

20 December 2013

Kate Fox
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Dear Kate

ICCPR List of Issues Prior to Reporting

The New Zealand Human Rights Commission (**the Commission**) derives its statutory mandate from the Human Rights Act 1993 (**HRA**). The long title to the HRA states that the Commission's role is to provide better protection of human rights in New Zealand in general accordance with the United Nations Covenants or Conventions on Human Rights. The Commission has "A" status accreditation from the International Co-ordinating Committee of National Human Rights Institutions.

The Commission appreciates the opportunity to provide information to the Human Rights Committee to inform its development of a list of issues prior to reporting (**LOIPR**) on New Zealand's anticipated 6th periodic report under the International Covenant on Civil and Political Rights (**ICCPR**).

In June 2012 the Commission wrote to the Committee in relation to the adoption of New Zealand's LOIPR. In that letter the Commission identified the key challenges for New Zealand's continued implementation of the ICCPR. Attached as Appendix 1 is a copy of that letter.

This letter is provided with the aim of updating the Committee on what the Commission views as significant developments and key challenges that have emerged since June 2012. In particular, the Commission notes that New Zealand will undergo its second Universal Periodic Review (**UPR**) before the Human Rights Council in January 2014. Earlier this year the Commission made an independent submission to the UPR process. In its submission the Commission made 20 recommendations, a significant number of which relate to the implementation of the ICCPR in New Zealand. Attached as Appendix 2 is a copy of the Commission's submission to the UPR process.

General Information on the National Human Rights Situation

New Zealand generally has high levels of human rights realisation. New Zealanders are generally free to say what they think, read and view what they like, worship where and how they choose, move freely around the country and feel confident in the laws that protect them from discrimination and the arbitrary abuse of power. Most New Zealanders also experience the benefits of the economic, social and cultural rights – education, decent work, good health and affordable, healthy housing.

Since 2012 there have been some significant achievements, including:

- greater recognition of the equality of same-sex couples with the recent passage of the Marriage (Definition of Marriage) Amendment Act 2013;
- significant progress in settling historic breaches of the Treaty of Waitangi. Since 2009, 19 Bills have been passed by Parliament giving effect to Treaty settlements.¹ As Māori and the Crown continue to make progress with Treaty settlements, innovative forms of

¹ An unprecedented 11 Bills were passed by Parliament in 2012 giving effect to Treaty settlements.

redress have emerged. These have related to things such as recognition of mana and recognition of cultural taonga;

- initiatives which aim to give better effect to cultural expertise and the principle of self determination. Examples of this approach are *Ka Hikitia – Managing for Success: The Māori Education Strategy 2008-2012* and the introduction of ten marae-based courts and two Pasifika courts for Māori and Pacific young people involved in the youth justice system; and
- the release of the Constitutional Advisory Panel’s report on the Constitutional Conversation.

Challenges remain, however, to fully realising human rights for everyone in New Zealand. Two major earthquakes and numerous aftershocks struck the Canterbury region in September 2010 and February 2011. The earthquakes resulted in significant loss of life and destruction of homes, businesses, community² and city infrastructure. The State has invested a large amount of resources and efforts in the Canterbury earthquake recovery process. However, significant issues have emerged relating to rights to property, health, housing and participation by affected people in decision making. The Canterbury earthquake recovery process has brought renewed attention to a number of enduring human rights challenges for New Zealand and highlighted the fragility of some human rights protections.

On 10 December 2013 the Commission released a report which outlines the human rights challenges raised by the Canterbury earthquakes. The aim of the report is to encourage key influencers and decision-makers to apply a human rights approach, by putting human rights principles at the centre of decision-making in civil emergencies, and more broadly when developing policies.³

Constitutional and Legal Framework (Art. 2)

Despite New Zealand’s commitment to its international obligations, in practice not all of the rights contained in the various international treaties to which New Zealand is a party are given explicit domestic legal expression or protection. For example:

- the rights and freedoms protected by the New Zealand Bill of Rights Act 1990 (**BoRA**) are set out in Part 2 of the BoRA and reflect some, but not all, of those incorporated in the ICCPR;⁴
- the Canterbury earthquake recovery has highlighted the importance of the right to be free of arbitrary interference with home and property. The right to property links to the realisation of many economic, social and cultural rights as and to the guarantee of rangatiratanga under Article 2 of the Treaty of Waitangi. It can be traced back to the Magna Carta which became part of New Zealand’s law in 1840.⁵ Property rights are protected to some extent by the common law and legislation,⁶ but are not among the rights and freedoms in BoRA;
- while aspects of social and economic rights are addressed in New Zealand through some legislation, at present economic social and cultural rights are not recognised as fundamental,

² Community infrastructure includes churches, church halls and community centres. The loss of these facilities has been particularly challenging, increasing social isolation for some groups, especially older people and disabled people.

³ A copy of the report is available here: <http://www.hrc.co.nz/key-projects/canterbury-earthquake-recovery/monitoring-human-rights-in-the-canterbury-earthquake-recovery>

⁴ In particular, there is no equivalent of Art. 17 of the ICCPR which guarantees “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honour and reputation.” The right to found a family, a general right of equality before the law, and additional rights protecting children are other rights which are not included in the BORA.

⁵ Chapter 29 of the Magna Carta provides “No freeman shall be...disseised of his freehold...but ...by the law of the land.” This aspect of the Magna Carta has been recognised by the Courts over the years (for example, *Cooper v Attorney-General* [1996] 3 NZLR 480) and is implicit in Article 2 of the Treaty of Waitangi.

⁶ Such as the Public Works Act 1981 and the Resource Management Act 1991.

justiciable rights.⁷ Human rights are universal and indivisible. Many civil and political rights cannot be realised in the absence of social, economic and cultural rights.

The Relationship and Confidence and Supply Agreement between the National Party and the Māori Party (16 November 2008) agreed to establish a group to consider constitutional issues, including Māori representation. In 2012 a Constitutional Advisory Panel (**Panel**) was appointed to “listen, facilitate and record New Zealanders’ views on constitutional issues.”⁸

On 31 July 2013 the Commission made a submission to the Panel. In its submission the Commission recommended *inter alia*:

- incorporation of all civil and political rights in to the BoRA;
- explicit statutory recognition of economic, social and cultural rights, including the availability of judicial remedies and alternative dispute resolution;
- adding an equality provision to BoRA;
- specific legislative protection of property rights;
- stronger protections to ensure better human rights compliance via a range of mechanisms;
- entrenchment of the BoRA; and
- enhancing political participation via a range of specified mechanisms.⁹

The Panel has now reported back to Government and has made a series of strong recommendations to improve New Zealand’s constitutional arrangements. In particular the Panel has recommended that the Government:

- sets up a process, with public consultation and participation, to explore in more detail the options for amending the Act to improve its effectiveness such as:
 - adding economic, social and cultural rights, property rights and environmental rights;
 - improving compliance by the Executive and Parliament with the standards in the Act;
 - giving the Judiciary powers to assess legislation for consistency with the Act; and
 - entrenching all or part of the Act.

Place of the Treaty of Waitangi in New Zealand’s Constitutional Arrangements

The Treaty of Waitangi (1840) is New Zealand’s founding document and has major significance for human rights and harmonious race relations in New Zealand. The four articles of the Treaty reflect fundamental human rights principles.¹⁰ The place of the Treaty of Waitangi in New Zealand’s constitutional arrangements was considered through the Constitutional Review process. The Panel recommended the Government:

- continue to affirm the importance of the Treaty as a foundational document;

⁷ In the absence of a comprehensive constitutional document or entrenched legal provisions, economic, social and cultural rights are mainly provided for through policy and practice.

⁸ <http://www.cap.govt.nz/Our-Role>

⁹ A copy of the Commission’s submission to the Constitutional Review is available here: <http://www.hrc.co.nz/2013/commissions-review-of-new-zealands-constitutional-arrangements-to-the-constitutional-advisory-panel-released>

¹⁰ Article 1 reflects the right to self-determination for incoming settlers, democratic rights such as citizenship rights and legal rights protected by the rule of law. Article 2 reflects the right to self-determination for tangata whenua, indigenous rights and property rights. Article 3 reflects the rights to equality and non-discrimination in the realisation of civil, political, economic and social rights. Article 4 reflects the right to freedom of religion and beliefs.

- ensure a Treaty education strategy is developed that includes the current role and status of the Treaty and the Treaty settlement process so people can inform themselves about the rights and obligations under the Treaty;
- support the continued development of the role and status of the Treaty under the current arrangements as has occurred over the past decades;
- set up a process to develop a range of options for the future role of Treaty, including options within existing constitutional arrangements and arrangements in which the Treaty is the foundation; and
- invite and support the people of Aotearoa New Zealand to continue the conversation about the place of the Treaty in our constitution.

The Commission supports the recommendations of the Panel.

Effective Remedy (Article 2)

The rule of law lies at the foundation of a free and democratic society and is essential for the protection of human rights. However, legislation is increasingly being used to oust judicial and other review mechanisms, which significantly impacts on the right to justice (and to an effective remedy). Recent examples include:

- Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010;
- Canterbury Earthquake Response and Recovery Act 2010
- Taxation (Tax Administration and Remedial Matters) Act 2011; and
- Immigration Amendment Act 2013;

In 2012 the Court of Appeal affirmed that the policy of not paying family carers to provide disability support services to disabled family members constituted unjustifiable discrimination on the basis of family status. In direct response to this decision the Government passed the New Zealand Public Health and Disability Amendment Act under urgency¹¹ on 17 May 2013. The Act effectively ousts the Commission's jurisdiction and removes any potential domestic remedy for unlawful discrimination relating to family care policy.¹² The passage of the Act from introduction to enactment in 24 hours with no opportunity for Select Committee Review, a heavily redacted Regulatory Impact Statement and a report from the Attorney General that the Bill breached BORA was greeted with despondency and despair by disabled people.

Adoption of National Plan of Action (Article 2)

The Commission has statutory responsibility for the development of a National Plan of Action for human rights. In 2005 the Commission developed the first 5 year action plan. The Human Rights Committee welcomed the action plan and recommended that the State should engage in the development and official adoption, as government policy, of a further national human rights action plan for 2010-2015.

¹¹ Meaning that despite there being significant human rights implications, neither the Commission nor the public were able to make submissions on the Bill.

¹² It stops people from bringing unlawful discrimination complaints about a family care policy to the Commission. Nor will any proceedings be able to be commenced or continued in any court in relation to discrimination.

The Government has committed to work with the Commission to develop New Zealand's second NPA.¹³ It is intended that the NPA will be developed as a follow on from, and be directly informed by, New Zealand's second UPR. As noted by the Committee on Economic, Social and Cultural Rights in 2012, it should also take into account the concluding observations from treaty bodies.¹⁴

Adoption (Articles 2, 17, 18 & 26)

The Adoption Act 1955 is one of the oldest statutes in New Zealand with ongoing application. It was enacted at a time when societal structures and mores were very different from today. The Act relies on a number of grounds of prohibited discrimination to regulate the adoption process.

Over the years the courts have made attempts to construe the Act in such a way as to align it with contemporary civil life. Executive government and Crown Entities such as the Law Commission have also reviewed the Act. The theme that consistently emerges from these court decisions and reviews is that at least some of the discrimination contained in the Act is unjustified and a barrier to ensuring justice in individual cases.

In 2013 *Adoption Action*¹⁵ applied to the Human Rights Review Tribunal for a declaration that the Adoption Act 1955 and the Adult Adoption Information Act 1985 are inconsistent with the anti-discrimination provisions in the BoRA and therefore contravene Part 1A of the HRA. The Commission has intervened in these proceedings. The hearing before the Tribunal is set to continue in early 2014.

Immigration (Articles 2, 9(1) & 13)

In 2012 the Government has introduced an Amendment to the Immigration Act designed to address the risk of a mass arrival of illegal immigrants. Although the Explanatory Note asserts that the Bill "contains a range of measures to enhance New Zealand's ability to deter people smuggling", the legislation appears to be less concerned with the imposition of sanctions against people smugglers or illegal immigration than imposing discriminatory conditions on refugee claimants who arrive as part of a group. It does this by introducing a detention regime that not only infringes the Refugee Convention and arguably amounts to arbitrary detention under Art.9 (1) but operates in a discriminatory manner as it applies only to groups arriving in New Zealand other than in the course of a scheduled international service. When assessed against the international norms and standards, the policy is inappropriate and unjust.¹⁶

In June 2013 the Bill was enacted into law.

Right to Privacy (Article 17)

Communications surveillance

Globally, issues around mass surveillance, privacy, business and human rights, and media freedom have arisen in the wake of disclosures by Edward Snowden in 2013. In New Zealand, the focal point

¹³ New Zealand National Universal Periodic Review Report, 4 November 2013, at paragraph 17.
[http://www.mfat.govt.nz/downloads/humanrights/New%20Zealand%20UPR%20national%20report%20-%20submitted%20version%20\(3\).pdf](http://www.mfat.govt.nz/downloads/humanrights/New%20Zealand%20UPR%20national%20report%20-%20submitted%20version%20(3).pdf)

¹⁴ E/C.12/NZL/CO/3 at paragraph 33.

¹⁵ *Adoption Action* is an incorporated society whose members include persons who have had personal experience of adoption whether as relinquishing parents, adopted persons or actual or potential adoptive parents.

¹⁶ For more information see the Commission's submission to the Transport and Industrial Relations Committee:
http://www.hrc.co.nz/wp-content/uploads/2012/06/Submission-on-Immigration-Bill_NZHRC.pdf

for these issues was the Government Communications Security Bureau and Related Legislation Amendment Act 2013 and the Telecommunications (Interception Capability and Security) Bill.

The Commission is concerned that the legislation is wide-reaching without sufficient safeguards against abuse of power. There is inadequate oversight and inadequate provision for ensuring transparency and accountability. In its report to the Prime Minister on the legislation and broader human rights matters regarding surveillance the Commission recommended:

- A full and independent inquiry into New Zealand's intelligence services be undertaken as soon as possible with terms of reference agreed on a cross-political party basis, to consider the role and function of our intelligence services, their governance and oversight mechanisms and to consider the balance between human rights and national security; and
- Stronger accountability and oversight mechanisms, including Parliamentary oversight from a cross-party select committee, in addition to the Inspector-General of Intelligence and Security.¹⁷

Arbitrary or unlawful interference with family of home

Following the Canterbury earthquakes the Government designated certain areas used for residential purposes as the "red zone". The Crown made an offer to purchase the property of people in the red zone for the full 2007 rateable valuation if their properties were insured. Owners of properties which were uninsured or consisted of vacant land were offered only half the 2007 rateable value of the land, and nothing for any improvements, including homes. Owners of commercial properties were offered half the 2007 rateable value of the land and half of the rateable value for any improvements (if the improvements had been insured).

At the same time the Council indicated that it was unlikely to install any new services in the red zone and utilities may be discontinued. It would also be difficult to insure properties if people elected to remain. The effect was that it would no longer be viable for people to continue living in the red zone and they would find it difficult – if not impossible – to sell their property to a purchaser other than the Crown.

The decision to red zone properties has had the effect of undermining the market value of those properties. As a result, owners of property within the red zone, particularly those who were uninsured or owned vacant land, find themselves at a considerable disadvantage economically, with severe social impacts, and under pressure to sell to the Crown on the Crown's terms.

In 2013 these decisions were challenged in the High Court. The Commission intervened in these proceedings.¹⁸

The High Court found that the Government's creation of the Red Zone was made "outside of, and without regard for, the statutory regime and was not made according to law."¹⁹ In addition the Court cited the Universal Declaration of Human Rights, the International Covenant on Economic Social and Cultural Rights and quoted Article 17 of the ICCPR. It said that:²⁰

¹⁷ A copy of the Commission's report is available here: <http://www.hrc.co.nz/wp-content/uploads/2013/07/09072013-Human-Rights-Commission-Report-to-the-Prime-Minister-re-GCSB-and-TICS-Bills-FINAL.pdf>

¹⁸ A copy of the Commission's submissions to the High Court are available here: http://www.hrc.co.nz/wp-content/uploads/2013/09/Quake-outcasts_Submission-of-the-Human-Rights-Commission-as-Intervener.pdf

¹⁹ *Quake Outcasts v Minister for Canterbury Earthquake Recovery* [2013] NZHC 2173 at [90].

²⁰ At [65].

The use and enjoyment of one's home is a fundamental human right. In my view the creation of the red zone comprised an interference with that right.

The Government appealed the High Court's decision to the New Zealand Court of Appeal. Again the Commission intervened in these proceedings and submitted that:

The decision to treat the small group of uninsured home owners differently from other home owners in the particular context of the residential red zones raises a serious issue of non compliance with New Zealand's international obligations. In particular the decision raises issues of arbitrary and disproportionate interference with the right to enjoy one's home, and a retrogressive step by the government in protection of the right to housing (including security of tenure and adequacy of housing conditions).

Although the Court of Appeal confirmed the High Court's decision that the offers made to owners of un-insured and vacant land in the red zone was unlawful, it considered that the red zoning process was lawful. It is unclear at this stage whether the decision of the Court of Appeal will be appealed to the New Zealand Supreme Court.

Participation (Article 25)

Despite having a strong commitment to democratic principles, the Canterbury earthquake recovery has highlighted the fragility of some human rights protections. People affected by the earthquakes are limited in their opportunities to participate in problem identification, solution design and decision-making in issues which affect their lives. Difficulties are faced in the provision of full and timely information relevant to decision-making, and clear timeframes and transparency from decision-making authorities. Limitations on meaningful participation and the uncertainty faced by many Cantabrians are factors contributing towards deteriorating standards of mental health and wellbeing. The Canterbury experience is symptomatic of a wider trend to move towards centralised governance, progressively removing the voice of those affected from the decision making process.

Counter-Terrorism measures and respect of Covenant guarantees – Operation 8 (Articles 2, 7, 14 & 26)

On 15 October 2007, 17 people were arrested in an exercise that became known as Operation 8. The exercise was the result of months of visual surveillance and interception of private communications by the police that had been authorized in the belief that the surveillance was necessary to prevent terrorist activity²¹. The Solicitor General later found the use of the Terrorism Suppression Act to obtain the interception warrants was justified but that there was insufficient evidence to authorise prosecution under that Act.

The implications of the use of the Terrorism Suppression Act was the subject of much public discussion and led to renewed concern about the effectiveness of the criminal law in preventing organized threats to public safety and security. The treatment of Māori and Pakeha was also raised and it was suggested that the police would not have employed the same tactics if predominantly Pakeha communities had been involved.

Within days the Commission received over 50 enquiries, complaints and expressions of concern. In considering how best to respond the Commission took into account that those arrested would be able to challenge any evidence through the formal court processes and that a complaint mechanism with extensive powers to examine Police files and require evidence, namely the Independent Police

²¹ As defined in the Terrorism Suppression Act 2002

Conduct Authority (IPCA), was available²². The Commission therefore chose not to investigate the complaints but rather analyse the human rights considerations that arose in the exercise.

On 19 December 2013 the Commission released its analysis of the human rights issues involved in Operation 8. The report concludes that no comprehensive assessment of the impact on innocent people was carried out; and insufficient support was provided to innocent people. It's very clear more should have been done in the immediate aftermath to support these people. The Commission makes five recommendations to help ensure negative impacts are minimised in the future.²³

Yours sincerely

A handwritten signature in black ink, appearing to read 'MJV White', followed by three dots '...'.

Michael J V White
Senior Legal and Policy Analyst

²² The criminal matters were still before the Courts and the IPCA had not reported at the time this comment was being prepared.

²³ A copy of the Commission's report is available here: <http://www.hrc.co.nz/2013/commission-releases-human-rights-analysis-of-operation-eight>

APPENDIX 1

15 June 2012

Kate Fox
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Dear Kate

ICCPR LIST OF ISSUES

The following list of issues provided by the Human Rights Commission (the Commission) identifies the key challenges for New Zealand's continued implementation of the Convention.

The status of the New Zealand Bill of Rights Act 1990 (NZBoRA) (Article 2)

In the Concluding Observations on New Zealand's Fifth Periodic Report in 2010, the Human Rights Committee reiterated its concern that the NZBoRA did not reflect all rights in the International Covenant on Civil and Political Rights (ICCPR). It also expressed concern that the NZBoRA did not take precedence over ordinary law and that laws adversely affecting the protection of human rights had been enacted, notwithstanding that they had been acknowledged by the Attorney-General as being inconsistent with the NZBoRA. The Committee recommended that New Zealand should enact legislation that gave full effect to all the rights in the ICCPR and strengthen current mechanisms to ensure compatibility of domestic law with the Covenant.

The Government is currently undertaking a review of Constitutional arrangements in which the issue of entrenchment of the NZBoRA will be explored, together with the implications of including the full range of Covenant rights in domestic legislation. Irrespective of the outcome of the review the protection of human rights in New Zealand and compliance with the Covenant could be improved in the interim by:

➤ **Amending section 7 of the NZBoRA.**

Section 7 is designed to ensure that Parliament is made aware of a possible breach so it can either rectify it or enact the legislation recognising there is a breach. At present the Attorney-General only reports to Parliament if the discrimination cannot be justified as a reasonable limit on the particular right or freedom under consideration. This process would be strengthened if the Attorney-General was required to present a report that legislation is *prima facie* discriminatory allowing a more informed debate about whether a breach can, in fact, be justified.

➤ **Creating a Human Rights Select Committee.**

Human rights are currently dealt with by the Justice and Electoral Committee. The functions of select committees include considering and reporting to the House on bills, petitions, financial reviews, estimates, supplementary estimates, international treaty examinations and any other matters. Given the wide scope of human rights, it is clear that human rights considerations are not confined to the Justice and Electoral Committee. The establishment of a Human Rights Select Committee will

enhance systematic Parliamentary oversight and strengthen accountability²⁴. It would provide human rights scrutiny of proposed legislation and have the power to carry out thematic inquiries.

The Commission considers that a recommendation by the Committee requiring the Attorney-General to report on every bill that is introduced together with the establishment of a Human Rights Select Committee would improve compliance with Article 2 of the Covenant.

Presumption of Innocence (Article 14(2))

In 2009, in the context of New Zealand's report on implementing the ICCPR, the Committee indicated that it wished to hear what the Government was proposing to do to ensure full respect for the right to be presumed innocent until proven guilty following the Supreme Court's decision in *R v. Hansen*²⁵. The Committee also asked for information on the results of the Parliamentary review of the Misuse of Drugs Act.²⁶

In 2010, the Government responded that the Law Commission had released an issues paper on the control and regulation of drugs which addressed (among other things) the problems of proof that the presumption of supply seeks to remedy. The Government stated that it intended to respond when the Law Commission released its final report later this year while stressing that a rewrite of the Misuse of Drugs Act was not a priority.²⁷ The Committee found the response unconvincing, and reiterated in its final recommendations that New Zealand should:

...expedite the adoption of amendments to the Misuse of Drugs Act 1975, with a view to ensuring compatibility with articles 9 and 14 of the Covenant and ensure the right to be presumed innocent²⁸.

Under section 25(c) of the NZBoRA, everyone charged with an offence has "the right to be presumed innocent until proved guilty according to law". While the right can be limited in some situations the Supreme Court in *Hansen* held that such situations will not be a common occurrence²⁹. In *Hansen* the majority held that although the control of illegal drugs was a significant objective, the fact that the reverse onus was triggered by possession of an arbitrary amount, it was not rationally connected with the objective and could not be justified in a free and democratic society.

In the wake of *Hansen*, the Attorney-General has twice found that the reverse onus of proof in proposed legislation could not be justified under s.5 NZBoRA³⁰ but the legislation has been passed despite the inconsistency. More recently a bill to strengthen the bail laws has been introduced that includes a reverse onus of proof which will require defendants charged with murder and serious Class A drug offences to show why they should be released on bail rather than the prosecution showing they should not be released (as is the case at present).

General Comment No. 32 (2007) states in relation to article 14(2) ICCPR that:

...everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt

²⁴ See also Geiringer, C "Declarations of Inconsistency dodged again" [2009] NZLJ 235 who considers that the absence of a dedicated select committee to consider the rights implications of legislation ...severely impoverishes the quality of rights-based scrutiny within the New Zealand House of Representatives.

²⁵ [2007] NZSC 7

²⁶ CCPR/C/NZL/Q/5 at para 19 1

²⁷ Minister Simon Power, Response to questions of Human Rights Committee (16/3/10) at 3

²⁸ CCPR/C/NZL/CO/5 at para 17

²⁹ The Chief Justice considered whether justification of the presumption of innocence could ever be limited as it denies the right entirely

³⁰ Misuse of Drugs (Classification of BZP) Amendment Act 2008 and the present Bill

can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle.

The continued use of a reverse onus of proof places New Zealand at odds with the accepted interpretation of Articles 9 and 14 of the Covenant and impacts on compliance with the Convention.

The Committee could raise the issue of the continued use of a reverse onus of proof given the decision of the Supreme Court in Hansen.

Representation of women (Articles 2, 3, 25 & 26)

In 2010, the Committee expressed concern about the low representation of women in high-level and managerial positions and on boards of private enterprises and urged the State Party to seek ways to “further encourage the participation of women in high-level and managerial positions and on boards of private enterprises through enhanced cooperation and dialogue with partners in the private sector.”³¹

The Commission acknowledges that New Zealand women have made significant progress in many areas of the labour market and in professional and public life, in several senior constitutional positions and in local and national politics. New Zealand also ranks highly in international measures, although it has recently slightly declined in the global equality report,³² indicating the fragility of some of the gains made and the extent of the structural gender inequalities that remain.

The Commission has produced for the past ten years a biennial Census which shows that representation of women at governance level in government appointed statutory bodies has slipped slightly to 41.5%, down from 42%.³³ This follows New Zealand’s commitment at Beijing in 1995 by former Prime Minister Jenny Shipley of a target of 50 percent women’s representation to be achieved in 2000. Because this was not achieved, the target for government appointments of women was then extended by the Government to 2010. However, in 2012 the Government introduced a sliding, lower target which is of considerable concern to the Commission. The Ministry of Women’s Affairs Statement of Intent 2012-2015 states that the percentage of appointees to state sector boards who are women will increase from 41 % to 45% by 2015.

The New Zealand Government committed to gender equality of 50/50 at Beijing more than 12 years ago, but is now targeting five percent less. The Commission would ask the Committee to comment on the soft and sliding target setting by the State Party, which breaches both the spirit and the intent of the “equal rights of men and women to the enjoyment of all civil and political rights” in the ICCPR.

Of equal concern is the target set by New Zealand for corporate sector representation of women in governance. The Ministry has set the following indicator:

The percentage of appointees to boards of the top 100 companies on the NZSX who are women will climb from 9% to at least 10% by 2015.

Given that the Commission’s Census report has indicated at least a one % gain every year for the past ten years to reach 9.32% in 2010 of women in the top 100 companies by market capitalisation, the 10 percent indicator is disappointing to say the least. It comes at a time when there is considerable civil society activity in mentoring, leadership development and sector accelerator programmes for women

³¹ CCPR/C/NZL/CO/5

³² Now 6th, down from 5th, in the World Economic Forum’s Global Gender Gap Report, 2011

³³ New Zealand Census of Women’s Participation 2010 accessed from www.neon.org.nz

to address boardroom gender gaps³⁴. The newest of these activities is one launched by the Prime Minister John Key called the 25 Percent Group which has a single-minded objective of 25 percent female participation on boards by 2015. It is comprised of 12 members who are chairs, directors and senior management of some of New Zealand's leading companies and organisations.³⁵

It also comes at a time when the New Zealand Exchange is pro-actively and positively consulting with its listed entity members on whether to follow the Australian Stock Exchange's example of requiring companies to disclose diversity policies in their annual financial reporting in a bid for transparency. At odds with these active programmes is the State Party's newly established and lesser target that appears to have set a 90 percent men and 10 percent women aspiration for corporate sector governance.

The Commission urges the Committee to recommend that New Zealand takes seriously Articles 2, 3, 25 and 26 of the Convention, and that the State Party urgently resets indicators that expressly acknowledge gender equality.

Diversity in the public service (Article 25(c))

- **Ethnic groups** are fairly well represented in the public service, given overall population percentages in New Zealand. They are not, however, well represented at senior management levels. In 2010, the State Services Commission reported on diversity in senior management in the public service. The *Equality and Diversity Report: Senior Management of the Public Service* was informed by interviews with people in public service management roles. It found that the proportion of Māori in senior management declined from 9.7 % in 2001 to 8.3 % in 2010. The proportion of Pacific peoples in senior management also declined slightly in the same period from 1.9% to 1.5%. The percentage of Asian peoples remains unchanged at 1.7%.
- **Disability** data which reflects the employment of people with disabilities in the public sector is no longer collected by the State Services Commission in its annual Human Resource Capability Survey. In *Tracking Equality at Work for Disabled People*³⁶ - a review carried out by the Human Rights Commission on the employment of people with disabilities – the Commission reported that that public service was seen as retrogressive in its role as an employer for disabled people and that the situation was even more difficult in the current environment of public service cuts.

While recognising that there have been developments to incorporate thinking about implications for diverse groups and guidance provided in the public service overall, the Committee could recommend setting targets to ensure change is fully implemented at a whole-of-government level.

Pay equality and pay equity (Articles 2 & 3)

The Commission has consistently raised pay equality and pay equity issues with international treaty bodies (UPR, ICCPR, ICESCR and CEDAW) over the past five years. Three current issues need scrutiny:

1. Pay equality for low paid female carers

³⁴ These include the EEO Trust's cross mentoring programme, Global Women's Women in Leadership Break Through programme, work by the Institute of Directors, the New Zealand Women in Leadership initiative within universities for academic women, the 13 corporate CEOs who has signed the UN Women's Empowerment Principles and accelerator programmes in agribusiness and the electricity supply industry.

³⁵ 25 Percent Group Targets Board Diversity. <http://newsroom.co.nz/stories/25-percent-group-targets-board-diversity>.

³⁶ The report can be accessed at www.neon.org.nz/trackingequalityatwork/

2. Pay equity implementation
3. Effective pay equality and pay equity legislation.

➤ **Pay equality for low paid female carers**

The Commission recently completed a major national inquiry into equal employment opportunities in the aged care workforce, *Caring Counts, Tautiaki tika*.³⁷ Up to 20,000 women in New Zealand are working in aged care as homecare support workers or in residential facilities. They are receiving very low wages (often the minimum hourly rate of \$13.50 to \$14.50) which is \$2 to \$5 less per hour than carers doing the same work in New Zealand's public hospitals. The pay parity issue is a gross anomaly in that public funding is being used by District Health Boards to fund their own employees at a higher rate than is paid by community and private providers who are contracted by District Health Boards to provide the same service in residential facilities and in the homes of older people. In other words on one hand the boards directly employ the women and on the other they funnel public money through contracts to other providers. While the Government has acknowledged the pay inequality, it says it cannot afford to fix the problem in the current financial climate but will look at it when the country's financial accounts are again in surplus³⁸.

The Commission's inquiry report included financial modelling of the fiscal impact of pay parity at approximately \$140 million a year, less than 1% of the overall health budget. The Commission recommended that the Government directs District Health Boards to develop a mechanism to achieve pay parity and that it is implemented within a stepped programme over the next three years.

The Commission reported that the funding model being used by the State party is driving the employment model in the aged care sector and that pay equality needs to be seriously addressed in light of New Zealand's ratification of international treaties affirming gender equality and pay equality and pay equity. *The Guiding Principles on Business and Human Rights* adopted by the United Nations General Assembly last year indicate that state parties cannot "contract out" of equal pay, pay equity and equal employment opportunities. They state:

*"States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights."*³⁹

➤ **Pay equity implementation, specifically in the public sector (Article 11(1)(d))**

Statistical data shows that New Zealand has had the smallest increase in median hourly earnings in the past 11 years, demonstrating sluggish growth and a jobless recovery. The gender pay gap has narrowed to 9.6 % with the ratio of female to male median hourly earnings in the June 2011 quarter at 90.4% up from 89.4% in the June 2010 quarter, the highest level since 1997. The ratio of female to male hourly wage and salary earnings for those in full-time employment also recorded its highest level since the survey began, at 95.8% in the June 2011 quarter⁴⁰.

At an aggregate level, the gender pay gap appears in times of slow growth to be tracking downwards, which may be a positive movement for some women. However, caution is required for several reasons. Statistics New Zealand warns that changes in income may be influenced by one-off events such as the change in the adult minimum wage by 25 cents an hour from April 2011, given that more

³⁷ *Caring counts, Tautiaki tika*. New Zealand Human Rights Commission 2012 accessible at www.neon.org.co.nz

³⁸ *Government won't increase aged care pay*, 3 News, <http://www.3news.co.nz/defaultStrip.aspx?tabid=213&articleID=255740>. Accessed on 13/06/2012

³⁹ *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, A/HRC/17/31.21 March 2011

⁴⁰ Statistics New Zealand, New Zealand Income Survey, June 2011. Released on 6 October 2011

women are on the minimum wage than men. Also, the overall gender pay gap figures in the past have disguised considerable variation by ethnicity and across the public sector. For example, analysis by the Commission in 2010 showed that 24 of 34 public service departments had a gender pay gap greater than the gap in the total labour force.

Twelve departments, some with significant numbers of staff, had gender pay gaps of more than 20%.⁴¹ A number of departments reported the dollar amount of the gap. For example, a 23.2% pay gap at the Ministry of Economic Development amounted to an average dollar amount of \$19,636.51 difference in annual pay.⁴²

Pay and employment equity reviews across the public service, the public health and public education sectors, as well as two local councils and three Crown entities were carried out in 2004-2009. The reviews found gender pay gaps for all but one of the public service departments of between 3-35%. Common findings included unequal starting salaries for the same job; female dominated jobs being paid lower than male dominated jobs; gender disparities in pay progression and performance pay; women dominating the lowest paid staff and few in the best paid jobs; women having a smaller share of additional rewards and significant gender differences in participation opportunities at all levels. These reviews and response plans were driven by the work of the Pay and Employment Equity Unit within the Department of Labour which was closed in 2009 after five years and the closure was accompanied by the Government's cancellation of two ongoing pay investigations for 24,000 school support staff and social workers.

Following these cancellations, the union, the Public Service Association (PSA), complained to the Commission of sex discrimination under the Human Rights Act 1993 on behalf of social workers, a largely female workforce earning 9.5% less than their male colleagues. The complaint was against the Government and the Chief Executive of the Ministry of Social Development as the employer. The Commission notified the parties to the complaint and under the Human Rights Act mediation through dispute resolution began. The parties have now agreed to take the matter outside the Commission, continue to talk and negotiate the issue.

The following table demonstrates the difference in median hourly rates by ethnicity in 2011.

Median Hourly Rates by Age and Ethnicity

Ethnicity	Male (NZ\$)	Female (NZ\$)
European	22.80	20.00
Māori	18.80	17.33
Pacific People	18.00	16.30
Asian	19.70	18.00
MELAA	20.00	19.18
Other	22.00	17.34
TOTAL	21.58	19.50

The gender gap between the highest hourly rate (European men) and the lowest (Pacific women) is 28.5% and has widened from 2010.

The Ministry of Women's Affairs in its latest Statement of Intent has no specific indicators relating to closing the gender pay gap or implementing pay equity, a critical element in advancing gender equality.

⁴¹ Human Rights Commission, *New Zealand Census of Women's Participation 2010*, <http://www.neon.org.nz/census2010/>

⁴² Ibid

➤ **Effective pay equality and pay equity legislation.**

No successful cases have ever been progressed under New Zealand's Equal Pay Act 1972 and there is no legislation in New Zealand that relates to pay equity and to work of equal value. The Equal Pay Act 1972 and the Human Rights Act 1993 provide for protection against sex discrimination but are widely regarded as ineffective in pay equity cases largely because no positive obligations are placed on employers in relation to equal pay and pay equity. The legislation also anticipates individual complainants, rather than groups of women, which is a limitation when attempting to reduce structural discrimination.

The Commission has developed and promoted a Pay Equality Bill that promotes transparency of wages, makes confidentiality of pay illegal and provides for a positive duty on employers.⁴³ The proposed legislation which is available for the Government, other political parties or a private member to sponsor, has generated significant publicity along with another private member's bill aimed at reforming the current Equal Pay Act.

The Commission recommends that the Committee asks New Zealand to:

- *establish specific measures and indicators relating to the implementation of equal pay and pay equity*
- *identify a time frame to develop a pay parity mechanism and redress pay inequality for female care workers in the aged care sector*
- *review the accountabilities of public service chief executives to be good employers and a requirement that they address the issues identified in their department's pay and employment equity response plans.*

Structural Discrimination (Article 3)

Entrenched ethnic inequalities exist in New Zealand. The effects of structural discrimination in one area and at any life stage impacts on socio-economic, cultural and other outcomes. This can be seen in the criminal justice system, where bias in policing in turn impacts on arrest and imprisonment statistics. Focusing on universal provision of public services, i.e. providing the same service to all irrespective of socio-economic status or ethnicity, assumes everyone has equal access to services.

Proper planning for reducing inequalities depends on good-quality, standardised data and disaggregated data. Where government services do not respond to the specific needs of ethnic groups, structural discrimination is perpetuated. Adequate resources – both financial and in terms of staff with relevant expertise (e.g. language skills or cultural knowledge) – training, and support materials are vital.

Right to Life and Prohibition of Torture & Cruel, Inhumane or Degrading Treatment and Treatment of Prisoners (Articles 6, 7&10)

➤ **Use of Tasers**

In the concluding recommendation on New Zealand's fifth report, the Committee recommended that New Zealand should consider relinquishing the use of Tasers or if they were retained then there should be a greater effort to ensure adherence at all times to guidelines restricting their use to situations where the use of lethal force was justified.

While there was transparent reporting on the use of Tasers during their trial in 2006, this seems to have been discontinued. Police have stated, however, that Taser-cams would ensure accountability but a complaint to the Ombudsmen regarding police refusal to release Taser-cam footage was not upheld,

⁴³ Human Rights Commission, Pay Equality Bill, in *Tracking Equality at Work*, 2011
<http://www.neon.org.nz/trackingequalityatwork/>

and police did not have to release their footage of an incident. Tasers are currently being updated to a two shot model, prompting concerns that they are becoming routinely used and employed in a wider variety of situations than originally anticipated.

The Commission recommends that the Committee reinforces its earlier comments about the use of Tasers and, if they are retained, the importance of ensuring greater accountability and the use guidelines limiting their use only to the most extreme situations.

➤ **Corrections Amendment Bill**

In 2010 the Committee considered that the privatisation of prisons should be monitored to ensure that persons deprived of their liberty were guaranteed all the rights enshrined in the Covenant.⁴⁴ Currently an amendment to the Corrections Bill is before a Select Committee. The Bill proposes to increase efficiency by removing layers of oversight, or by extending powers to additional people (including staff of privately managed prisons). The cumulative effect of some of the changes has the potential to weaken the Act's human rights protections in significant ways. These changes appear to be in breach of binding international obligations that New Zealand has committed to.

The Commission agrees with the statement in the Bill's explanatory note that "overall, current legislation continues to provide a sound framework for the operation of the corrections system" and welcomes the commitment to "managing prisoners in a manner that is safe, secure, humane, effective and efficient". However, greater efficiency does not require, or justify, erosion of legislative protections for people deprived of their liberty. While the nature of imprisonment means that human rights may be limited in some circumstances, any incursion into individual rights must be accompanied by appropriate safeguards. The Bill removes a number of procedural safeguards that ensure oversight and accountability around the use of coercive powers. These checks and balances are crucial in situations where the powers of the State are exercised upon those in their custody.

The Commission recommends that the Committee reiterates the importance of the State ensuring that all persons deprived of their liberty are guaranteed the rights in the Covenant.

➤ **High level of incarceration of Māori & Pacific people**

Māori form approximately 15 per cent of the population, but account for over half of the prison population.⁴⁵ Pacific people comprise 11.31 per cent of all prisoners yet are only estimated to make up seven per cent of New Zealand's population.⁴⁶

To a large extent the disproportionate number of Māori in prison can be attributed to their social and economic circumstances generally, but there is an element of bias in the justice system itself which results in Māori being more likely to be apprehended and severely punished than non-Māori.⁴⁷

While the Commission recognises that the Government has put in place a number of programmes to deal with Māori inequalities, the Committee should urge the State to commit to specific targets and timelines for reducing the disproportionate number of Māori in prison

Immigration (Articles 2, 9(1) & 13)

➤ **Conditions of Detention**

⁴⁴ CCPR/C/NZL/Q/5 at 3

⁴⁵ Johnson A., Salvation Army Social Policy and Parliamentary Unit (2010) *A Road to Recovery*.

⁴⁶ Statistics New Zealand *National Population projections* accessed June 2011 at http://www.statistics.govt.nz/tools_and_services/tools/TableBuilder/population-projections-tables.aspx

⁴⁷ *Overrepresentation of Māori in the Criminal Justice Sector: An Exploratory Report*. Department of Corrections, Wellington (2007) at 6

In 2010 the Committee expressed concern at reports that asylum-seekers and undocumented migrants were being detained in correctional facilities with convicted prisoners and that the Immigration Act should be amended to reflect that this was inappropriate. However, concern has recently been expressed by civil society groups, interested in corrections facilities, that people charged with immigration offences such as refugees and migrants were now no longer housed separately at Auckland Central Prison but were being integrated with the general prison population.

The Commission suggests that the Committee reinforces that if asylum seekers must be detained, they are held separately from convicted prisoners.

➤ **Immigration Amendment Bill**

The Government has introduced an Amendment to the Immigration Act designed to address the risk of a mass arrival of illegal immigrants. Although the Explanatory Note asserts that the Bill “contains a range of measures to enhance New Zealand’s ability to deter people smuggling”, the legislation appears to be less concerned with the imposition of sanctions against people smugglers or illegal immigration than imposing discriminatory conditions on refugee claimants who arrive as part of a group. It does this by introducing a detention regime that not only infringes the Refugee Convention and arguably amounts to arbitrary detention under Art.9 (1) but operates in a discriminatory manner as it applies only to groups arriving in New Zealand other than in the course of a scheduled international service. When assessed against the international norms and standards, the policy is inappropriate and unjust.

The Commission urges the Committee to recommend that the Bill be withdrawn. If it is passed into law by the time the Committee considers this list of issues, the Committee should recommend that it is amended to ensure that detention is only resorted to if necessary and that there are appropriate mechanisms and procedural safeguards in place for reviewing the situation of people deemed to be mass arrivals.

➤ **Human rights and immigration**

Section 392 of the Immigration Act 2009 exempts the Act and immigration regulations and instructions made pursuant to it from the Human Rights Act and the jurisdiction of the Human Rights Commission as “immigration matters inherently involve different treatment on the basis of personal characteristics”⁴⁸.

In 2010 the Human Rights Committee recommended, in its concluding observations relating to New Zealand’s fifth periodic review under the ICCPR that the government should “consider extending the mandate of the New Zealand Human Rights Commission so that it can receive complaints of human rights violations related to immigration laws, policies and practices and report on them”.⁴⁹

As the situation has not changed, the Commission urges the Committee to renew its request for the exclusion to be removed.

Rights of the Child (Article 24)

⁴⁸ Section 392 (3) IA 2009

⁴⁹ CCPR/C/NZL/Q/5 at 4

The level of family violence in New Zealand is unacceptably high. In 2009, 2855 children were physically abused, 1126 were sexually abused and 15,615 suffered emotional abuse and neglect.⁵⁰ In 2010/11 there were 55,194 recorded incidences of family violence, up from 46,937 in 2009/2010.⁵¹

Violence is also endemic in New Zealand schools. Effects on victims can include living with anxiety and fear, lowered self-esteem, engagement in risk-taking behaviours such as substance abuse, self-harming, truanting and dropping-out from school, with associated long term adverse impacts. Victims may also suffer mental health issues including suicidal ideation, relationship difficulties and impeded emotional, behavioural and cognitive development.⁵²

In response to recommendations made during New Zealand's UPR the Government confirmed its objective to make the community safer for children, and to protect children and young people from abuse and neglect⁵³. The prevalence of peer to peer violence and abuse in schools shows that the current legislative and regulatory framework fails to provide adequate protection for children and young people. Statistics New Zealand figures show the number of recorded offences of "acts intended to cause injury" at schools or education institutes increased 23 per cent from 2004 to last year.⁵⁴

The Commission recommends that the State introduce a national response to bullying, violence and abuse in schools including legislative, policy and/or practice changes to improve students' safety at school that will include a focus on affected children, young people and their families.

Right to vote – Disabled people (Articles 2 & 25(b))

Although the Government has progressively implemented measures to remove the barriers that prevent disabled people from exercising their right to vote and to participate in elections, significant gaps remain that need to be addressed to fulfil New Zealand's obligations under the CRPD and the ICCPR. For example, people who have difficulty reading standard print or literacy difficulties have experienced problems in accessing information about candidates, as have users of New Zealand sign language.

The current legislation governing central government and local body elections does allow disabled voters to vote with assistance if needed.⁵⁵ At times this could require disabled voters to disclose their voting preference to someone else, breaching their right to a secret vote.⁵⁶ Failure to guarantee accessibility by means of reasonable accommodation and universal design⁵⁷ infringes both the right to political participation and the principle of equality and non-discrimination.⁵⁸

The Commission urges the Committee to request the Government to take the necessary steps to ensure the right to full political participation for all New Zealand citizens including those with disabilities.

⁵⁰ Ministry of Social Development (2009), *Protecting our most vulnerable infants*. Media release, 3 September. <http://www.msd.govt.nz/about-msd-and-our-work/newsroom/media-releases/2009/pr-2009-09-03.html>

⁵¹ Ibid.

⁵² Office of the Children's Commissioner (2009) *School Safety: An Inquiry into the safety of students at school*

⁵³ Supra note 21.

⁵⁴ Supra note 23.

⁵⁵ Section 170 Electoral Act 1993; section 4 Local Electoral Act 2001.

⁵⁶ Section 12 of the NZBORA states that every New Zealand citizen over the age of 18 has the right to vote by equal suffrage and by secret ballot

⁵⁷ Article 2, United Nations Convention on the Rights of Persons with Disabilities

⁵⁸ Article 5, United Nations Convention on the Rights of Persons with Disabilities

Māori representation in Local Government (Article 25 (a))

Māori are under-represented in local government with the result that a Māori perspective is often not reflected in the governance of local resources, and those who do govern have limited connection with Māori communities or can misunderstand Māori aspirations. That is in spite of changes to the legislative framework to provide ways for councils to address the imbalance.

The Local Government Act places specific Treaty of Waitangi obligations on councils about facilitating participation by Māori in decision-making. Through the Local Electoral Amendment Act 2002 all councils have the option of establishing Māori seats (wards for district and city councils, constituencies for regional councils). Some councils have consulted Māori on whether to take up this option, but few have done so. Given this lack of take up it is time to reconsider the legislative framework for local government representation.

The Committee recommends that the Government examine how its Treaty of Waitangi responsibilities are carried out in the powers and functions it delegates to local government.

Adoption of National Plan of Action (Article 2)

The Commission has statutory responsibility for the development of a National Plan of Action for human rights. In 2005 the Commission developed the first 5 year action plan. The Human Rights Committee welcomed the action plan and recommended that the State should engage in the development and official adoption, as government policy, of a further national human rights action plan for 2010-2015.

In 2010, the Commission undertook a re-evaluation of the status of human rights in New Zealand as a precursor to developing a further plan of action. Now, with a new Minister of Justice, it is preparing a second action plan which will involve the audit of government departments' SOIs to establish what human rights issues will be promoted to strengthen human rights and better ensure the dignity, equality and security of all New Zealanders.

The Commission urges the Committee to endorse the development and official acceptance of a human rights action plan for 2012-2017.

Yours sincerely



Dr Judy McGregor, EEO Commissioner

APPENDIX 2



18th SESSION OF THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW

Report on New Zealand's Human Rights Performance *New Zealand Human Rights Commission | Te Kāhui Tika Tangata*

The New Zealand Human Rights Commission | Te Kāhui Tika Tangata (**Commission**) is an independent national human rights institution with 'A' status accreditation. It derives its statutory mandate from the Human Rights Act 1993.

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A. Introduction

1. This year the Commission has worked with a variety of organisationsⁱ to provide information about New Zealand's second Universal Periodic Review (**UPR**) to civil society in order to encourage their active and productive participation in the process. In addition the Commission worked with the Ministry of Foreign Affairs in Trade to deliver appropriate and transparent consultation on the State's report.
2. The Commission has sought input and comments from NGOs, human rights experts, Māori organisations and members of the community on its proposed submission to the UN Human Rights Council (**HRC**). The Commission has also worked together with various groups to contribute to the preparation of submissions including:
 - the organisations responsible for monitoring places of detention in New Zealand under the Optional Protocol to the Convention Against Torture: the Office of the Ombudsman, the Office of the Children's Commissioner, the Independent Police Conduct Authority, and the Inspector of Service Penal Establishments (**the OPCAT National Preventative Mechanism**);
 - the organisations mandated to monitor the implementation of the Convention on the Rights of Persons with Disabilities (**CRPD**): the Office of the Ombudsman and the New Zealand Convention Coalition (**the CRPD Monitoring Mechanism**); and
 - the non-government sector group established by the Children's Commissioner in February 2011 to monitor the implementation of the Convention on the Rights of the Child (**UNCROC**): the Office of the Children's Commissioner, UNICEF NZ, Save the Children NZ, Action for Children and Youth Aotearoa, the Child Poverty Action Group, and Every Child Counts (**the UNCROC Monitoring Group**).

Attached as **Annexes 2 to 4** are copies of these submissions. The Commission endorses the recommendations made in these submissions.

B. Follow up to UPR and Treaty Body recommendations

3. During New Zealand's first UPR the HRC recommended that New Zealand "ensure regular consultation with civil society in the follow-up to the UPR recommendations."ⁱⁱ
4. Since New Zealand's first UPR, New Zealand has been reviewed by the Human Rights Committee,ⁱⁱⁱ the Committee on the Rights of the Child (**CRC**),^{iv} the Committee on Economic Social and Cultural Rights (**CESCR**),^v the Committee on the Elimination of Discrimination Against Women (**CEDAW**),^{vi} and the Committee on the Elimination of Racial Discrimination (**CERD**).^{vii}

5. New Zealand continues to actively engage in these processes. There has, however, been an absence of a coordinated system that includes all levels of government and representatives of civil society (including Rangatira) to monitor and report on the implementation of the UPR^{viii} and/or treaty body recommendations on a systematic and ongoing basis.
6. **The Commission recommends that the Government establish a comprehensive UPR and Treaty body reporting process, linked to the Government's own planning process and periodic development of National Plans of Action for Human Rights, that includes engagement with civil society, greater integration across public agencies, and clearer accountability for coordinating and publicising reports and following up on their recommendations.**
7. Attached as **Annex 5** is a table setting out the Commission's assessment of the steps New Zealand has taken to implement the 64 recommendations from its first UPR.

C. Achievements, best practice and challenges

8. New Zealand generally has high levels of human rights realisation. Since New Zealand's first UPR there have been a number of human rights related initiatives and achievements, including:
 - supporting the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP);
 - ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;
 - the recent passage of the Marriage (Definition of Marriage) Amendment Act 2013;
 - evidence of improvements in education for all ethnic groups in some key indicators;
 - the establishment of a Ministerial Committee on Poverty to support New Zealanders from all backgrounds to move out of long-term poverty.^{ix}
 - recognition of the importance of addressing inequalities. The *Better Public Services* programme sets high-level targets for the delivery of value-for-money public services. These targets are underpinned by Action Plans in each key result area. The adoption of specific policy targets that include some recognition of the need to reduce inequalities in education, health and employment is a welcome step towards accountability for outcomes by government. Considerable innovation will still be required, however, if targets are going to be reached;
 - significant progress in settling historic breaches of the Treaty of Waitangi. Since 2009, 19 Bills have been passed by Parliament giving effect to Treaty settlements.^x As Māori and the Crown continue to make progress with Treaty settlements, innovative forms of redress have emerged. These have related to things such as recognition of mana and recognition of cultural taonga; and

- initiatives which aim to give better effect to cultural expertise and the principle of self determination. Examples of this approach are *Ka Hikitia – Managing for Success: The Māori Education Strategy 2008-2012* and the introduction of ten marae-based courts and two Pasifika courts for Māori and Pacific young people involved in the youth justice system.
9. Challenges remain, however, to fully realising human rights for everyone in New Zealand. Two major earthquakes and numerous aftershocks struck the Canterbury region in September 2010 and February 2011. The earthquakes resulted in significant loss of life and destruction of homes, businesses, community^{xi} and city infrastructure. The State has invested a large amount of resources and efforts in the Canterbury earthquake recovery process. However, significant issues have emerged relating to rights to property, health, housing and participation by affected people in decision making. The secondary stressors of community dislocation, financial distress, insurance issues being unresolved and poor or insecure housing are resulting in high levels of psychosocial harm. The Canterbury earthquake recovery process has brought renewed attention to a number of enduring human rights challenges for New Zealand and highlighted the fragility of some human rights protections.
 10. The earthquake recovery has clearly shown the importance of private sector actors respecting the rights of affected people. Health and housing, for example are two areas of post-natural disaster recovery where businesses may find themselves in breach of human rights law standards. **The Commission urges the Government to commit to ensuring that all businesses operating or registered in New Zealand understand and apply the *Guiding Principles on Business and Human Rights* (the Ruggie Principles) in all their activities.**
 11. The Commission has been designated the responsibility to periodically develop a National Plan of Action for Human Rights (NPA) for the promotion and protection of human rights in New Zealand, in consultation with interested parties. The Government has agreed to work with the Commission to develop New Zealand's second NPA. It is intended that the NPA will be developed as a follow on from, and be directly informed by, New Zealand's second UPR. As noted by CESCR in 2012, it should also take into account the concluding observations from treaty bodies.^{xii}
 12. **The Commission recommends that the HRC note the government's commitment to work with the Commission as well as with non-governmental organizations and other members of civil society to develop and actively monitor and implement New Zealand's second NPA.**^{xiii}

D. Background and Framework

Scope of International Obligations

13. New Zealand has a good record of ratifying human rights treaties, after checking for any inconsistencies in New Zealand law. However, despite repeated recommendations from treaty bodies^{xiv} and through the UPR, New Zealand has failed to give effect to a number of individual complaints mechanisms under the Conventions and Covenants to which it is a State Party:

- New Zealand has yet to opt into the Article 14 individual complaints process under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).^{xv} As at May 2013, the government was still reviewing this position;
- whilst New Zealand engaged constructively in the negotiation of the Optional Protocol to the International Covenant on Economic Social and Cultural Rights (ICESCR), it has not agreed to ratification although it has indicated it may consider reviewing this position once the costs of the process are understood (along with the Optional Protocol to the CRPD) in due course;^{xvi} and
- New Zealand has not taken any steps to ratify the Optional Protocol to UNCROC.^{xvii}

14. New Zealand has still not ratified the International Convention for the Protection of All Persons from Enforced Disappearance (CED) or the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW).

15. **The Commission recommends that the Government:**

- (a) commit to working with the relevant treaty bodies to explore ways in which New Zealand's alternative human rights disputes resolution (ADR) mechanisms could be used to reduce the potential costs of acceding to individual complaints procedures relating to ratified conventions and covenants; and**
- (b) ratify both the CED and CMW.**

Constitutional and Legal Framework

16. The Treaty of Waitangi (1840) is New Zealand's founding document and has major significance for human rights and harmonious race relations in New Zealand. The four articles of the Treaty reflect fundamental human rights principles.^{xviii}

17. A Constitutional Review is underway, initiated by the Government in 2011. The place of the Treaty of Waitangi in New Zealand's constitutional arrangements is being considered through the Constitutional Review.^{xix} The Commission endorses greater recognition of the Treaty of Waitangi in New Zealand's constitutional arrangements.

Incorporation of international obligations into domestic law

18. Despite New Zealand's commitment to its international obligations, some significant gaps continue to exist in how New Zealand has incorporated these rights into domestic law. New Zealand's policy of not ratifying a treaty until the necessary laws are already in place, together with a longstanding commitment to social welfare rights, has meant that its domestic law has generally provided an adequate framework for enforcing the international standards without further change being necessary. However, in practice this can mean that not all of the rights contained in the various international treaties to which New Zealand is a party are given explicit domestic legal expression or protection. For example:

- the rights and freedoms protected by the New Zealand Bill of Rights Act 1990 (**BORA**) are set out in Part 2 of the BORA and reflect some, but not all, of those incorporated in the International Covenant on Civil and Political Rights (**ICCPR**);^{xx}
- the Canterbury earthquake recovery has highlighted the importance of the right to be free of arbitrary interference with home and property. The right to property links to the realisation of many economic, social and cultural rights as and to the guarantee of rangatiratanga under Article 2 of the Treaty of Waitangi. It can be traced back to the Magna Carta which became part of New Zealand's law in 1840.^{xxi} Property rights are protected to some extent by the common law and legislation,^{xxii} but are not among the rights and freedoms in BORA;
- while aspects of social and economic rights are addressed in New Zealand through some legislation, at present economic social and cultural rights are not recognised as fundamental, justiciable rights.^{xxiii}

19. The Commission recommends the full and effective incorporation of ratified international human rights standards into domestic legislation including through:

- (a) protection of property rights in the BORA;**
- (b) explicit statutory recognition^{xxiv} of economic, social and cultural rights, including the availability of judicial and ADR remedies where appropriate.^{xxv}**

Parliamentary Processes

20. Although New Zealand has a longstanding commitment to the development of international human rights standards, it is less consistent in fully incorporating those standards in the development of legislation and policy. Human rights considerations are generally not at the heart of public policy decision making. New Zealand has no overarching cross government strategy to ensure that human rights are known and understood by all duty bearers and rights holders, and that a human rights approach to legislative and policy development is routinely applied.

21. **The Commission recommends that the Government commit to developing and implementing a human rights education strategy,^{xxvi} including capacity-building programmes for parliamentarians and senior civil servants, to ensure rights holders and duty bearers know their human rights and responsibilities, the development of policy and legislation is informed by a human rights approach, and decision making is consistent with New Zealand’s human rights obligations.**
22. The New Zealand Cabinet Manual expressly requires Ministers to advise the Cabinet of any “international obligations” affected by proposed legislation.^{xxvii} However, this requirement is consistently overlooked and there is seldom any transparent assessment of New Zealand’s international human rights obligations in the development of legislation.
23. **The Commission recommends that:**
- a) the requirement set out in section 7.60 of the Cabinet Manual be more explicit in requiring identification of implications in relation to international human rights commitments and extended to apply to all policy and legislation (both primary and secondary); and**
 - b) Ministers and officials be directed to strictly adhere to current and extended Cabinet Manual requirements.**
24. Select committees are regarded as an important check and balance on the Executive, particularly in a Parliament that lacks an upper house or revising chamber, as is the case in New Zealand. Examination of bills for consideration after the first reading – except for those to which urgency is accorded – is a primary function of select committees. Public participation in providing feedback on the content of legislation through the select committee process is a positive feature of the New Zealand legislative process.
25. Since 2008, the Government has passed over 70 Bills^{xxviii} through at least one legislative stage under urgency. The use of urgency has decreased since 2011 with the introduction of a process by which Parliament can agree to extended sitting hours. Nevertheless it continues to be used in situations which have significant implications for the realisation of human rights.
26. Although the use of urgency can arguably be justified for some of the Bills, for others it cannot. Neither the Commission nor the public was able to submit on a number of significant pieces of legislation that had fundamental human rights implications because they were passed under urgency. These included the Environment Canterbury legislation which was introduced under urgency and forced through all three readings in one sitting,^{xxix} the Canterbury Earthquake Response and Recovery Act 2010,^{xxx} and the Employment Relations (Film Production Work) Amendment Act 2010.^{xxxi} The New Zealand Public Health and Disability Amendment Act (No 2) is arguably the most stark example of legislation being passed under urgency and this is discussed further below at

paragraphs 31-32.

27. The Commission recommends that parliamentary democracy in New Zealand be strengthened by:

- a) limiting the use of urgency to exceptional circumstances and subject to bi-partisan support; and**
- b) ensuring greater discipline in limiting the legislative programme to allow for sound parliamentary practice.**

28. There is no formal mechanism that currently allows treaty body reporting or concluding observations from UN bodies to be reported back to the New Zealand Parliament and debated. Nor is there a specific human rights select committee that enhances Parliamentary oversight and strengthens accountability on human rights matters.

29. To better fulfil New Zealand's international human rights obligations, the Commission recommends that the government commit to:

- a) formal tabling of all concluding observations from UN treaty bodies in Parliament; and**
- b) establishing a human rights select committee or designating an existing select committee or committees to conduct comprehensive human rights analysis of all legislation both primary and secondary.**

30. In 2012 the Court of Appeal affirmed that the policy of not paying family carers to provide disability support services to disabled family members constituted unjustifiable discrimination on the basis of family status. In direct response to this decision the Government passed the New Zealand Public Health and Disability Amendment Act under urgency^{xxxii} on 17 May 2013. The Act effectively ousts the Commission's jurisdiction and removes any potential domestic remedy for unlawful discrimination relating to family care policy.^{xxxiii} The passage of the Act from introduction to enactment in 24 hours with no opportunity for Select Committee Review, a heavily redacted Regulatory Impact Statement and a report from the Attorney General that the Bill breached BORA was greeted with despondency and despair by disabled people.

31. In its last report to the Universal Periodic Review in 2009 New Zealand advised the HRC that there was a work plan in place to address the systemic and serious abuse of the health of people with intellectual disability. There is currently minimal evidence of a commitment to address this abuse and the Act (including the manner in which it was passed) does little to enable good lives for such individuals.

32. The Commission recommends that the Government:

- (a) urgently reconsider the New Zealand Public Health and Disability Amendment Act and in particular repeal those sections that limit further legal action and limit the circumstances in which family members can be paid and the categories of family member that can be paid;**
- (b) ensures that effective domestic remedies are available for breaches of all those rights as set out in the international conventions and covenants to which New Zealand is a state party; and**
- (c) advise the HRC of the concrete steps it has taken to address the systemic abuse of the health of people with intellectual disability since 2009.**

Implementation and Monitoring

33. In 2010, reflecting its commitment to the CRPD, the Government recognised the Human Rights Commission, the Office of the Ombudsman, and the Convention Coalition^{xxxiv} as an independent monitoring mechanism of New Zealand's implementation of the CRPD.
34. The inclusion of a requirement in the CRPD to establish a monitoring body including government officials, members of civil society and national human rights institutions represents international best practice. Although earlier covenants and conventions do not specifically require such a mechanism, establishing equivalent mechanisms in relation to those covenants and conventions would provide a robust framework to systematically monitor other international instruments to which New Zealand is a state party.
35. **The Commission recommends that the Government:**
- (a) establish mechanisms, drawing on the CRPD model, to independently monitor the Government's implementation of each of the human rights treaties to which it is a state party; and**
 - (b) commit to implementing any recommendations from these mechanisms.**
36. In the area of human rights measurement, there remains a distinct lack of data across a number of key indicators. Where data is available, it is often not sufficiently disaggregated to be of use in monitoring the realisation of human rights. For example, *Report Card 11*, the latest in the series from UNICEF's Innocenti Research Centre notes that data for New Zealand is available for less than 75% of the total number of indicators used.
37. A number of United Nations treaty bodies have therefore called for the gathering of systematic, rigorous and robust national human rights data for groups including disabled people, women and sexual and gender minorities. This will have the impact of better informing human rights interventions and highlight gaps for improvement in human rights realisation.

38. **The Commission recommends that the government commit to:**
- (a) developing an agreed set of key human rights indicators;**
 - (b) systemically collecting data across these indicators; and**
 - (c) ensuring that this data is disaggregated sufficiently to measure the impact on groups vulnerable to systemic disadvantage.**

E. Promotion and protection of human rights on the ground: domestic implementation of international human rights obligations

Participation

39. Despite having a strong commitment to democratic principles, the Canterbury earthquake recovery has highlighted the fragility of some human rights protections. People affected by the earthquakes are limited in their opportunities to participate in problem identification, solution design and decision-making in issues which affect their lives. Difficulties are faced in the provision of full and timely information relevant to decision-making, and clear timeframes and transparency from decision-making authorities. Limitations on meaningful participation and the uncertainty faced by many Cantabrians are factors contributing towards deteriorating standards of mental health and wellbeing. The Canterbury experience is symptomatic of a wider trend to move towards centralised governance, progressively removing the voice of those affected from the decision making process.
40. Participation issues overlap with accessibility issues. The Canterbury context shows there is a gap in understanding and effort in New Zealand to ensure that minimum standards are in place to provide accessibility for everyone, regardless of their physical abilities. Consistent with Article 9 of the CRPD, this means accessibility to the physical environment, transport, to information, communications and technology systems, and to both rural and urban public facilities and services.
41. Since the official launch of the *Open Government Partnership* in 2011, over 50 governments have come together with civil society and the private sector to further to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance and support the implementation of multilateral commitments. New Zealand remains notably absent from this initiative.
42. **The Commission recommends that New Zealand:**
- (a) commit to open, transparent and participatory governance and actively engage with the Open Government Partnership; and**

- (b) ensure active participation from communities and individuals in all decision making about them at both a local and national level by developing, implementing and actively monitoring appropriately tailored systems and processes.**

Equality and non-discrimination

43. Despite the many efforts of communities and successive governments, discrimination, social and economic exclusion and entrenched inequalities remain a reality for certain groups of people living in New Zealand. Those seriously affected include women, children, disabled people, Māori, Pacific people, migrants and refugees, older people, and other minority groups.
44. Particularly concerning are growing disparities between Māori and Pacific people and European New Zealanders. These are reflected in child poverty and incarceration rates, education achievement levels, health outcomes, and housing. In 2012, CESCR specifically urged the government to eliminate these disadvantages by addressing the underlying structural discrimination in the delivery of public services.^{xxxv} It also recommended that the government develop specific equality targets for these groups and that it closely monitor progress.^{xxxvi}
45. Some agencies have now acknowledged that the way certain groups are managed is a significant driver for poor outcomes across a range of indicators. For example, Iwi and Police are now joining together to implement an innovative strategy aimed at reducing victimisation among Māori.^{xxxvii}
- 46. The Commission recommends that strategies be established across all sectors including health, education, and justice to identify and address structural discrimination. These strategies should set specific timelines and targets and be monitored and reported on regularly.**
47. Despite government committing to a target of 50% women representation on Government Boards by 2000^{xxxviii}, this has still not been achieved. In 2012, the Government introduced a sliding, lower target, which is of considerable concern to the Commission. The gender pay gap between women and men persists and there is considerable variation by ethnicity, with Māori and Pacific women earning considerably less per hour than women of European descent.
48. Recently the Commission used its Inquiry powers under Section 5 (2) (h) of the Human Rights Act 1993 to examine equal employment opportunities in the aged care sector. In 2012 it released the inquiry report, *Caring Counts, Tautiaki tika*.^{xxxix}
49. The Inquiry concluded that carers in the aged care sector are one of the lowest paid groups in the country with many receiving the minimum wage for physically, mentally

and emotionally demanding work. The workforce is predominantly female and the Commission came to the conclusion that the low value placed on care work and consequent low remuneration is undoubtedly gendered. Recommendations included redressing pay inequity.

50. The Commission recommends that the Government:

- (a) reset targets for women's representation that expressly acknowledge gender equality and commit to progressively eliminate the gender pay gap across all groups and ethnicities by 2019 by using demonstrated effective mechanisms including intensive monitoring processes and legislative levers;^{xl} and**
- (b) commit to implementing the recommendations from *Caring Counts*.**

Child Poverty

51. Child poverty remains a significant issue in New Zealand, affecting 270,000 children and young people. 230,000 children of the poorest children are discriminated against on the basis of their parents' work status because of the way the *In Work Tax Credit* has been designed and applied. This is currently the subject of litigation before the Court of Appeal.^{xli}

52. An Expert Advisory Group on Solutions to Child Poverty was established by the Children's Commissioner in March 2012. The Group has developed a series of proposals to reduce child poverty and mitigate its effects. **The Commission recommends that the Government commit to a timetable for implementing the recommendations in the Experts Advisory Group's report on Solutions to Child Poverty.**^{xlii}

Right to life, liberty and security of the person

53. Violence, abuse and harassment continue to occur at unacceptably high levels in New Zealand, despite wide recognition of the problem and wide-ranging efforts to address it. Globally, disabled people are up to three times more likely to be victims of physical and sexual abuse and rape, and have less access to physical and psychological and judicial interventions.

54. Violence against women in New Zealand is pervasive and as Kofi Annan has noted, perhaps the most shameful human rights violation.^{xliii} Studies quoted by the Ministry of Women's Affairs show the gender of victims of sexual violence as being between 92 and 95 percent female.^{xliv} The groups most at risk of sexual violence are young women, Māori women, women who have been victimised before and people with disabilities.^{xlv} Young women between the ages of 16 and 30 comprise 66-70 percent of victims of sexual violence. Just under half of all victims are New Zealand European, just under one third is Māori, and just over one tenth is Pacific. Urgent and ongoing attention is required to address violence in the home and the wider community.

55. New Zealand has the fifth worst child abuse record of 31 OECD countries. A 2008 report^{xlvi} for Every Child Counts highlighted the extremely limited resources made available for prevention and treatment of child abuse and neglect.
56. In schools, violence and bullying is concerning, and the lack of a comprehensive national policy on violence and bullying in the education sector is problematic. Disabled children and young people, and same-sex attracted, both sex-attracted, trans and intersex children and young people are disproportionately affected by violence in schools. In 2012 the CESCR recommended (among other things in this area) that the government systematically collect data on violence and bullying in schools.^{xlvi}
57. **Drawing on the recommendations of the CRC, CEDAW and CESCR, the Commission recommends that interventions to reduce violence be actively monitored, adjusted and extended on the basis of robust empirical evidence.**

Right to Housing

58. There have been long standing problems with housing in NZ particularly in relation to the right to habitable and affordable housing.^{xlvi} These problems have been highlighted in the Canterbury earthquake recovery context where a significant proportion of people are struggling with unaffordable rent and house prices, un-repaired, damp and cold homes and over-crowded living conditions. In addition, eligibility for social housing has been restricted to those in greatest need which denies many vulnerable people of their right to adequate housing, particularly people on low and fixed incomes. The Commission has advocated for a cross-party accord on a broad-based national strategy based on CESCR General Comment 4^{xlvi} on the right to adequate housing.
59. **The Commission recommends that the Government:**
- (a) ensure provision of adequate housing including social housing for people in need and particularly for vulnerable groups;ⁱ**
 - (b) develop a national housing plan which addresses the rights of people in New Zealand to adequate housing and prioritises the needs of vulnerable people in all tenure types; and**
 - (c) adopt a human rights approach to the Canterbury earthquake recovery ensuring appropriate consideration of the adequacy of housing^{li} including for temporary housing.^{lii}**

Indigenous Rights

60. In 2010 New Zealand indicated its support for UNDRIP and acknowledged that Māori hold a special status as tangata whenua, the indigenous people of New Zealand and have an interest in all policy and legislative matters. The following year the Waitangi Tribunal released its *Wai 262* decision regarding Māori intellectual and cultural property rights. It

made a number of recommendations for the reform of laws, policies and practices relating to health, education, science, intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture, heritage, and the involvement of Māori in the development of New Zealand's position on international instruments affecting indigenous rights.

61. However, as noted by CERD in 2012, the government has not yet announced a timetable for implementing this decision.^{lii} **The Commission recommends that the Government commit to fully protecting and promoting indigenous rights through appropriate measures in law, policy and practice, and promptly announce a timetable to implement the Waitangi Tribunal's decision.**

62. Water and water related issues – rivers, lakes, springs, riverbeds, lakebeds, wetlands, geothermal resources, marine fisheries, the foreshore and seabed, aquaculture, marine reserves, fresh water fish, deep sea drilling – have been a prominent feature of Crown-Māori relations in the past two decades. Some communities continue to voice concerns about the adequacy of consultations with affected groups and individuals around these issues.

63. **As recommended by CERD in 2013, the Commission urges the Government to enhance appropriate mechanisms for effective consultation with indigenous people around all policies affecting their ways of living and resources.**^{liv}

ⁱ Including the New Zealand Centre for Human Rights Law, Policy and Practice; Action for Children and Youth Aotearoa; the Human Rights Foundation; Amnesty International; the Salvation Army; the Human Rights Lawyers Association; Wellington Community Justice Project; Law for Change and the Equal Justice Project. Support for hosting information events was also received from University law faculties throughout the country.

ⁱⁱ Report of the UPR Working Group A/HRC/12/8, 11 May 2009, recommendation 64.

ⁱⁱⁱ The Human Rights Committee considered the fifth periodic report of New Zealand on 15 and 16 March 2010.

^{iv} The CRC considered New Zealand's combined fourth and fifth periodic reports on 19 January 2011.

^v The CESCR considered New Zealand's third periodic report on 18 May 2012.

^{vi} The CEDAW considered New Zealand's seventh periodic report on 18 July 2012.

^{vii} The CERD considered the eighteenth to twentieth periodic reports of New Zealand on 21 and 22 February 2013.

^{viii} In 2011 the Ministry of Justice prepared a mid-term review of the steps taken to implement the UPR recommendations. This report was presented to civil society groups at one-off public meetings in the main population centres of New Zealand.

^{ix} See <http://www.dpmc.govt.nz/dpmc/publications/mcop>. The establishment of the Ministerial Committee on Poverty is an acknowledgement of the serious poverty issues at the highest political level. Committee is co-chaired by the Deputy Prime Minister and Minister of Finance, giving the Committee senior Cabinet representation.

^x An unprecedented 11 Bills were passed by Parliament in 2012 giving effect to Treaty settlements.

^{xi} Community infrastructure includes churches, church halls and community centres. The loss of these facilities has been particularly challenging, increasing social isolation for some groups, especially older people and disabled people.

^{xii} E/C.12/NZL/CO/3 at paragraph 33.

^{xiii} See Recommendation from CESCR in 2012, E/C.12/NZL/CO/3 at para 33.

^{xiv} See Recommendations from the CRC in 2011, CRC/C/NZL/CO/3-4 at 60, from CESCR in 2012, E/C.12/NZL/CO/3 at 31, and from the CERD in 2013, CERD/C/NZL/CO/18-20 at 24.

^{xv} Under Article 14 of CERD, the Committee on the Elimination of Racial Discrimination may consider complaints from individuals if the individual is within the jurisdiction of a state that has recognised the competence of the Committee to receive such complaints.

^{xvi} National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council,

Resolution 5/1 at para 2.1.

^{xvii} The Optional Protocol (on a communications procedure) to UNCROC gives competence to the CRC to receive and consider individual communications alleging violations of the Convention and its Protocols.

^{xviii} Article 1 reflects the right to self-determination for incoming settlers, democratic rights such as citizenship rights and legal rights protected by the rule of law. Article 2 reflects the right to self-determination for tangata whenua, indigenous rights and property rights. Article 3 reflects the rights to equality and non-discrimination in the realisation of civil, political, economic and social rights. Article 4 reflects the right to freedom of religion and beliefs.

^{xix} Public consultation on the Constitutional Review is being undertaken during 2013.

^{xx} In particular, there is no equivalent of Art. 17 of the ICCPR which guarantees “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honour and reputation.” The right to found a family, a general right of equality before the law, and additional rights protecting children are other rights which are not included in the BORA.

^{xxi} Chapter 29 of the Magna Carta provides “No freeman shall be...disseised of his freehold...but ...by the law of the land.” This aspect of the Magna Carta has been recognised by the Courts over the years (for example, *Cooper v Attorney-General* [1996] 3 NZLR 480) and is implicit in Article 2 of the Treaty of Waitangi.

^{xxii} Such as the Public Works Act 1981 and the Resource Management Act 1991.

^{xxiii} In the absence of a comprehensive constitutional document or entrenched legal provisions, economic, social and cultural rights are mainly provided for through policy and practice.

^{xxiv} Such statutory recognition could be in BORA itself. This would have the added benefit of requiring all new legislation to be assessed for compliance with economic, social and cultural rights in accordance with s7.

^{xxv} See Recommendation from CESCR in 2012, E/C.12/NZL/CO/3 at paras 9-10.

^{xxvi} As envisaged by the World Programme for Human Rights Education (2005), and as recommended in 2003 and 2011 by the CRC.

^{xxvii} Section 7.60 of the *Cabinet Manual*, Cabinet Office, 2008.

^{xxviii} Attached as annex 6 is a list of the Bills which passed all stages under urgency since 2008.

^{xxix} Joseph, P “Environment Canterbury Legislation” [2010] NZLJ at 193.

^{xxx} The Act was passed under extended sitting hours adopted by leave of Parliament, rather than under urgency.

^{xxxi} The Act changed the status of film workers to independent contractors and removed their right to collectively bargain. It was passed under urgency and no regulatory impact statement was prepared. Nor were any public submission heard.

^{xxxii} Meaning that despite there being significant human rights implications, neither the Commission nor the public were able to make submissions on the Bill.

^{xxxiii} It stops people from bringing unlawful discrimination complaints about a family care policy to the Commission. Nor will any proceedings be able to be commenced or continued in any court in relation to discrimination.

^{xxxiv} The Convention Coalition consists of the Disabled Persons Assembly (DPA), the Association of Blind Citizens, People First, Deaf Aotearoa, Ngāti Kāpo, and Ngā Hau E Whā (a network of organisations of people with experience of mental illness).

^{xxxv} E/C.12/NZL/CO/3 at 12.

^{xxxvi} Ibid.

^{xxxvii} See New Zealand Police (2012), ‘The Turning of the Tide - a Whanau Ora Crime and Crash Prevention Strategy’ <http://www.police.govt.nz/featured/new-strategy-aims-turn-tide-maori-victimisation-and-offending>

^{xxxviii} In 1995 New Zealand’s former Prime Minister Jenny Shipley committed to a target of 50 percent women’s representation by 2000.

^{xxxix} New Zealand Human Rights Commission (2012) *Caring Counts Tautiaki tika* New Zealand Human Rights Commission Wellington New Zealand.

^{xl} CEDAW/C/NZL/CO/7 at 27-28.

^{xli} <http://www.cpag.org.nz/in-focus/cpag-in-the-court-of-appeal-1/>

^{xlii} http://www.occ.org.nz/publications/child_poverty

^{xliii} Kofi Annan (1999)\0, quoted in “Violence Against Women in Aotearoa New Zealand 2009”, Herbert, Hill, A and DicksonS. Published online at <http://.roundtablevaw.org.nz/Integrated.pdf>

^{xliv} Restoring Soul (2009), Ministry of Women’s Affairs. (Wellington New Zealand) p84

^{xlv} V Kingi and J Jordan 2009 and S Triggs et al 2009 quoted in Restoring Soul (2009) Ministry of Women’s Affairs (Wellington New Zealand) p12

<http://www.mwa.govt.nz/news-and-pubs/publications/restoring-soul-pdf>

^{xlvi} Every Child Counts *The nature of economic costs of child abuse and child neglect in New Zealand: a report prepared by Infometrics Ltd for Every Child Counts* (2008) available at <http://www.everychildcounts.org.nz>

^{xlvi} See Recommendations from CESCR in 2012, E/C.12/NZL/CO/3 at 18-19. See also Recommendations from

CEDAW in 2012, CEDAW/C/NZL/CO/7 at 22-24, and CRC in 2011, CRC/C/NZL/CO/3-4 at 30 and 36.

^{xlviii} See for example New Zealand Productivity Commission, *Housing affordability inquiry* (2012).

http://www.productivity.govt.nz/sites/default/files/Final%20Housing%20Affordability%20Report_0_0.pdf.

^{xlix} As set out in CESCR General Comment 4 *The right to adequate housing*, Contained in document E/1992/23.

^l See Recommendations from CESCR in 2012, E/C.12/NZL/CO/3 at 21-22.

^{li} As set out in CESCR General Comment 4 *The right to adequate housing*, Contained in document E/1992/23.

^{lii} Ibid.

^{liii} CERD/C/NZL/CO/18-20, at 14.

^{liv} CERD/C/NZL/CO/18-20 at 18.