

Universal Periodic Review of the NZ government's human rights record



A presentation for the ANZTSR Conference, November 2008

Why are we doing this presentation?

- as an example of NGOs' collaborative research
- to make the Universal Periodic Review (UPR), and related human rights processes, more widely known
- to encourage other organisations and researchers to see their own work in the context of the human rights monitoring systems, and also to consider how they might contribute to such processes

Overview

- Outline of UN human rights mechanisms
- Outline of the Universal Periodic Review (UPR) mechanism
- NZ and the UPR
- NGO collaboration
- Limitations of the UPR
- Where you can get more information

UN human rights mechanisms

- Human rights are integrated throughout the work of the UN, its agencies, and so on
- two main types of UN bodies with particular roles in human rights promotion, protection and standard setting:
 - **UN Charter bodies**
 - **UN treaty monitoring bodies**

UN Charter bodies

- **General Assembly** - 192 UN member states
 - agrees resolutions on range of human rights issues
 - adopts human rights instruments:
 - Declarations - eg, UN Declaration on the Rights of Indigenous Peoples
 - Conventions - eg, Convention on the Rights of Persons with Disabilities
 - accepts reports of treaty monitoring bodies

UN Charter bodies continued

- **Human Rights Council** - 47 UN member states, established in 2006
 - adopts human rights standard setting instruments, eg, Declarations → General Assembly
 - adopts legally binding instruments, eg, Conventions → General Assembly
- **Universal Periodic Review** - stand alone mechanism of the Human Rights Council
- **Economic and Social Council (ECOSOC)** – accepts the reports of one of the treaty monitoring bodies

UN human rights treaty monitoring bodies

- independent human rights experts
- monitor state party compliance with the legally binding human rights instruments (treaties)
- develop new standards in human rights promotion and protection with reference to their respective instrument
- eight treaty monitoring bodies

Examples of human rights treaty monitoring bodies

- **Committee on the Elimination of Racial Discrimination (CERD)** ➔ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- **Human Rights Committee** ➔ International Covenant on Civil and Political Rights (ICCPR)
- **Committee on Economic, Social and Cultural Rights (CESCR)** ➔ International Covenant on Economic, Social and Cultural Rights (ICESCR)

Mandates of the other five treaty monitoring bodies:

- the elimination of discrimination against women
- the prevention of torture
- the rights of the child
- the rights of migrant workers
- the rights of persons with disabilities

Universal Periodic Review

- mechanism of the Human Rights Council, created by the General Assembly in 2006
- purpose: to review the human rights performance of all UN member states by the Human Rights Council on a four yearly cycle
- 48 States are reviewed each year, during three two week sessions, 16 states per session
- intended to complement, not replace, the work of the treaty monitoring bodies

UPR process reviews each state's performance in relation to:

- **UN Charter**
- **Universal Declaration of Human Rights (UDHR)** - the 'common standard of achievement for all peoples and nations', spells out basic civil, political, economic, social and cultural rights that all humans should enjoy
- **human rights instruments** which the state is a party to, and **voluntary human rights pledges** (eg, made when campaigning for election to the Human Rights Council),
- **applicable international humanitarian law**

UPR process

- **Stage I - preparation of reports**
 - **NGO reports and other stakeholder reports, eg, Human Rights Commission (maximum of 5 pages for single organisations, 10 pages for coalitions) - submitted November 2008**
 - **NZ state report (maximum 20 pages) - to be submitted March 2009**
 - **states are "encouraged" to consult with the other stakeholders**

Stage I - report preparation, continued

- **UN Office of the High Commissioner for Human Rights (OHCHR) prepares two compilation documents:**
 - a summary of UN information on the state under review
 - a summary of information submitted by other relevant stakeholders - including NGOs, human rights defenders, National Human Rights Institutions etc
- **these documents and the state party's report form the basis of the review**

UPR process: Stage II - the review,

- **In advance:** a troika of 3 state representatives or independent experts is selected by drawing lots - the troika assists the Working Group on the UPR (composed of the 47 member states of the Human Rights Council)
 - each state under review has a different troika - NZ has been allocated the Philippines, Italy and Mauritius

Stage II - the review, continued

- **The review:** takes place in Geneva in the Working Group on the UPR
 - the state presents its report, and an interactive dialogue is held between the state under review and Human Rights Council member and observer states
- NGOs can observe, but not contribute

Stage II - the review, continued

- the troika prepares the report of the Working Group, a full account of the proceedings
- the Working Group adopts an outcome document, which can be modified by the state within the following two weeks
 - the state can accept / refuse recommendations - this is noted in the report

Stage II - the review, continued

- the outcome document is adopted in a plenary session of the Human Rights Council
- NGOs (with UN accreditation) can speak in the plenary session

UPR process: Stage III - follow up

- the state is required to implement the recommendations in the outcome document
- NGOs and National Human Rights Institutions monitor the state's progress

UPR and the NZ government

- NZ is to be reviewed in May 2009
- NZ is a state party to seven of the core international human rights treaties:
 - International Covenant on Civil and Political Rights
 - International Covenant on Economic, Social and Cultural Rights
 - International Convention on the Elimination of All Forms of Racial Discrimination
 - Convention on the Elimination of All Forms of Discrimination Against Women

UPR & the NZ government, continued

- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child
- Convention on the Rights of Persons with Disabilities
- NZ government has not as yet made any voluntary human rights pledges, although it has put itself forward for election to the Human Rights Council next year, so there will be some forthcoming

NGO collaboration

- NGOs began working together specifically around the UPR earlier this year:
 - **August / September** - Peace Movement Aotearoa began talking with Aotearoa Indigenous Rights Trust and other NGOs we had collaborated with around UN reports, and publicising forthcoming deadline
 - **late September** - Human Rights Foundation held a meeting to discuss possibility of combined NGO reports

NGO collaboration, continued

- decided to put together thematic combined reports and an over-arching submission (highlighting points from the thematic submissions) to maximise input to the UPR process
- the reports would be based on collaborative research, combining our separate and overlapping areas of knowledge

NGO combined submissions

- Coordinating NGOs:
 - **Action for Children and Youth Aotearoa** - on the rights of the child
 - **Human Rights Foundation (with input from the Women's International League for Peace and Freedom, Indonesian Human Rights Committee, and later, the CTU)** - on civil, political, economic, social and cultural rights

Coordinating NGOs, continued

- **Peace Movement Aotearoa and Aotearoa Indigenous Rights Trust** - on the Treaty of Waitangi and indigenous peoples' rights
 - added dimension of non-indigenous / indigenous organisations working together on indigenous peoples' rights, intentionally from our different perspectives
- **Human Rights Foundation** - coordinated the over-arching submission

NGO combined submission

Rights of the Child

- **Action for Children & Youth Aotearoa**
 - discrimination and inequities - particularly for Maori and Pacific children, and children with disabilities
 - violence against children
 - child poverty
 - lack of respect for the views of the child

Rights of the Child, continued

- absence of a comprehensive policy approach to children and their well being
- maintain independence and increase resources for the Office of the Commissioner for Children
- reservations to the Convention on the Rights of the Child
- ratification of the Optional Protocol on the sale of children, child prostitution and child pornography

NGO combined submission

Civil, political, economic, social and cultural rights

- **Human Rights Foundation, New Zealand Council of Trade Unions, Peace Movement Aotearoa, Women's International League for Peace and Freedom, Christian World Service, Pax Christi, and Indonesia Human Rights Committee**
 - lack of enforceability of Bill of Rights Act
 - lack of protection for economic, social and cultural rights

Civil, political, economic, social and cultural rights, continued

- lack of implementation of National Action Plan for Human Rights
- interdiction of asylum seekers, lack of protection for the rights of those asylum seekers who arrive here
- lack of protection for human rights in the Immigration Act, including the Security Risk Certificate process
- activities of the Immigration Profiling Group

Civil, political, economic, social and cultural rights, continued

- lack of protection for human rights in the Terrorism Suppression Act
- introduction of taser stun guns to the police arsenal
- level of family violence, and violence against women and children
- discrimination against women
- concerns about women and babies in prison

Civil, political, economic, social and cultural rights, continued

- NZ's obligations as an international citizen
- domestic and international application of the Declaration on the Rights of Indigenous Peoples
- ratification of the International Convention relating to the Status of Stateless Persons, of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, and of ILO Conventions

NGO combined submission

Treaty of Waitangi and indigenous peoples' rights

- **Aotearoa Indigenous Rights Trust and Peace Movement Aotearoa, Foundation for Peace Studies Aotearoa-NZ, INA (Maori, Indigenous & South Pacific) HIV/AIDS Foundation, Maori Party, Network Waitangi Otautahi, Ngati Kuri Trust Board, Ngati Raukawa Trust Board, Pacific Centre for Participatory Democracy, Pax Christi Aotearoa NZ, Quaker Treaty Relationships Group ...**

Treaty and indigenous peoples' rights, continued

... Tamaki Treaty Workers, Tauwiwi Solutions, Te Runanga o Nga Kaimahi Maori o Aotearoa, Treaty Tribes Coalition, Wellington Treaty Educators Network, and Women's International League for Peace and Freedom (Aotearoa); supported by Christian World Service and Human Rights Foundation.

- government's approach to indigenous peoples' rights generally

Treaty and indigenous peoples' rights, continued

- failure to recognise the right of self determination in relation to hapu and iwi
- failure to meet obligations under international law in relation to indigenous peoples' rights
- lack of protection from violations of human rights arising from Acts of Parliament
- failure to provide an effective remedy for such violations

Treaty and indigenous peoples' rights, continued

- Foreshore and Seabed Act 2004
- Treaty of Waitangi settlements
- 'anti-terrorism' raids and discriminatory treatment of Maori communities
- government's response to, and lack of respect for, the UN treaty monitoring bodies and Special Procedures

Common points in all of the combined submissions

- the vote against the UN Declaration on the Rights of Indigenous Peoples in the General Assembly
- the government is not meeting its legally binding human rights obligations, to a greater or lesser degree, in multiple areas
- the lack of constitutional and legislative protection for human rights

Limitations of the UPR

- **Lack of opportunities for NGO involvement in the process**
 - requirement for NGOs to submit their reports in advance of the state under review
 - no provision for NGOs to comment on the state report
 - no provision for NGO input / involvement in the UPR Working Group session

Limitations of the UPR, continued

- provision for NGOs to make general comments before the adoption of the UPR report is too little too late
- **State consultation process – is "encouraged" rather than required, eg NZ**
 - MFAT arranged three NGO 'consultation' meetings
 - meetings very limited in terms both of who was invited and what was recorded

Limitations of the UPR, continued

- consultation that was promised did not happen
- no consultation with Maori
- **Voluntary pledges**
 - states already have legally binding human rights obligations - general concern that the UPR process may create lesser human rights standards than those developed by the treaty monitoring bodies

Where you can get more information

- **Human Rights Foundation:** www.humanrights.co.nz
- **Peace Movement Aotearoa:** www.converge.org.nz/pma
UPR page with links to UN sites
 - www.converge.org.nz/pma/nzupro9.htm
- **Aotearoa Indigenous Rights Trust:** www.airtrust.org.nz
- **Action for Children & Youth Aotearoa:** www.acya.org.nz
- **UPR Info:** www.upr-info.org