or another person;
- preventing the child from engaging or continuing to engage in conduct that amounts to a criminal offence;
- preventing the child from engaging or continuing to engage in offensive or disruptive behaviour; or
- performing normal daily tasks that are incidental to good care and parenting.

The new section 59 differs from the previous section in that it does not include the use of force for the purposes of correction. Police have the discretion not to prosecute complaints against a parent of a child, or person in the place of a parent of a child, in relation to an offence involving the use of force against a child, where the offence is considered to be so inconsequential that there is no public interest in proceeding with a prosecution.

In acknowledgement of the referendum results, the Government took steps to give good parents comfort they will not be criminalised for lightly smacking their children. First, in November 2009, the Ministry of Social Development completed a report which assessed the effect of the law to date. The report found no evidence to show that parents are being subject to unnecessary state intervention for occasionally lightly smacking their children.

Secondly, a review into the policies and procedures used by the New Zealand Police and Child, Youth and Family, was conducted also conducted by the Chief Executive of the Ministry of

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[13] based on the total valid and invalid votes as a percentage of the total number of voters enrolled as at 30 July 2009 (3,002,968)

[14] Invalid votes are excluded from the count and include, for example, voting papers received late, those that cannot be processed because the voter has made the barcode unreadable, or voting papers cancelled as a result of replacement voting papers being issued.

Social Development, the Commissioner of Police, and independent clinical psychologist, Nigel Latta. The review was completed in December 2009 and found that there are effective guidelines for ensuring good parents are not criminalised. The reviewers made recommendations for measures to reassure parents that they will not be criminalised or unduly investigated for a light smack.

The recommendations, which have been accepted by the Government, include:

- a parent support helpline for parents who have questions or concerns;
- guidelines for social workers reports of child abuse reports involving smacking;
- a requirement for Police officers and social workers to provide families with specific information about their rights; and
- collection of specific information on the application of section 59 so a clearer picture is available of how the law is operating in practice.

The Police will continue reporting on a six-monthly or annual basis for the next three years on the operation of the law, and to include data on cases where parents or caregivers say the force used on the child was reasonable in the circumstances.

Question 23.

Child Maltreatment in New Zealand

Child abuse is taken very seriously by both the Government and the community in New Zealand. From 2004 to 2008 the number of substantiated child maltreatment findings for cases relating to children aged zero to 16 notified to Child, Youth and Family (New Zealand's care and protection agency) rose from about 8,500 to 16,000. During this time the number of children in New Zealand has remained at about 1000,000.

Child death from maltreatment is a rare event in New Zealand. In a small country the small numbers involved produce highly volatile rates. For example, compared to the 1990s when the rate was 1.2 per 100,000 the annual average child maltreatment death rate for the five years to 2003 has declined to 0.9 per 100,000. This is partly the result of an unusually low number of maltreatment deaths in 2003. The fact that such small changes in the absolute number substantially alter the rate of child deaths from maltreatment reinforces the need for care when using this measure.

Initiatives to Address Child Maltreatment

In the past five years significant efforts have been made to address issues of family violence in New Zealand society. A cross-sectoral Taskforce for Action on Violence within Families was launched in 2005 to develop strategic responses to address family violence, including its impact on children and young people. The Taskforce has launched a successful large-scale public awareness campaign on family violence and has led several other prevention initiatives.

Significant effort has also been applied to strengthening the community of child protection services in New Zealand. Critical to this has been the implementation of the New Zealand "differential response" approach to facilitate a more collaborative and flexible response to

families where there is a potential care or protection concern. The initiative, piloted in 2008, was implemented nationwide in July 2009. Differential response better links families to a range of community-based services, including early intervention services to ensure that problems are addressed early. This prevents the problems from escalating to a more serious level. Practical enhancements, including a suite of improved tools to support social work practice, have also been developed under differential response to strengthen practice for families requiring further statutory assessment, investigation or intervention.

In addition to a number of system improvements, Child, Youth and Family have also improved their response to its most vulnerable population, vulnerable infants, both those under 2 and those under 5 years of age. Toddlers and babies are represented in statistics as the most significant group at risk of serious injury or death from abuse and/or neglect.

Question 24.

New Zealand has no plans to raise the minimum age for prosecution of murder and manslaughter offences from 10. New Zealand recognises murder and manslaughter offences as being in a special category that require the offender to be held accountable for their actions in the High Court. In recognition of children's immaturity, however, the law provides that in order for a child to be convicted it must be proved either that the child knew the act or omission was wrong or that it was contrary to law (the doli incapax principle).

It is also important to note that, although section 102(1) of the Sentencing Act 2002 creates a presumption in favour of a life sentence for murder, the Court may impose a lesser sentence if a sentence of imprisonment for life would be manifestly unjust.

Prosecutions against 10 to 13 year olds for murder and manslaughter are extremely rare. Since the age was lowered in 1977 there have been fewer than ten 10 to 13 year olds convicted of manslaughter, and only one 13 year old convicted of murder.

RIGHT TO TAKE PART IN THE CONDUCT OF PUBLIC AFFAIRS (ARTICLE 25)

Question 25.

Areas of Electoral Law under Review

New Zealand is currently undertaking work in the following areas:

- *A review of electoral finance regulation.* The government repealed the Electoral Finance Act 2007 in early 2009 (although it retained the provisions relating to donations and penalties). Reform proposals have been the subject of public consultation (refer below for further information).
- *Establishing a new Electoral Commission.* The Government is proposing establishing a new independent Crown entity to undertake electoral administration. Electoral agency reform will occur in two stages. The Electoral (Administration) Amendment Bill, implementing the first stage, has been introduced into the House of Representatives. The Bill establishes the new Electoral Commission in statute and transfers the functions of the Chief Electoral Officer and the current Electoral Commission to the new Electoral Commission. This stage will be completed by 1 October 2010 to enable the new Electoral Commission to administer the 2011 general election. A further bill will implement stage

two of electoral agency reform. This second bill will transfer the functions of the Chief Registrar of Elections to the new Electoral Commission on 1 October 2012. Electoral agency reform is being staged to ensure that transition to the new arrangements is managed smoothly and does not create risk for the administration of the next general election in 2011.

- *A referendum on the electoral system*. Through a referendum held in 1993, New Zealanders voted to change the electoral system from First Past the Post to Mixed Member Proportional Representation (MMP). MMP, a proportional system of representation, has been in place as the electoral system in New Zealand since the 1996 general election. The Government has committed to holding a further referendum to gauge voter satisfaction with MMP. The Government has decided to hold a first referendum asking voters if they wish to retain or change from the current MMP electoral system, and what their preferred alternative voting system is from a short list of options. If a majority votes for change, there will be a second binding referendum. The second referendum will be a contest between MMP and the alternative voting system that receives the most votes in the first referendum. The first referendum will be held in conjunction with the 2011 general election. A bill will be introduced in early 2010 to provide the rules for the conduct of the referendum.

New Zealand's commitment to universal and equal suffrage and the use of the secret ballot, which guarantees electors the right to express their free will, is unchanged. As fundamental tenets of New Zealand's democracy, these rights will be in no way diminished through the proposed measures. Article 25 of the Covenant is reflected in section 12 of the Bill of Rights Act. Additionally, New Zealand's Human Rights Commission is being consulted at every stage of the review of electoral finance.

Regulation of financial support for the activities of political parties

The New Zealand Government has conducted public consultation on proposals relating to the regulation of financial support for the activities of political parties. The core areas covered by the proposals are: candidate and political party funding; campaign spending; election advertising; parallel or 'third party' campaigning; and monitoring and compliance.

In developing these proposals, the Government conducted two formal public consultation processes. Consultation between May and June 2009 was based on a government Issues Paper. Consultation between September and October 2009 was based on a government Proposal Document. The government is now considering the results of this consultation.

RIGHTS OF PERSONS BELONGING TO MINORITIES (ARTICLE 27)

Question 26. .

Incorporation of the Treaty into Domestic Law

Consideration of the Treaty of Waitangi is built into the law-making process in New Zealand. Ministers seeking the Cabinet's approval to introduce Bills into Parliament must indicate whether the Bill complies with the principles of the Treaty of Waitangi, and, if not, provide reasons for non-compliance.

The Treaty of Waitangi is currently incorporated into a range of domestic legislation. Some statutes require statutory decision-makers to give effect to, acknowledge or have regard to the principles of the Treaty of Waitangi (e.g. the Conservation Act 1987, the Resource Management Act 2004, the Education Act 1989, the Crown Minerals Act 1991). Others recognise and respect the principles of the Treaty of Waitangi by providing specifically for participation by Māori in statutory processes or functions (e.g. the Local Government Act 2002, the Public Records Act 2005, the New Zealand Health and Disability Act 2000).

The Treaty of Waitangi Act 1975 established the Waitangi Tribunal, a forum to which Māori can submit claims that the Crown has acted inconsistently with the principles of the Treaty. In general, the Tribunal investigates the claims and makes recommendations to the government. The House of Representatives may also refer any proposed legislation to the Waitangi Tribunal, so that it may report on whether any of its provisions are in any way contrary to the principles of the Treaty.

Legislation settling the historic grievances of Māori with the Crown also contains acknowledgements by the Crown of breaches of the Treaty of Waitangi.

Comprehensive Settlement of Land Claims

In New Zealand there is bipartisan support for the settlement of historical land claims brought against the Crown under the Treaty of Waitangi. The Crown has accepted a moral obligation to take steps to address the historical wrongs committed by the Crown in New Zealand in divesting Māori of their land and other resources in breach of the Treaty of Waitangi.

While the redress offered is not full compensation for losses suffered it is a sincere attempt to provide just redress within the context of a modern society. Settlement redress includes commercial redress (a combination of cash and commercial redress properties), cultural redress (including the gifting of sites of cultural significance) and historical redress (an historical account, acknowledgements including of where the Treaty of Waitangi was breached, and a Crown apology).

As at 30 June 2009 $1.057 billion has been committed to final and comprehensive settlements and several part settlements. This includes $22.066 million paid as claimant funding separate from the negotiated settlement redress.[15]

The Committee has considered the Treaty of Waitangi settlement process in *Mahuika v. New Zealand*[16] and concluded that no inconsistency arose.

Financial Resources of the Waitangi Tribunal

The Waitangi Tribunal received an increase in funding in 2007 and its current total operating expenditure is $12.15 million. The Government is satisfied that the current level of funding is sufficient for the Tribunal to carry out its functions.

DISSEMINATION OF INFORMATION RELATING TO THE COVENANT (ARTICLE 2)

[15] Office of Treaty Settlements Four Month Report, July – October 2009
[16] (CCPR/C/70/D/547/1993, 27 October 2000)

Question 27. Please indicate what steps the State party has taken to disseminate information about the Covenant, the submission of its fifth periodic report, its examination by the Committee and the Committee's previous concluding observations on the fourth periodic report. Please also provide information on the involvement of civil society and national human rights institutions in the preparation of the report.

Information about the Covenant is available from the Ministry of Justice and also from the Ministry of Foreign Affairs and Trade, which produces a handbook on International Human Rights. This Handbook, which is widely distributed, contains the texts of all the main human rights treaties. In addition, links to the texts of the core human rights treaties can be found on the website of the Ministry of Foreign Affairs and Trade.[17]

As noted in paragraph 4 of the State report, a draft of that report was circulated for public comment in late October 2007. That consultation addressed the Government responses to the Committee's concluding observations on the fourth periodic report. Officials from the Ministry of Justice also met with representatives of the Human Rights Commission to discuss the draft report. The Ministry received 14 submissions that were considered in the preparation of the final report.

Following the UPR of New Zealand in May 2009, the Human Rights Council recommended that New Zealand ensure regular consultation with civil society in the follow-up to the UPR recommendations. The Government accepted this recommendation and is considering ways to improve the involvement of non-Government organisations in the UPR and in treaty reporting.

As a first step, the Ministry of Justice has sought the views of non-Government organisations about how and when they would like to be consulted. In October 2009, the Human Rights Commission and the Ministry of Justice held meetings with non-Government organisations in Auckland, Wellington and Christchurch. The purpose of the meetings was to follow-up on the UPR of New Zealand by the Human Rights Council; however, the Ministry took the opportunity to discuss consultation with those organisations.

The response from those organisations has highlighted the need to improve the dissemination of information throughout the reporting period, including information about concluding observations and the government response to those observations. For example, the Government could make better use of on-line resources to keep non-Government organisations informed and received feedback.

[17] http://www.mfat.govt.nz/Foreign-Relations/1-Global-Issues/Human-Rights/Treaties/index.php