

NATIONAL REPORT SUBMITTED IN ACCORDANCE WITH PARAGRAPH  
15(a) OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1

**New Zealand**

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## Abbreviations and Glossary of Terms

<i>CAT</i>	<i>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i>
<i>CBO</i>	<i>Community Based Organisation</i>
<i>CERD</i>	<i>Convention on the Elimination of All Forms of Racial Discrimination</i>
<i>CEDAW</i>	<i>Convention on the Elimination of All Forms of Discrimination against Women</i>
<i>CRC</i>	<i>UN Convention on the Rights of the Child</i>
<i>DRIP</i>	<i>Declaration on the Rights of Indigenous Peoples</i>
<i>ECE</i>	<i>Early Childhood Education</i>
<i>HRRT</i>	<i>New Zealand Human Rights Review Tribunal</i>
<i>ICCPR</i>	<i>International Covenant on Civil and Political Rights</i>
<i>ICESCR</i>	<i>International Covenant on Economic, Social and Cultural Rights</i>
<i>ILO</i>	<i>International Labour Organisation</i>
<i>IPCA</i>	<i>New Zealand Independent Police Conduct Authority</i>
<i>Iwi</i>	<i>Tribe</i>
<i>Māori</i>	<i>Indigenous people of New Zealand</i>
<i>MFAT</i>	<i>New Zealand Ministry of Foreign Affairs and Trade</i>
<i>MMP</i>	<i>Mixed Member Proportional Representation</i>
<i>MP</i>	<i>Member of Parliament</i>
<i>MWA</i>	<i>New Zealand Ministry of Women's Affairs</i>
<i>NHRI</i>	<i>National Human Rights Institution</i>
<i>NGO</i>	<i>Non-government Organisation</i>
<i>NZAID</i>	<i>New Zealand Agency for International Development.</i>
<i>NZAPHR</i>	<i>New Zealand Action Plan for Human Rights</i>
<i>NZHRC</i>	<i>New Zealand Human Rights Commission</i>
<i>NZSL</i>	<i>New Zealand Sign Language</i>
<i>ODI</i>	<i>New Zealand Office for Disability Issues</i>
<i>OEA</i>	<i>New Zealand Office of Ethnic Affairs</i>
<i>OHCHR</i>	<i>Office of the UN High Commissioner for Human Rights</i>
<i>PCA</i>	<i>New Zealand Police Complaints Authority</i>
<i>UNHCR</i>	<i>UN High Commissioner for Refugees</i>
<i>UPR</i>	<i>Universal Periodic Review</i>
<i>WFF</i>	<i>Working for Families</i>

## Introduction

New Zealand has a proud tradition of promoting and protecting human rights both at home and abroad. New Zealanders have a fundamental belief that human rights are the essential foundations of a free and prosperous society - one that is able to embrace diversity, is tolerant and accepting of a range of views, and enjoys harmonious relations between different groups and individuals.

New Zealand was the first country to aspire to a national partnership with indigenous people. The Treaty of Waitangi of 1840, which was the treaty between the Government and the indigenous Māori tribes, is the founding document of New Zealand and part of New Zealand's constitutional framework. Since the establishment of the Waitangi Tribunal in 1975, New Zealand has renewed the partnership with Māori. It pioneered a national process of reconciliation and settlement of treaty breaches and realising Māori potential.

New Zealand has been at the forefront of countries developing a domestic human rights system and affirming people's basic social and economic rights. In 1898 the Government laid the foundation of the welfare state with the Old Age Pensions Act. It was based on the idea that the State had some responsibility for citizens whose own efforts were not enough to keep them from poverty in their old age. In 1893, New Zealand became the first State in the world where women could vote in national elections. In 2000, New Zealand was the only country in the world where all of the major constitutional positions were held by women. New Zealand is now ranked 5th in the world in the latest *Global Gender Gap Report*.<sup>1</sup>

Over the course of the twentieth century, New Zealand developed a unique national identity as a diverse country in the South Pacific. New Zealand's multicultural society consists of Māori, Pacific Island, and Asian communities with the remainder being of European origin. Auckland is the largest Polynesian city in the world. This diversity is represented in New Zealand's Parliament and our key constitutional positions.

The idea that everyone deserves an equal opportunity in life - "a fair go" - is central to New Zealand's national identity and approach to human rights on the international stage. In 1945, New Zealand took a leading role in strengthening the human rights provisions in the United Nations Charter. At the deliberations in 1948 on the *Universal Declaration of Human Rights*, the New Zealand delegation advocated for the inclusion of economic, social and cultural rights. New Zealand argued successfully that governments had just as much responsibility to promote these rights as civil and political rights..

Following this tradition, New Zealand continues to take an active and constructive role in the evolution of international human rights standards and norms. New Zealand chaired the negotiations on the Convention on the Rights of Persons with Disabilities. This achievement was recognised by the international community when New Zealand received the Franklin D. Roosevelt International Disability Award in May 2008.

A key part of New Zealand's ongoing commitment to human rights is ensuring that these universal rights are enjoyed and respected by New Zealand society. In *Human Rights in*

*New Zealand Today* released in 2004, the New Zealand Human Rights Commission (NZHRC), an independent national human rights institution, concluded:

New Zealand meets international human rights standards in many respects, and often surpasses them. Although New Zealand is not flawless, the report [*Human Rights in New Zealand Today*] shows that we have most of the elements essential for the effective protection, promotion and fulfilment of human rights: democracy, the rule of law and an independent judiciary free of corruption; effective structures of governance; specific processes for human rights and other forms of accountability; recognition of the vulnerability of particular groups and individuals; and active, involved, diversely organised citizens.... New Zealanders are generally free to say what we think, read what we like, worship where and when we choose, move freely around the country and feel confident in laws that protect us from discrimination and the arbitrary abuse of power.

This report will outline those areas where New Zealand is meeting or surpassing international human rights standards and norms. To ensure the report is a balanced evaluation, it will also discuss the challenges New Zealand faces in meeting our human rights obligations.

## **1. Methodology and Consultation Process**

In July 2008 Government Ministers instructed the Ministry of Foreign Affairs and Trade (MFAT) to prepare New Zealand's national UPR report in accordance with the Human Rights Council Resolution 5/1 of 18 June 2007 and the *General Guidelines for the Preparation of information under the Universal Periodic Review* (as contained in document A/HRC/6/L/24).

MFAT consulted relevant stakeholders in gathering information for this report. In association with the NZHRC and the Ministry of Justice, MFAT held an initial series of consultation roundtable meetings around the country. Over 70 civil society and community based organisations (CBOs) and non-government groups (NGOs) participated.<sup>2</sup> Following Ministerial and departmental consultation, the draft report was made available for further public consultation (a draft copy of the report was made available on MFAT's website). The report was also brought to the attention of interested Māori (indigenous people of New Zealand) representatives. Given New Zealand's special constitutional relationship with the Cook Islands, Niue and Tokelau, their Governments were consulted on the draft report.

During the consultation process, a wide range of views were expressed by stakeholders on the human rights situation in New Zealand. In an open and constructive dialogue, it was generally felt that while there have been some notable advances over the last few years in New Zealand, there were still a number of outstanding human rights issues that need to be addressed and areas where we can do better. Most of the key human rights challenges for New Zealand society are discussed in this report. During the consideration of this report, the Council should refer to New Zealand's Core Document.<sup>3</sup>

## **2. Background of Country**

New Zealand is situated in the South-West Pacific Ocean and consists of two main islands – the North and South Islands – and many other islands covering a total area of 268,021

km<sup>2</sup>. New Zealand is a diverse multi-cultural society with a total population of just over 4 million people (2006 Census). New Zealanders of European ethnicity make up nearly 68% of the people living in New Zealand and 14.6% of people are Māori. The remainder of New Zealanders belong to the Asian ethnic group (9.9%), Pacific Peoples ethnic group (6.9%) and Middle East, Latin America and African ethnic groups (1%).<sup>4</sup> Reflecting this ethnic diversity, New Zealand is a country of many faiths with a significant minority who profess no religion. In the 2006 Census, just over 2 million New Zealanders (55.6%) affiliated with a Christian denomination, 64,392 New Zealanders affiliated with Hinduism, and 36,072 New Zealanders affiliated with Islam. Close to 35% (1.3 million people) of New Zealanders stated that they are affiliated with no religion.

## ***2.1. Constitutional, Political and Legal Structure***<sup>5</sup>

New Zealand's "unwritten constitution" has evolved over many years and increasingly reflects regard for the Treaty of Waitangi as a founding document of Government in New Zealand. The key elements of New Zealand's constitution can be found in the Constitution Act 1986 as well as in the prerogative powers of the Queen; other, relevant New Zealand, English and United Kingdom of Great Britain and Northern Ireland statutes; relevant decisions of the courts (the common law), for example, upholding rights of the individual against the powers of the State, and determining the extent of those powers; and long-standing and recognized practices, some of which are described as conventions.

The New Zealand constitution reflects and establishes that New Zealand is a monarchy with a parliamentary system of Government. The underlying principle is that of democracy. New Zealand's constitution is based on the Westminster tradition, a fundamental tenet of which is the separation of powers: the legislature, executive and judiciary must be kept separate from each other to provide checks and balances within the system and to ensure accountability and impartiality. The New Zealand constitution is also based on the rule of law. The powers exercised by parliamentarians and officials are based on legal authority and there are minimum standards of justice to which the law must conform.

The Queen - the Sovereign in right of New Zealand - is the Head of State. She appoints the Governor-General to represent her in New Zealand. In general, each has all the powers of the other. By law, they may appoint Ministers of the Crown as well as Judges, Defence Chiefs and the Ombudsmen, and dismiss them (following certain procedures); they may summon and dissolve Parliament; and they may assent to bills and agree to regulations. By convention, they do so only on the advice of the Prime Minister or Ministers, who have the support of the House of Representatives.

New Zealand Parliament - the legislature - consists of the Sovereign and a single-chamber, 120-member House of Representatives, elected every three years unless earlier dissolved. Parliament has full power to make law but delegates some lesser law-making powers to government (for example, to make regulations). Parliament has a number of Select Committees that examine proposed legislation in detail and hear submissions from interested members of the public.

The executive governs. It comprises Ministers of the Crown (collectively, the Executive Council), the public service and some statutory bodies. Only members of Parliament

(MPs) may be Ministers of the Crown. Most Ministers are in the Cabinet. This body makes policy decisions and supervises the administration of law and policy by the public service. The Prime Minister is the head of Government, chairs the Cabinet, and has a coordinating role across all areas of Government.

The judiciary provides a check on the power of the executive by ensuring that it acts in accordance with the laws made by Parliament and the common law (or “judge-made law” accruing from fundamental legal principles and interpretation of statutes). However, Parliament is supreme and judges cannot strike down any provision of an act of Parliament (although they can strike down secondary legislation that is inconsistent with a provision of an act of Parliament). The independence of the judiciary is an important principle of the New Zealand constitution, so freedom from political interference is an essential feature of the judiciary’s position.

Under the Electoral Act 1993, New Zealand has a Mixed Member Proportional (MMP) electoral system, where voters have a party vote and an electorate vote. Under MMP there will usually be 120 MPs. Four Māori electorate seats were established in 1867 to give Māori a direct say in Parliament. Since 1996, the number of Māori seats has been set according to the number of people on the Māori electoral role and currently there are seven Māori electorate seats. Following the 2008 general election, there are now eighteen Māori MPs (15% of all 122 MPs in Parliament), five MPs of Pacific descent and six MPs of Asian descent.<sup>6</sup>

The official languages of New Zealand and Parliament are Māori (from 1987), English and New Zealand Sign Language (from April 2006).

## ***2.2. Relationships with the Cook Islands, Niue and Tokelau***

Special constitutional relationships exist between New Zealand and the Cook Islands, Niue and Tokelau. The Cook Islands became self-governing in free association with New Zealand in 1965 and Niue followed in 1974. Both the Cook Islands and Niue have their own directly elected legislative assemblies, governments with full executive powers, administrative, fiscal and legal systems and their own courts of law. Both are self-governing with the power to make their own laws. New Zealand cannot make laws for them. While New Zealand retains some residual responsibility for the external affairs and defence of the Cook Islands and Niue, these responsibilities confer no rights of control to the New Zealand Government. New Zealand’s relationship with Tokelau is covered in *Annex A* (attached to this report).

Since the mid-1980s, the Cook Islands and Niue generally conduct their own treaty-making including with regard to international human rights instruments. The Cook Islands is party to CEDAW and CRC. Niue is party to CRC. Both the Cook Islands and Niue are responsible for the implementation of their international human rights obligations. New Zealand has no control over how the Cook Islands and Niue implement these human rights obligations domestically. Since 1988 treaties entered into by the New Zealand Government have not been regarded as extending to the Cook Islands or Niue unless expressly stated.

### ***2.3. New Zealand Human Rights Commission (NZHRC)***

The NZHRC was established on 1 September 1978 and it is an independent national human rights institution (NHRI) with “A” status accreditation. Today, the NZHRC is empowered under the Human Rights Act 1993 to protect human rights. It has a wide range of functions and powers including:

- advocating and promoting respect for, and an understanding and appreciation of, human rights in New Zealand society;
- encouraging the maintenance and development of harmonious relations between individuals and among diverse groups in New Zealand society;

The NZHRC also has the power to resolve disputes relating to unlawful discrimination. If a member of the public believes they have been discriminated against, they can seek the NZHRC’s assistance. The NZHRC consists of a Chief Commissioner, a Race Relations Commissioner, and Equal Employment Opportunities (EEO) Commissioner, up to five other part-time Human Rights Commissioners, and support staff in New Zealand’s major cities. Its budget for 2008/09 is NZ\$9.1 million.

### ***2.4. International Commitments<sup>7</sup>***

New Zealand is party to most of the major international human rights instruments including ICCPR, ICESCR, CERD, CEDAW, CAT, and CRC. New Zealand ratified the Convention on the Rights of Persons with Disabilities in September 2008.

New Zealand is party to the Optional Protocols of ICCPR, CEDAW, CAT and CRC. New Zealand has signed the Second Optional Protocol to CRC but ratification is still under consideration. New Zealand supported the adoption of the Optional Protocol to ICESCR by the UN General Assembly in November 2008.

New Zealand is party to a number of other UN and other instruments that involve human rights, including the Convention on the Prevention and Punishment of the Crime of Genocide and the Slavery Convention. New Zealand has ratified various ILO conventions and the Hague Conference on Private International Law conventions, and is party to most international humanitarian law instruments. New Zealand is party to the Rome Statute of the International Criminal Court and became party to the Convention on the Reduction of Statelessness in September 2006.

While there are no regional human rights instruments for New Zealand to become party to, New Zealand is a member of the Commonwealth (an association of 53 independent states consulting and co-operating in the common interests of their peoples and in the promotion of international understanding) which has a strong commitment to the promotion and protection of human rights. In 1991 Commonwealth Leaders committed themselves to the Harare Declaration, which seeks to protect and promote democratic processes and institutions; fundamental human rights; the rule of law and the independence of the judiciary; and just and honest government.

As a founding member of the Pacific Islands Forum, New Zealand is committed to the Pacific Plan’s vision to strengthen cultural diversity and human rights. New Zealand is



actively supporting Pacific engagement in the UPR process. For example, New Zealand hosted a UPR capacity-building seminar for Pacific officials in February 2009.

New Zealand's Agency for International Development. (NZAID) is committed to mainstreaming human rights into its development assistance programmes and procedures, supported by human rights training for its staff. New Zealand support to multilateral human rights agencies remains strong, including NZ\$3.5m for the OHCHR in 2008/09. In the Asia-Pacific region, NZAID funds a range of human rights institutions and educators to build the capacity of government, civil society and citizens to promote and protect human rights, often in partnership with the NZHRC or the Asia-Pacific Forum of Human Rights Institutions. NZAID's support for education programmes reflects a strong commitment to the right to education, in accord with the *Education for All* goals.

## ***2.5. Incorporation of International Treaties***

For an international agreement to have domestic effect in New Zealand, either its provisions must be reflected in New Zealand's existing law or new legislation must be enacted by Parliament. Before becoming a party to an international human rights instrument, the Government reviews New Zealand's domestic law, policy and practice to see what additional legislation or amendments to existing legislation would be required to ensure the full and effective implementation of the agreement in New Zealand.

New Zealand's international human rights obligations also influence the jurisprudence of New Zealand courts when it comes to interpreting a statutory provision. When New Zealand Government Ministers are empowered to make decisions under a statute, they take into account, where relevant, human rights obligations.

## ***2.6. Human Rights Legislation***

New Zealand has been criticised for not having an over-arching or an entrenched constitution that protects the human rights of New Zealanders. The UN Human Rights Committee, in its concluding comments on New Zealand's fourth periodic report under ICCPR, regretted that "certain rights guaranteed under the Covenant are not reflected in the [New Zealand] Bill of Rights [Act] and that it has no higher status than ordinary legislation". The Committee also noted with concern that it is possible to enact legislation incompatible with the provisions of the New Zealand Bill of Rights Act.

The absence of a constitutional bill of rights, however, does not mean human rights are not protected in New Zealand's legislative framework. A number of key pieces of legislation are in place that affirm, protect and promote human rights and New Zealand's international human rights obligations.

The New Zealand Bill of Rights Act 1990 is designed to affirm, protect and promote human rights and fundamental freedoms in New Zealand, as well as affirm New Zealand's commitment to ICCPR.

The primary purpose of the Human Rights Act 1993 is to prohibit discrimination. It sets out thirteen prohibited grounds of discrimination: sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origin, disability (including the presence in

the body of organisms capable of causing illness), age, political opinion, employment status, family status and sexual orientation. The Act contains provisions relating to racial disharmony, sexual harassment and racial harassment and provides a publicly-funded dispute resolution service for complaints about discrimination.

The Human Rights Amendment Act 2001 introduced significant changes to the Human Rights Act 1993 including *inter alia*: making Government activity (except in relation to employment, sexual or racial harassment and victimisation, which are subject to the general provisions of Part 2 of the Act) now subject to a discrimination standard in section 19(1) of the New Zealand Bill of Rights Act; institutional reform of the NZHRC and requiring the NZHRC to develop a *New Zealand Action Plan for Human Rights (NZAPHR)*; and establishment of an independent Office of Human Rights Proceedings to undertake discrimination cases with public funding; and granting the Human Rights Review Tribunal (HRRT) the ability to make declarations of inconsistency in respect of discriminatory legislation.

Human rights protection is afforded by a range of other important legislation. The Ombudsmen Act 1975 empowers the Ombudsmen to investigate the actions of Government. The Official Information Act 1982 is designed to make official information more freely available to the New Zealand public. The Privacy Act 1993 promotes individual privacy and establishes privacy principles concerning the collection, retention, use and disclosure of information relating to individuals by public and private sector agencies. The Act also regulates access to personal information held by these agencies. The Police Complaints Authority Act 1988 established a Police Complaints Authority (PCA) to provide for the investigation and resolution of complaints against the police. In late 2007 and early in 2008, the Government made changes to strengthen the effectiveness of the PCA – now designated the Independent Police Conduct Authority (IPCA).

The Executive (New Zealand Cabinet) requires that all Cabinet papers contain a statement on the human rights implications, addressing consistency with the New Zealand Bill of Rights Act and the Human Rights Act. New Zealand is a firm adherent to the mainstreaming of gender and disability issues, requiring relevant Cabinet papers to have a gender implications statement and a disability perspective.

## ***2.7. Remedies, Compensation and Rehabilitation***

Individuals who consider that any of their rights under the New Zealand Bill of Rights Act have been infringed can bring an action against the Government. A number of remedies are available including the ability to award damages or compensation and excluding evidence obtained in breach of a right guaranteed by the Act. New Zealand courts can also order a stay in proceedings where there has been a delay of such a length that it constitutes a breach of section 25 (b) of the Act (the right to be tried without undue delay).

As noted above, individuals can also make complaints of unlawful discrimination under the Human Rights Act 1993 through the NZHRC complaints mechanism. If the NZHRC's dispute resolution process fails or is inappropriate, complainants may take their case to the HRRT for adjudication. The HRRT is a statutory body and has powers to award compensatory damages and to declare legislation or government decisions to be inconsistent with the right to freedom from discrimination (affirmed by section 19 of the New Zealand Bill of Rights Act). The Director of Human Rights Proceedings, established

in January 2002, provides legal representation for people (who qualify) who have complained of breaches of the Human Rights Act so that they can take their case to the HRRT. Since the HRRT's establishment in 1977, New Zealanders have taken the opportunity to seek HRRT adjudication. Most of the HRRT's decisions from 2002 are publicly available on the internet.<sup>8</sup>

In relation to personal grievance claims including claims for breaches of employment agreements and for sexual or racial harassment or discrimination due to union membership, the Employment Relations Authority and Employment Court also have some jurisdiction. The District Courts have jurisdiction under sections 131 and 134 of the Human Rights Act to deliberate on offences of inciting racial disharmony and of refusing access on discriminatory grounds to a public place, vehicle or facility.

Finally, subject to various admissibility requirements, individuals who consider that their rights under the ICCPR, CEDAW or CAT have been breached by New Zealand can utilise the treaty body communication mechanisms.

### **3. Promotion and Protection of Human Rights**

#### ***3.1 Treaty of Waitangi and the Rights of Indigenous People***

New Zealand has one of the largest and most dynamic indigenous people – the Māori - in the world. The Government is committed to improving the rights of Māori. The Treaty of Waitangi, signed on 6 February 1840 between representatives of the British Crown and Māori, established the legal basis for the European settlement of New Zealand and aimed to protect the rights and properties of Māori. The Treaty continues to be the founding document for the ongoing and evolving relationship between Māori and the Government.

A major focus of the Government's effort is related to addressing all historical claims arising from acts or omissions of the Government (Crown) under the Treaty. In 1975 Parliament passed the Treaty of Waitangi Act, which established the Waitangi Tribunal to make recommendations to the Government on claims relating to the Treaty. The continuing impetus and evolution in the work of the Waitangi Tribunal is important, as it provides a key avenue for resolving grievances arising from past injustices to Māori.

The Government is making real progress with Māori in negotiating the settlement of claims. Comprehensive agreements have been reached with a number of Māori tribes including land, fisheries, aquaculture and forestry. Māori now control over 40% of New Zealand's fisheries quota. As at 24 December 2007, the Government had signed settlements with 21 claimant groups involving financial redress of NZ\$743 million. Settlements now cover over half of New Zealand's land area, around 25% of the Māori population, and over half of the tribes who suffered land confiscation. A Treaty settlement usually includes a Government apology as well as cultural, financial and commercial redress. Legislation is usually required to fully implement the settlement. The settlement process is helping to re-establish an economic base for future Māori development.

In addition to historical Treaty settlements, the Government is engaged with Māori groups in a number of initiatives to enhance the Government-Māori relationship. One example is

the return of Mount Maunganui to local Māori, in recognition of the significant cultural, traditional, historical and spiritual importance of the mountain.

In 2004 the Foreshore and Seabed Act vested ownership of the foreshore and seabed in the Government, and provided a mechanism for recognition of customary interests in the public foreshore and seabed. Many Māori disagreed with the Act. In August 2007, the CERD Committee called for renewed dialogue on the Act between the Government and Māori. The Government is engaged in dialogue with several Māori groups concerning the recognition of their customary interests under the Act. A number of agreements recognising customary interests have subsequently been made under the Foreshore and Seabed Act. The Government will review the application of the Act by 31 December 2009.

In September 2008, the Government concluded its most recent and largest Treaty settlement to date with the enactment of the Central North Island Forests Land Collective Settlement Act. The Act provides for the transfer of the central North Island Crown forests land, worth NZ\$196 million and associated accumulated rentals of approximately NZ\$223 million to the seven Māori tribal groups (with more than 100,000 members).

While the Government recognises that the Treaty settlement process is important, it should not be seen as the primary focus or mechanism for encouraging that relationship in the future. The Government is working to address social inequalities in health, housing, employment, education, social services and justice including the highly disproportionate rate of Māori imprisonment. This work includes the development and implementation of the Māori Potential Approach across the public sector. This approach is intended to guide the development and implementation of public policy that is derived from and reflects the strengths and aspirations of Māori. It aims to sharpen the policy focus of government by promoting Māori people as key to achieving exceptional life quality for themselves, their families and their wider communities.

Given the progress that New Zealand has made over many years in promoting indigenous rights and combating racism, the Government was disappointed that it could not support the adoption of the UN Declaration on the Rights of Indigenous Peoples (DRIP) in September 2007. New Zealand was one of the few countries that supported the elaboration of the Declaration from the outset and worked constructively to seek a compromise text. New Zealand has been implementing most of the standards in the Declaration for many years and we support the principles and aspirations of the Declaration.<sup>9</sup> A number of civil society groups and Māori remain critical of the Government's stance on the Declaration.

### **3.2. Gender**

As the first country in the world to grant women the right to vote, New Zealand gives priority to the advancement of the rights of women. According to the 2006 Census women account for 51% of New Zealand's population. New Zealand has been party to CEDAW since 1985 and New Zealand law specifically prohibits discrimination on the basis of sex. New Zealand is ranked highly in international measurements of gender parity. *The Global Gender Gap Report 2008*, produced by the World Economic Forum, ranks New Zealand in 5th place in the world – up two places from our ranking in 2006.

The Human Rights Development Report's Gender-related *Development Index* and *Gender Empowerment Measure* for 2007/08 rank New Zealand 18<sup>th</sup> and 11<sup>th</sup> respectively.

In October 2008, the Ministry of Women Affairs (MWA) released its report *Indicators for Change: Tracking progress of New Zealand women*.<sup>10</sup> This report concludes that progress has been made since the 1970s but obstacles still remain in achieving gender equality. The major challenges include: how to value the significant contribution that women make through their unpaid work; addressing the potential under-valuing of female-dominated occupations; reducing violence against women; and ensuring women have access to equal opportunities in those areas of the workforce where they are still poorly represented.

The profile of New Zealand women in the public and political life of the country has remained strong, with women holding (or having held) senior constitutional and ministerial positions in New Zealand including Governor-General, Prime Minister, Chief Justice and Speaker of the House of Representatives. Following the 2008 general election women comprise 34% of MPs, compared with 32% of MPs following the 2005 general election. But as outlined in the NZHRC's report on *New Zealand Census of Women's Participation 2008*, women are still chronically underrepresented on the board of directors of major New Zealand companies (8.65%). Despite comprising 59% of state sector employees, only 23% of public service chief executives are women. Women are underrepresented in local government positions, statutory bodies and boards, legal and judicial positions, the media and science, and leadership roles in sport management and governance.<sup>11</sup>

Notwithstanding recent progress in women's participation in paid employment, earning power and the reduction in the pay gap with men, gender inequalities still persist in New Zealand society. Women's labour market participation rate is now at 62% but this is still below the male participation rate of 75.1%.<sup>12</sup> Although the pay gap has been closing, it has plateaued over the last six years at around 12%.<sup>13</sup> While there has been an improvement in Māori women participation in paid employment and business and income levels, challenges remain. Māori and Pacific Island women are more likely to work in low skilled manual occupations, which are associated with lower wages.<sup>14</sup>

The Government is taking a proactive approach to address these challenges and improve the lives of New Zealand women. The MWA is a stand-alone government agency responsible for leading the whole-of-government implementation of the five-year *Action Plan for New Zealand Women* launched in 2004. The Action Plan's three goals are: to improve the economic independence of women; to achieve greater work-life balance for families; and to improve the quality of life of New Zealand women. The *Action Plan* will be reviewed in late 2009.

The Government has rolled out a family assistance package, known as *Working for Families (WFF)*, to help improve household incomes and assist people into paid work. *WFF* provides direct financial assistance through the Working for Families tax credits, as well as support through an accommodation supplement and childcare subsidies. *WFF* has created an incentive for work-ready sole parents (predominantly women) to move into paid employment.

As recommended by the CEDAW Committee, the Government is working towards increasing women's participation in universities. On 1 April 2006 the Government introduced interest-free student loans and this is likely to have a positive impact on women, because they will no longer face increasing interest charges if they choose to take time off work for children or other reasons.

In August 2006 the Government introduced the *Choices for Living, Caring and Working* Plan of Action. The plan aims to ensure that good policy and workplace practice should support families to balance work and caring in a range of ways which they can choose to meet their needs.

As part of the *Choices* plan, the Government funds 20 hours of free early childhood education (ECE) for all three and four year olds enrolled in teacher-led services and some indigenous early childhood education centres. Combined with the *WFF* package, this initiative has substantially improved the affordability of ECE and it is having a positive impact on working mothers or mothers wishing to enter the paid workforce. Under the *Choices* plan, access to paid parental leave has also been improved by lengthening the amount of paid parental leave available to women from the original 12 weeks to 14 weeks and shortening the qualifying period of employment from 12 months to six months. Paid parental leave has also been extended to self-employed persons. The Employment Relations (Flexible Working Arrangements) Amendment Act 2007 provided employees with caring responsibilities the right to request flexible working arrangements, including a variation in hours or place of work.

The Government's five-year *Pay and Employment Equity Plan of Action* aims to ensure that remuneration, job choice, and job opportunities in the public service, public health, and public education sectors are not affected by gender. This plan has since been extended, on a voluntary basis, to include local government bodies, state-owned enterprises, and government entities.

In 2008 the NZHRC released the Report of the Inquiry into Discrimination Experienced by Transgender People called *To be Who I am*. This was the world's first inquiry by a NHRI into discrimination experienced by transgender people.

### ***3.3. Children and Young People***

At the time of the 2006 Census, there were 1.05 million children under 18 years and 385,000 young people aged 18–24 years living in New Zealand, a total of 1.44 million people under 25 years – just over one third of New Zealand's total population.

The Government places a high priority on protecting and promoting the human rights of New Zealand children and young people. New Zealand has been party to UNCROC since May 1993. Under the Education Act 1989, every New Zealand child has the right to free primary and secondary education at a state school. The core principles of the new national education curriculum launched in November 2007 acknowledge the importance of human rights, the Treaty of Waitangi, cultural diversity and inclusion (being non-sexist, non-racist and non-discriminatory).

In 1989, the position of the Children's Commissioner was established under the Children, Young Persons and Their Families Act and now in the Children's Commissioner Act 2003, to promote and ensure the well-being of children and young people. The Commissioner's responsibilities include raising awareness of children's interests, rights and welfare and monitoring the application of UNCROC in government agencies and entities. The Office of the Children's Commissioner is funded by the Government and its budget was increased to NZ\$1.9 million for 2007/08. In the last five years, the government agencies primarily responsible for the protection of children and young people have also been strengthened. For example, the establishment of Family and Community Services within, and the merging of Child, Youth and Family and the Ministry of Youth Development with, the Ministry of Social Development, has both enabled better co-ordination of child and youth focussed policy, and improved the alignment of care and protection and youth justice policy and operations.

In 2002 the Government adopted the *Agenda for Children and the Youth Development Strategy* to ensure the views and priorities of children and young people are taken into account by government policy development and they are consulted on these matters. Recognising the important role that non-government agencies play in working with children, young people and their families, the Government initiated the *Pathway to Partnership* programme in July 2007. *Pathway to Partnership* will progressively extend full, as opposed to partial, funding to non-government organisations that provide essential social services to children, young people and their families.

While the report on *Children and Young People: Indicators of Wellbeing in New Zealand 2008* illustrates that wellbeing outcomes for New Zealand children and young people are generally positive and are improving,<sup>15</sup> there are still challenges that need to be addressed, including poverty, abuse and neglect, disparities in health and educational outcomes for Māori, Pacific, disabled and new migrant children, suicide, bullying and discrimination.

### **3.4. Senior Citizens**

At the end of December 2006, the population in New Zealand aged 65 years and over was 519,940 – 12% of the total population. Projections indicate that the older population will continue to grow and will double to reach over 1 million by 2028.<sup>16</sup> Older people are potentially at risk from employment discrimination, lower incomes than 15-64 year olds, material hardship, poor health, abuse and neglect.

The Government is addressing ageing issues and is committed to reaffirming the value of older people in society. The Office for Senior Citizens is responsible for monitoring the implementation of the *New Zealand Positive Ageing Strategy* across government. New Zealand also maintains a comprehensive state-funded pension system. New Zealand's universal superannuation system is neither income nor asset tested. The Government provides other assistance to older New Zealanders. For example, under the SuperGold Card initiative, eligible seniors have access to discounts from a wide range of businesses and are entitled to free off-peak public transport and subsidised hearing aids. A mentoring programme called SAGES has been developed so that older people are trained as home and life skills mentors for families and individuals in their community.

### 3.5. *Violence within Families*<sup>17</sup>

Violence within families impacts on the lives of thousands of New Zealanders. The research on the New Zealand experience of violence within families tells us that men are responsible for two-thirds of the deaths of children aged 14 or under. Victims of the most severe and lethal cases of family violence are predominantly women and children. Family violence is a problem that affects families from all cultures, classes, backgrounds and socio-economic circumstances. However, Māori are significantly over-represented as both victims and perpetrators of violence in families.<sup>18</sup>

The Government recognises that the high incidence and cost of family violence in New Zealand is unacceptable and that reducing interpersonal violence in families and communities is critical to New Zealand's social and personal wellbeing. The CEDAW Committee has also expressed a close interest in our work on violence against women.

In the last five years, the Government has introduced a comprehensive range of measures and increased funding levels to reduce family violence.<sup>19</sup> In 2002, the Government released *Te Rito - New Zealand Family Violence Prevention Strategy* to implement the family violence prevention plan of action released in September 2001. Following the Government's *2004 Opportunity for All New Zealanders* report which identified family violence as a critical social issue requiring sustained interagency attention over the medium to long term, a Family Violence Ministerial Team was established to provide leadership across the state sector, and promote public debate. The Team is chaired by the Minister for Social Development and Employment and consists of the Ministers of Justice, Police, Education, Health and Women's Affairs.

A *Taskforce for Action on Violence within Families* was established in June 2005 to advise the Team on how to make improvements to the way family violence is addressed, and how to reduce family violence in New Zealand. The Taskforce consists of CEOs, decision-makers from the government and non-government sectors, the judiciary and Crown agencies. A Māori Reference Group and Pacific Advisory Group support the Taskforce's work.

Building on the work carried out under *Te Rito* and *The Early Years Approach* (providing assistance to families and children during the early years of a children's life), the Taskforce has devised a programme of action. One of the Taskforce's most visible initiatives has been a nationwide *Campaign for Action on Family Violence* launched in September 2007. The Taskforce has also worked on improving justice sector access for domestic violence victims. For example, the implementation of the Domestic Violence Act 1995 has been reviewed and a Domestic Violence Reform Bill to strengthen the Act was tabled in Parliament before it dissolved in October 2008. In addition, five more Family Violence Courts have been established (bringing the total to seven), and funding for eight Victim Advocates will be introduced in Family Violence Courts by April 2009.

A Ministerial group supported by an expert *Taskforce for Action on Sexual Violence* has been established to provide leadership and greater co-ordination of services to reduce the incidence and impact of sexual violence. The Taskforce comprises government and non-government agencies, as well as the judiciary.



Under the Families Commission Act 2003, a Families Commission has been established to provide a voice for New Zealand families to promote a better understanding of family issues and needs among government agencies and the wider community. The Families Commission is an autonomous Crown agency governed by a board of commissioners.

Measures have been undertaken to improve service coordination for child victims of ill-treatment and abuse. The *Family Violence Inter-agency Response System* has been developed to better support children affected by family violence. The *Strategies with Kids – Information for Parents* (SKIP) programme teaches positive parenting and alternatives to physical discipline.

The CRC Committee has previously expressed concern about section 59 of the Crimes Act 1961 that allowed physical force against children as a punishment within the family setting provided the force is reasonable in the circumstances. In June 2007 section 59 of the Crimes Act 1961 was repealed and substituted with a new provision that provided there was no justification for the use of force for the purpose of disciplining children. With this measure, New Zealand became the 18<sup>th</sup> country in the world to ban the physical punishment of children.<sup>20</sup>

The Care of Children Act came into effect on 1 July 2005. Its purpose is to promote children's welfare and best interests, and facilitate their development, by helping to ensure that appropriate arrangements are in place for their guardianship and care. The Act states that the welfare and the best interests of the child must be the first and paramount consideration in matters relating to the guardianship or care of the child.

### **3.6. Persons with Disabilities**

In 2006, an estimated 660,300 New Zealanders, representing 17% of the population, reported having an impairment.<sup>21</sup> Many New Zealanders experiencing disability face barriers to full participation and independence in society such as in employment. The Government is taking action to remove these barriers and to promote a fully inclusive and enabling society for persons with disabilities living in New Zealand.

Since 1999, there has been a specific ministerial portfolio for disability issues. In 2000 Parliament passed the New Zealand Public Health and Disability Act, which requires there to be a government strategy that provides an overall framework for disability supports. The Act requires the Minister for Disability Issues to report to Parliament annually on progress implementing the *New Zealand Disability Strategy*, which was released in April 2001. In July 2002 the Office for Disability Issues (ODI) was established. It is responsible for promoting and monitoring implementation of the *New Zealand Disability Strategy*. ODI provides a government focal point for disability issues. New Zealand ratified the Convention on the Rights of Persons with Disabilities in September 2008

The Health and Disability Commissioner, established in October 1994, is responsible for promoting and protecting the rights of consumers using health and/or disability services and the resolution of complaints. The rights are outlined in the *Code of Health and Disability Services Consumers' Rights* and they apply to all providers of health care and disability services. The Code sets out ten rights, including the right to be treated with respect, to be free from discrimination or exploitation, to dignity and independence, to

services of an appropriate standard, to give informed consent, and to complain. The complaint mechanisms under the Health and Disability Commissioner Act 1994 have become the primary vehicle for dealing with complaints about the quality of health care and disability services in New Zealand. Claims for a breach of the *Code* may also be taken to the HRRT.

### **3.6.1. Mental Health**

The Mental Health Commission, established in 1996 to provide Government with independent advice on mental health and addiction services, is taking a leading role in monitoring the implementation of the mental health strategy. The *Like Minds, Like Mine* public campaign supported by Government is trying to counter the stigma and discrimination associated with mental illness. Mental health services are also becoming more responsive as evidenced by a drop in the rate of new acute admissions, despite an increase in patients examined. In 2006, the *National Depression Initiative* was launched. It aims to reduce the impact of depression on the lives of New Zealanders, by aiding early recognition, appropriate treatment, and recovery.

### **3.7. Ethnic Diversity and Tolerance**

New Zealanders are conscious that harmonious relations between communities are important for a fair and just society. Over the last decade, New Zealand has experienced a growth of other ethnic minority communities, particularly from Asia. Immigration flows have led to peoples of Asian ethnicity now outnumbering Pacific peoples. Diversity must be acknowledged as strength. During the next 20 years, it is projected that New Zealand's Māori, Asian and Pacific populations will continue to grow. By 2026, it has been estimated that Māori will represent 16.6% of New Zealand's population, compared to 16.0% for Asian and 9.8% for Pacific peoples.<sup>22</sup> Unfortunately racism and racial discrimination do occur in New Zealand. In 2007, the NZHRC received 414 complaints and enquiries involving race-related grounds out of a total of 1486 complaints and enquiries about unlawful discrimination.<sup>23</sup>

The Government has continued to work to eliminate discrimination based on colour, religion, race or ethnic or national origin. The New Zealand Bill of Rights Act and the Human Rights Act prohibit racial discrimination and there continues to be a strong and active Government commitment to the promotion of racial harmony including the *Durban Declaration and Programme of Action*.

#### **3.7.1. Migrants**

To realise the full potential of New Zealand's increasing diversity, the Government established the Office of Ethnic Affairs (OEA) in May 2001. The OEA is responsible for ensuring that the interests and views of ethnic groups are taken into account in Government policy. The Ministry of Pacific Island Affairs also promotes the economic, social and cultural wellbeing of Pacific peoples in New Zealand. Implementation of the *Pacific Economic Action Plan* and the *Pacific Women's Economic Development Plan* are key priorities for the Ministry. The Ministry contributes to achieving better outcomes for Pacific peoples in education.

In February 2002, the Government made a formal apology to Chinese New Zealanders for historical discrimination against Chinese settlers in the late 1800s, beginning the formal process of reconciliation between the Government and the Chinese community in New Zealand.

New Zealand has ratified ILO Convention 97 on Migration for Employment but in 2003 the Government decided not to become party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The human rights of migrant workers are protected under existing New Zealand law and by virtue of the international instruments to which New Zealand is already party.

In 2007 the Government launched a revised New Zealand settlement strategy for newcomers called *Our Future Together*. The Strategy focuses on positive relationships with host communities, employment, English language ability, access to information and services, supportive social networks, safety, and participation to help the transition to living in New Zealand. An accompanying Settlement National Action Plan was developed to implement the revised Strategy and to provide the basis for interagency activity and coordination of initiatives to enhance settlement outcomes. Regional strategies and associated action plans have been developed for the Auckland and Wellington regions. In addition the Settlement Support New Zealand initiative has been established in 19 locations throughout the country as a clear point of contact for newcomers to access appropriate local information and referrals to responsive services.

### ***3.7.2. Interfaith Dialogue***

New Zealand has been at forefront of promoting interfaith dialogue. In addition to the *Statement on Religious Diversity*, the establishment of a religious diversity network, and the *Building Bridges* programme, New Zealand co-sponsored with Australia, Indonesia and the Philippines a process of interfaith dialogue in the Asia-Pacific region including sixteen South East Asian and Pacific nations. New Zealand hosted a regional seminar on the implementation of the United Nations Alliance of Civilisations report in 2007 and a national implementation plan for the Alliance of Civilisations initiative was published in 2008.

## **4. Identification of Achievements, Best Practices, Challenges and Constraints**

### ***4.1. Achievements and Best Practices***

Since the NZHRC's assessment of New Zealand's human rights in 2004 and the development of the *New Zealand Action Plan for Human Rights (NZAPHR)* in 2005, New Zealand has made significant progress in improving human rights in most areas. A number of these advances have already been outlined in sections two and three of the report but other major achievements and best practices include:

#### ***4.1.1. Refugee Quota***

New Zealand is one of a limited number of countries that accepts quotas of refugees for resettlement. These quota refugees are referred to New Zealand by the UNHCR. Since

1970, New Zealand has accepted over 20,000 quota refugees, which relative to New Zealand's population represents a significant contribution. Currently New Zealand's quota stands at 750 refugees per year and includes a sub-quota for women at risk and a medical/persons with disabilities sub-quota.

#### ***4.1.2. Increased Resources for Child Health***

Reducing inequalities and improving the health and wellbeing of young New Zealanders has been a key priority for Government action. Between 2002 and 2008, NZ\$2.2 billion additional funding (a 20% increase in the total Vote Health) has been directed into lowering the cost for everyone of visiting the doctor and into providing more innovative approaches to health care, particularly for children under six and communities with higher health needs. Over 70% of New Zealand children under six now have access to free primary health care. All New Zealanders are entitled to free hospital care.

#### ***4.1.3. New Zealand Sign Language Act 2006***

As part of the *New Zealand Disability Strategy* and the Government's commitment to promote rights and full participation of persons with disabilities in New Zealand society, Parliament passed the New Zealand Sign Language (NZSL) Act in 2006. The Act recognises NZSL as an official language and the right for persons who are deaf to use it in legal proceedings. This Act encourages government services and information to be accessible to the deaf community through the use of appropriate means, including the use of NZSL.

#### ***4.1.4. Māori Language Strategy and Broadcasting***

In 1998, the Government greatly increased its practical support for the revitalisation of the Māori language and this was reflected in the release of the Māori Language Strategy in 2003. Key achievements arising from the Strategy include the establishment of the Community Based Language Initiatives programme and a contestable fund for one-off projects on Māori language. The Māori radio network has been strengthened and a Māori television service was launched in 2004. The service now operates two channels broadcasting in the Māori language. Government surveys show significant gains in the health of Māori language. By 2006, the percentage of Māori people with some level of speaking proficiency had increased from 42% in 2001 to 51%. Listening proficiency increased from 58% to 67% during the same period. Attitudes towards the Māori language among Māori and non-Māori have become more positive. A new Māori Language Strategy is due to be completed in 2009.

#### ***4.1.5. Civil Union Act 2004***

In 2004 the Government removed a major barrier of discrimination for homosexual people with the passage of the Civil Union Act, which enables individuals in same-sex relationships to formalise their relationship by entering into a civil union. The Civil Union Act allows for legal recognition of relationship for heterosexual couples who do not wish to marry, as well as for same-sex couples (who cannot marry). Changes to the Relationship (Statutory References) Act 2005 and related statutes means the same-sex couples are treated in the same way as opposite-sex married or de facto couples when applying for social security benefits.

#### **4.1.6. Prostitution Law Reform**

The 2003 Prostitution Reform Act has taken a pragmatic approach to decriminalising prostitution as it does not endorse or morally sanction prostitution or its use. The Act is consistent with CRC and the ILO Convention 182. The Act has created a framework designed to promote the welfare and occupational health and safety of sex workers. The Act specifically prohibits the use in prostitution of persons under 18 years of age. It recognises the vulnerability of people who do not speak English well or do not have a secure footing in New Zealand. The Act prohibits people who are not permanent residents or citizens from supplying commercial sexual services. In May 2008 the Prostitution Law Review Committee's first report on the Act's operation concluded that it has had a "marked effect in safeguarding the [human] rights of sex workers".

#### **4.1.7. Freedom of Expression and the Statement on Religious Diversity**

New Zealand is firmly committed to the freedom of expression and the freedom of thought, conscience, religion and belief. Under the New Zealand Bill of Rights Act everyone has the right to the freedom of thought, conscience, religion and belief (section 13) and the right to the freedom of expression (section 14).

In February 2006, a number of New Zealand media reproduced the cartoons depicting the Prophet Mohammed to illustrate the international news story. This led to peaceful local protests as well as threats of international sanctions against New Zealand. In the Government's view, the decision of some New Zealand media to publish the cartoons that they knew would be deeply offensive to the Muslim community in New Zealand was regrettable. It showed little respect for New Zealand's long-standing commitment to tolerance and respect for each others' beliefs. Following the controversy, the Race Relations Commissioner convened a meeting of the media and religious leaders to discuss the issue. A *Statement on Religious Diversity* was also developed through the *New Zealand Diversity Action Programme*. The *Statement* directly addressed the issue, noting *inter alia* that "the right to freedom of expression and freedom of the media are vital for democracy but should be exercised with responsibility".

#### **4.1.8. Open Invitation to all UN Special Procedures Mandate Holders**

In February 2004 New Zealand extended a standing open invitation to all UN Special Procedures mandate holders to visit New Zealand. In the Government's view, UN Special Procedures play a very important role in working constructively with States and relevant stakeholders in ensuring countries are implementing their human rights obligations. The UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, visited in November 2005. New Zealand's open invitation will continue to stand without restrictions.

## **4.2. Challenges and Constraints**

A number of human rights challenges and constraints have already been discussed in this report but additional challenges for New Zealand include:

#### ***4.2.1. Victims' Rights***

Over the last 20 years successive Governments have paid greater attention to the issues of victims of crime. These issues include better recognition and participation in the legal system for victims, financial compensation and restitution, a more comprehensive and sustained system of support for victims, better promotion of restorative justice programmes, and the need for greater sensitivity in the treatment of victims of crime. The Government has undertaken a number of policy and legislative measures to address these concerns, including the Victims' Rights Act 2002; direct funding of community providers of victim support services including the New Zealand Council of Victim Support Groups; the establishment of Family Violence Courts; and funding a number of Victim Assistance Schemes for victims of serious crime.

In December 2007, a Parliamentary Select Committee completed an Inquiry into victims' rights, which found that while much had been done to strengthen victims' rights and provide support services, there were still a number of areas where further improvements could be made. In response to the Inquiry, the Government has undertaken a Review of Services for Victims of Crime, which to date has included the development of a Victims' Charter, a Victims' Information Line and a Website. Current priorities for the Government include establishing a Victims' Compensation Scheme, a Victims' Services Centre, and reviewing the Victims' Rights Act.

#### ***4.2.2. Human Rights and Countering Terrorism***

In the wake of 9/11 and the Bali bombings, the Government has strengthened anti-terrorism measures to meet its international counter-terrorism obligations and duty to protect New Zealanders. NGOs and the NZHRC have expressed concern that some of these measures do not adequately respect human rights or have been used inappropriately. For example, the NZHRC received a number of approaches about the New Zealand Police operation in October 2007 under the Arms and Terrorism Suppression Acts resulting in the arrest of individuals for the unlawful possession of firearms and other restricted weapons. The operation was mounted in response to the establishment of training camps involving the use of firearms and other weapons in a remote part of New Zealand (Urewera). Following subsequent investigations, the arrested individuals were charged with offences under the Arms Act. No charges were laid under the Terrorism Suppression Act (TSA), which requires the Solicitor-General's consent. The Solicitor General decided that, while there was a sufficient basis for investigations under that legislation, there was insufficient evidence against the individuals to proceed with prosecution of offences under the TSA. Three UN Special Rapporteurs received a communication on this issue in late November 2007 and the Government responded in January 2008. The Special Representative of the Secretary-General on the situation of human rights defenders expressed appreciation for the Government's detailed response.

Following a recommendation from the Solicitor-General, the New Zealand Law Commission (an independent organisation which reviews areas of the law that need updating, reforming or developing) is undertaking a review of existing legislation to ascertain whether amendments are needed to cover the conduct of individuals that creates risk to, or public concern about, the preservation of public safety and security. The terms of reference for the review direct the Commission "to take into account the need to ensure an appropriate balance between the preservation of public safety and the security and

maintenance of individual rights and freedoms”. The Commission process is to undertake initial research and consultations then prepare an issues paper followed by a final report.

#### **4.2.3. Child Poverty**

In August 2008 the Children’s Commissioner released a report on the negatives consequences of poverty for New Zealand children.<sup>24</sup> The Ministry of Social Development continues to monitor and report on child poverty as part of its wider work programme monitoring social and economic wellbeing. The Ministry’s 2008 Household Incomes report provides information on the material wellbeing of New Zealanders as indicated by their household incomes from 1982 to 2007. On all measures, the report identified that poverty rates for children declined from 2004 to 2007. Significant efforts have been undertaken to address child poverty in the last decade but more remains to be done.

## **5. Key Human Rights Priorities**

The priorities of the Government are:

- improving the economic, social and cultural wellbeing of New Zealanders;
- reducing violence within families and its impact on women and children;
- improving the opportunities and responsibilities of young New Zealanders through the education and youth justice systems;
- strengthening the rights of victims of crime;
- realising Māori potential and continuing the momentum on achieving fair, just and practical settlements of historical claims under the Treaty of Waitangi; and
- the implementation of the Convention on the Rights of Persons with Disabilities and the *New Zealand Disability Strategy*.

## **Annex A: Tokelau**

### **Methodology/Consultation Process**

The first draft of this report was prepared by New Zealand in consultation with the Government of Tokelau. The draft was then made publicly available for interested groups to comment on, including the NZHRC.

### **Background information on Tokelau**

Tokelau is comprised of three atolls Atafu, Nukunonu and Fakaofu (the former two with a single village, the latter with two). The atolls are separated from each other by 60–100 km of open ocean and are located about 500 km to the north of Samoa. The total land area of Tokelau is 12 sq. km, and the population is approximately 1466 people (2006 Census). In addition to Tokelauan, English and Samoan are widely spoken on the atolls.

#### *Constitutional Status and Government*

Tokelau is a non-self-governing territory, and has been administered by New Zealand since 1926. Tokelau is considered “part of New Zealand” for certain purposes under the Tokelau Act 1948 (NZ) and Tokelauans are New Zealand citizens. In practice Tokelau remains substantially self-governing. The Tokelau General Fono is the national legislative and executive body and includes the *Ulu o Tokelau*, the title of titular Head of Government rotated between the Tokelau’s three *Faipule* (head of each single village atoll). Tokelau has its own court system.

In 2003, the Governments of New Zealand and Tokelau signed the *Joint Statement on the Principles of Partnership*, which sets out the medium- to long-term context in which work can be carried forward on Tokelau’s constitutional and other development. The *Principles of Partnership* affirm partners’ shared values of human rights, commitment to good governance and respect for the rule of law.

#### *Tokelau and the International Community*

A number of human rights instruments apply in Tokelau through New Zealand treaty action, including ICCPR and its two Optional Protocols; ICESCR; CEDAW; CERD; and CAT.

With New Zealand’s support, Tokelau participates in certain regional organisations in its own right, and is an associate member of a number of international organisations.

### **Promotion and Protection of Human Rights**

The Draft Constitution of Tokelau (2007) provides that the individual human rights for all people in Tokelau are those stated in the Universal Declaration of Human Rights and reflected in the International Covenant on Civil and Political Rights. Those rights are to be exercised with proper regard to the rights of other individuals, and to the community to



which the individual belongs. A person may apply to the Council for the Ongoing Government for protection of any of their rights.

### *Women*

Tokelau has a draft *National Policy for Women and National Plan of Action* that will assist the Government's response to women's development issues. Tokelau's women's groups (*Fatupaepae*) are currently involved in implementing the Government's Project to *Stop Violence against Women and Young Girls*. This involves raising awareness among women of their rights under the law as well as suggestions for amendments to Tokelauan laws as they affect women.

### *Employment, Education and Health*

The Public Service is Tokelau's main employment provider. The Public Service Rules 2004 and Public Services Human Resources Manual provide for the protection of certain labour rights, for example, appointments are made on merit, salary scales relate to jobs, not people, and paid maternity leave is available.

Literacy levels in Tokelau are high, there is one hundred percent access to education up to 16 years of age, and senior secondary and foundation tertiary education is provided on each atoll. Ensuring the ongoing quality of education remains a challenge.

Tokelau has reaffirmed its commitment to quality health services and education facilities for its people. Schools and hospital facilities are being upgraded and there is to be a necessary emphasis on primary health care efforts.

### *Fair Trial*

Tokelau has its own criminal code set out in the Crimes, Procedure and Evidence Rules 2003. The Rules are consistent with Tokelau's human rights obligations. Tokelau's 2008 *Handbook for the Law Commissioners of Tokelau*, includes the main human rights documents of relevance to Tokelau, including Children and Young People and Persons with Disabilities.

## **Identification of achievements, best practices, challenges and constraints**

### *Achievements and Best Practices*

In 2003 the General Fono outlined *Human Rights Rules* for Tokelau, which were incorporated as Article 16 of Tokelau's Draft Constitution endorsed by the General Fono following the second referendum in 2007. The *Principles of Partnership* between Tokelau and New Zealand signed in 2003 provide a platform for Tokelau's constitutional development.

### *Challenges and Constraints*

Tokelau faces a range of challenges to fully realising human rights in the areas of health and education. Weaknesses in the health system include constraints on resources and

access to appropriate technologies common to similar isolated atoll communities. Both health and education infrastructure are currently of a lower than satisfactory standard, but this is being addressed through a programme for infrastructure development supported by NZAID. Human resource constraints are an ongoing issue. Tokelau faces the challenge of retaining skilled teachers and medical practitioners in the atolls.

Isolation is a major challenge for Tokelauans in realising human rights. There are no air services to and from the atolls and shipping services remain inadequate. This is being addressed through a substantial, long-term shipping project with the support of NZAID in which a purpose built craft, suited to the conditions, will service Tokelau by 2010.

Tokelau faces a core question regarding the interaction between law and custom,<sup>1</sup> and seeks understanding of its situation, particularly of the challenge inherent in reconciling socially known codes based in oral traditions and written law of the Western conception. A similar question involves reconciling the imported notion of individuality, as it is promoted in Human Rights principles, with the Tokelauan notion of community, which is held in high regard in Tokelauan society.

### **Key Priorities**

The General Fono has identified health, education, economic development and shipping as priority areas for development. Self-determination referenda held in February 2006 and October 2007 on the issue of a possible change of status from that of territory to self-government in free association with New Zealand did not reach the two-thirds majority set by the Tokelau General Fono for a change of status. As a consequence of the outcome of these referenda Tokelau's leaders have decided in the immediate future to focus their efforts on ensuring adequate infrastructure and services are in place on each atoll before any further consideration is given to further acts of self-determination. Tokelau continues to make progress in strengthening the governance and administrative capability of the public service, including the *Taupulega* (*village councils*).

### **Capacity Building**

Core capacity needs in Tokelau include attracting and retaining trained teachers and medical practitioners, improving core infrastructure for the citizens of Tokelau, and increasing capacity in the public service to deliver good governance at village and national level.

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## Endnotes

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<sup>1</sup> *The Global Gender Gap Report 2008*, p. 18.

<sup>2</sup> Copies of the summary reports of the consultation roundtables in Christchurch, Wellington and Auckland are available on the websites of the New Zealand Human Rights Commission ([www.hrc.co.nz](http://www.hrc.co.nz)) and the Ministry of Foreign Affairs and Trade ([www.mfat.govt.nz](http://www.mfat.govt.nz)).

<sup>3</sup> HRI/CORENZL/2006.

<sup>4</sup> Please note that people can choose to identify with more than one ethnic group, therefore percentages do not add up to 100.

<sup>5</sup> This section draws on the Rt. Hon. Sir Kenneth Keith's, "On the Constitution of New Zealand: An Introduction of the Foundations of the Current Form of Government", (1990, updated 2008) in *The Cabinet Manual* and New M. S. R. Palmer's, "What is New Zealand's constitution and who interprets it? Constitutional realism and the importance of public office-holders", (2006) 17 *Public Law Review* 133.

<sup>6</sup> Please note this is provisional data from the Electoral Commission.

<sup>7</sup> For more information on New Zealand's position in relation to human rights instruments see *New Zealand Handbook on International Human Rights*, New Zealand Ministry of Foreign Affairs and Trade, May 2008 and New Zealand's Core Document (HRI/CORE/NZL/2006) of 26 October 2006.

<sup>8</sup> Please refer to the following website: [www.nzlii.org](http://www.nzlii.org)

<sup>9</sup> New Zealand's Explanation of Vote of 13 September 2007 is available on the Ministry of Foreign Affairs and Trade's website – [www.mfat.govt.nz](http://www.mfat.govt.nz).

<sup>10</sup> A copy of this report can be found at Ministry of Women's Affairs' website - [www.mwa.govt.nz](http://www.mwa.govt.nz).

<sup>11</sup> *Indicators for Change: Tracking progress of New Zealand women*, Ministry of Women's Affairs, October 2008.

<sup>12</sup> *Indicators for Change: Tracking progress of New Zealand women*, Ministry of Women's Affairs, October 2008.

<sup>13</sup> New Zealand Income Survey June 2007, based on median hourly earnings.

<sup>14</sup> *Focusing on Women 2005*. Wellington (Statistics New Zealand 2005).

<sup>15</sup> *Youth '07: The Health and Wellbeing of Secondary School Students in New Zealand*, The University of Auckland, December 2008.

<sup>16</sup> *Positive Ageing Indicators 2007*, Ministry of Social Development, August 2007.

<sup>17</sup> *Te Rito - New Zealand Family Violence Prevention Strategy* identifies the different forms of family violence as abuse and neglect of children by an adult; violence between adult partners; abuse and neglect of older people; violence perpetrated by a child against a parent; and violence between siblings.

<sup>18</sup> Statistical information on the impact of family violence in New Zealand is contained in *Indicators for Change: Tracking progress of New Zealand women*, Ministry of Women's Affairs, October 2008, *Children and Young People: Indicators of Wellbeing in New Zealand*, Ministry of Youth Development, September 2008, and *The Taskforce for Action on Violence within Families, The First Report*, July 2006 (available from the Ministry of Social Development's website, [www.msd.govt.nz](http://www.msd.govt.nz)).

<sup>19</sup> Many of these initiatives are outlined in the New Zealand Family violence clearing house website. For further information, see [www.nzfvc.org.nz](http://www.nzfvc.org.nz).

<sup>20</sup> See [www.savethechildren.org.nz](http://www.savethechildren.org.nz).

<sup>21</sup> *The Social Report 2008*, Ministry of Social Development, 2008.

<sup>22</sup> Please note that people can choose to identify with more than one ethnic group, therefore percentages do not add up to 100%.

<sup>23</sup> *Tui Tui Tuituia: Race Relations in 2007*, New Zealand Human Rights Commission, March 2008.

<sup>24</sup> M. Fletcher and M. Dwyer, *A Fair Go for all Children, Actions to address child poverty in New Zealand*, August 2008.