

**New Zealand's National  
Universal Periodic Review (UPR)  
Report**

**Consultation Summary Reports**

**August 2008  
March 2009**

**Meeting of civil society organisations to discuss the Universal Periodic Review of New Zealand by the United Nations Human Rights Council, Christchurch, 4 August 2008.**

Consultations were held by the Ministry of Foreign Affairs and Trade and the Human Rights Commission in Christchurch on Monday 4<sup>th</sup> August 2008. Stakeholders met to discuss New Zealand's Universal Periodic Review – the new human rights reporting mechanism for the UN Human Rights Council. A total of 20 participants attended the roundtable from the following civil society organisations: City Mission; DPA; Māori Women's Welfare League; Community Law Canterbury; Canterbury United Nations Association; NZ Prostitutes Collective; Lesbian and Gay community; AGENDER (Transgender); Howard League for Penal Reform; Network Waitangi Otautahi; Mental Health Education and Resource Centre Trust; Canterbury Men's Centre; Christchurch Community House; New Zealand EPMU/CTU Canterbury; Te Rūnanga o Ngāi Tahu; Prisoners Aid and Rehabilitation Society; Christchurch Resettlement Services

Apologies were received from Age Concern, the Tenants Protection Association, Council for Social Services and PEETO.

The Deputy Director of the United Nations, Human Rights and Commonwealth Division of the Ministry of Foreign Affairs and Trade, Michael McBryde, outlined the UPR process and how civil society organisations can participate in New Zealand's UPR examination. He advised that their views would help inform New Zealand's national UPR report and that key stakeholders, including NGOs and the Human Rights Commission are able to make their own individual submissions direct to the Office for the High Commissioner for Human Rights in Geneva. Accredited NGOs and the Human Rights Commission can attend New Zealand's review in May 2009 in Geneva and can make statements during the adoption of the final UPR outcome for New Zealand at the Council. He advised groups to keep an eye on the website of the Office of the High Commissioner for Human Rights ([www.ohchr.org](http://www.ohchr.org)) for the deadline for submission of their own reports.

Race Relations Commissioner Joris de Bres outlined the key issues identified in the Commission's 2004 review of human rights in New Zealand and progress in achieving the priority actions in the New Zealand Action Plan for Human Rights. He said the conclusions of the status report provided a baseline for the UPR which he hoped would be useful to people wanting to make submissions. While the Commission had not yet completed its review, major human rights challenges identified included violence against women and children, the high levels of imprisonment, social and economic inequality (particularly as it affected Maori and Pacific peoples), Crown-Maori relationships, and poverty.

Those present then identified both achievements and challenges. The achievements included the Prostitution Law Reform Act, the PATHS Programme providing access to health solutions for sickness beneficiaries, the ratification of the Optional Protocol to the Convention against Torture (OPCAT), and the Transgender Inquiry report. Some of these in turn presented new challenges in terms of implementation or resourcing the changes. Challenges identified can be summed up into seven areas as follows:

1. The persistence of discrimination and barriers (including in relation to gender (both women and girls and men and boys), mental health, disability, lesbian and gay people, transgender, and migrants)
2. The criminal justice system and its treatment of Maori in particular, and the high level of imprisonment

3. Violence and abuse, including against women and children, the elderly and disabled people, and bullying in schools
4. The human rights framework, including the need for constitutional entrenchment of human rights and the Treaty, curbs on the power of the executive, a process to ensure follow up of recommendations and declarations from United Nations and New Zealand human rights bodies, providing for responsibilities as well as rights, and balancing the rights of different groups of rights holders (horizontal application of human rights)
5. The continued experience of poverty by a significant number of New Zealanders, and the disproportionate effect on Maori and Pacific peoples, children and disabled people
6. Immigration, including the situation of migrant workers, policy on family reunification, refugees, support for settlement and integration
7. Resources to support civil society as an important component of a human rights framework, including both NGO's and community based groups (CBO's)

It was further noted that this meeting should not be seen as satisfying the requirement for consultation with civil society but rather as a beginning of that process. Those present would also like the opportunity to comment on the government's draft report before the deadline for their own submissions to the Office of the High Commissioner for Human Rights. Interest was also expressed in seeing the government's response to United Nations treaty bodies and special procedures.

The Ministry of Foreign Affairs thanked those present for their contributions and noted that the nature of further consultation had yet to be determined by government.

## New Zealand Human Rights Consultation Auckland, 13 August 2008

**Present:** Peter Jenkins, Sensible Sentencing Trust; Parvez Akbar, Employers and Manufacturers Association; Lesley Belcham, Outline New Zealand; Felicity Lamm, Danae Anderson, Auckland University of Technology; Beverley Turner, Pacific Women's Watch; Jesse Colquhoun, Auckland City Council; Cathy Parker, Genderbridge; Juanita Muslua, Shakti Asian Women's Centre; Rodney Mapleston, Psychiatric Survivors; Penny Bright, Water Pressure Group; Richard Northey, Auckland District Council of Social Services; Rina Tagore, Manukau City Council; Janferie Bryce-Chapman, Age Concern North Shore; Rachael Le Mesinner, New Zealand AIDS Foundation; Farida Sultana, WAV; Joan Macdonald, WILPF; Shila Nair, Shakti Community Council; Crystal Shrestha, Shakti Community Council; Philomena Lobo Shakti Women's Safe House; Kate Waterworth, Action for Children and Youth Aotearoa; Bharat Jamnadas, Asia Down Under; Dr Rasalingam, Ethnic Voice; Antony Vallyon, UNANZ; Suzanne Mahon, Auckland Interfaith Council; Judi Clements, Mental Health Foundation; Thomas Hamilton, Genderbridge; Gidion McCusker Dixon, Human Rights Council.

**Apologies:** Office of Advancement of Women for the Baha'i Community of New Zealand, the Children's Issues Centre, Literacy Aotearoa and the Council of Civil Liberties.

Consultations were held by the Ministry of Foreign Affairs and Trade and the Human Rights Commission in Auckland on Wednesday 13<sup>th</sup> August 2008. Stakeholders met to discuss New Zealand's Universal Periodic Review and the mid-term review of the *New Zealand Action Plan for Human Rights 2005-2010*.

The Director of the United Nations, Human Rights and Commonwealth Division of the Ministry of Foreign Affairs and Trade, Joan Mosley, outlined the UPR process and how civil society organisations can participate in New Zealand's UPR examination. She advised that their views would help inform New Zealand's national UPR report and that key stakeholders, including NGOs and the Human Rights Commission, are able to make their own individual submissions direct to the Office for the High Commissioner for Human Rights in Geneva. Participants were advised to keep an eye on the website of the Office of the High Commissioner for Human Rights ([www.ohchr.org](http://www.ohchr.org)) for the deadline for submission of their own reports, which could be in the next few months. In terms of consultation on the New Zealand's draft national UPR report, participants were told that this would be subject to further Ministerial consideration.

Chief Commissioner Rosslyn Noonan outlined the key issues identified in the Commission's 2004 review of human rights in New Zealand and progress in achieving the priority actions in the New Zealand Action Plan for Human Rights. She said that the initial assessment concluded that while some notable advances have been over the last few years, there were still some major human rights challenges that have to be addressed and areas where we can do better. New Zealand's UPR examination represented a real opportunity to get some of these issues addressed.

Those present then identified, challenges, progress over the last few years and priority actions for the future. **Challenges** identified (in no particular order) included:

- Recognising access to water as a human rights issue
- An adequate standard of living for all New Zealanders
- Independent audit of corruption and conduct of judiciary

- Child poverty, including challenging discrimination against children whose parents are beneficiaries
- Asylum seekers access to services including accredited interpreters and ending the practice of imprisonment with convicted criminals
- Improved enforcement of labour standards for health and safety
- Establishing human rights standards for child labour
- Ending child abuse
- Elderly abuse and protection in institutional care
- Domestic violence, including violence against people with experience of mental illness
- Lack of migrant women in leadership roles
- Lack of culturally appropriate foster homes for the children of ethnic minorities
- New Zealand's position on the Declaration of the Rights of Indigenous Peoples
- Institutional racism and poverty
- The Treaty of Waitangi formally incorporated into New Zealand's constitutional arrangements
- Involuntary hospitalisation of mental health patients for excessive periods of time and inadequate funding levels for community care
- Rights of immigrants
- Combating covert discrimination in employment recruitment
- Improving the position of sexual minorities
- Affirmative action for minorities
- High imprisonment rates, especially for Maori, and lack of rehabilitation services
- Exclusion of children from school and discrimination concerning disabled children's access to education services.
- Improving the rights of children in the Family Court and in the Youth Justice system
- Discrimination against migrants
- Rural issues e.g. equal access to health services.
- Cultural "rights" and practices versus human rights e.g. dowries and polygamy

Participants agreed that New Zealand's human rights situation has **improved** in a number of areas including:

- Disabled persons rights including New Zealand Sign Language becoming an official language and New Zealand signing the Convention on the Rights of Persons with Disabilities);
- The treatment of asylum seekers
- Establishing minimum workplace health and safety standards
- Establishing the Positive Ageing Strategy and monitoring results
- The HRC Inquiry into Discrimination Experienced by Transgender People
- Some progress in implementing the mental health blue print
- Employers are more aware of human rights issues
- Positive shift in some societal attitudes e.g. the Like Minds Like Mine campaign
- Prostitution Law Reform Act; and Civil Union Act.

It was noted that there was a need to access non-government progress to get a better picture on New Zealand's human rights situation

A number of **priority actions** were also identified including:

- the differentiation in opportunities for children from different backgrounds
- interpreting body for languages

- mainstreaming the rights of women
- developing a charter for mental health
- improving access for the transgender community to health services; and
- reviewing employment law to look at discrimination issues.

The Human Rights Commission and the Ministry of Foreign Affairs and Trade thanked those present for their contributions.

**New Zealand Human Rights Consultation Roundtable  
Wellington Monday 18 August 2008**

**Present:** Barbara Lambourn, UNICEF, New Zealand; Catherine Healy, New Zealand Prostitutes Collective; Calum Bennachie, New Zealand Prostitutes Collective; Ced Simpson, Human Rights in Education; Charles Waldegrave, Family Centre; Chris Peters and Jolene Molloy, Hearing Association Inc; Claire Szabo, ESOL Home Tutors; Diana Crossan, Retirement Commissioner; Eileen Brown, NZCTU; Graham Howell, Wellington's People's Centre; John Parrott, Wellington City Council, Mary Wareham, Human Rights Watch; Mereana Ruri, Office of the Children's Commissioner; Mike Reid, LGNZ; Nicholas Green, Business New Zealand; Paul Browne, Transparency International; Richard Archer, Pax Christi; Robin Halliday and John Morgan, UNA, Wellington; Rose Dew, Council for International Development; Ruth Jones, CCS Disability Action; Susan Elliot, NZEI; Tim O'Donovan, Development Resource Centre; Tony Wilton, EPMU; Edwina Hughes, Peace Movement Aotearoa.

Human rights consultations were held by the Ministry of Foreign Affairs and Trade and the Human Rights Commission in Wellington on Monday 18<sup>th</sup> August 2008. Ministry of Justice officials also attended the meeting. Stakeholders met to discuss New Zealand's Universal Periodic Review and the mid-term review of the *New Zealand Action Plan for Human Rights 2005-2010*.

The Deputy Director of the United Nations, Human Rights and Commonwealth Division of the Ministry of Foreign Affairs and Trade, Michael McBryde, outlined the UPR process and how civil society organisations can participate in New Zealand's UPR examination. He advised that their views would help inform New Zealand's national UPR report and that key stakeholders, including NGOs and the Human Rights Commission, are able to make their own individual submissions direct to the Office for the High Commissioner for Human Rights in Geneva. Participants were advised that the deadline for submission of their own reports has just been announced by OHCHR as **Monday 10 November 2008**. In terms of consultation on the New Zealand's draft national UPR report, participants were told that this would be subject to further Ministerial consideration.

Chief Commissioner Rosslyn Noonan outlined the key issues identified in the Commission's 2004 review of human rights in New Zealand and progress in achieving the priority actions in the New Zealand Action Plan for Human Rights. She said that the initial assessment concluded that while some notable advances have been over the last few years, there were still some major human rights challenges that have to be addressed and areas where we can do better. New Zealand's UPR examination represented a real opportunity to get some of these issues addressed.

Those present then identified, challenges, progress over the last few years and priority actions for the future. **Challenges** identified (in no particular order) included:

- Immigration policy changing quickly –support mechanisms not keeping pace.
- Fragility of employee rights – ratification of ILO Conventions – weak compliance of ILO Convention.
- Ratification and implementation of Convention of the Rights of Persons with Disabilities.
- Linking up of human rights between groups.
- Income inequalities in the labour market.
- Right to education for children of people studying here

- Bullying at schools – around sexuality.
- Inadequate resources for mainstreaming children with disabilities in New Zealand classrooms.
- Pay and employment equity issues.
- Impact of poverty/violence/abuse/neglect of children.
- Lowering age of criminality.
- Impact of those on the DPB returning to work early.
- DRIP and the interface with the Treaty of Waitangi and other indigenous issues.
- Poverty.
- Affordable and accessibility to decent housing including home ownership.
- Corruption and transparency issues – local body reporting – behaviour of New Zealand companies offshore.
- Challenges for older workers.
- Right to financial education – embedded in school curriculum/financial literacy.
- Accessible buildings.
- Education on civil and political rights in the curriculum.
- Fair trade.
- Lack of coordination across agencies on disability issues.
- Employment disability issues.
- New Zealand's Government's approach to Treaty of Waitangi and indigenous issues.
- Constitutional fragility of protection of human rights.
- Immigration and anti-terrorist legislation – breach of human rights.
- Rights and conditions of people in detention.
- Protection of migrant/part-time/student sex workers.
- New Zealand's overseas development assistance is addressing the key issues for sex workers in other countries.
- Still challenges/discrimination against LGBT people.
- Wide poverty gap – impact on children.
- Restorative justice – victim and offender.
- Maintaining human rights dialogue.
- Human rights education in schools – New Zealand violates UNCROC (Art 42) – Ministry of Education action hampered by self-regulating schools.
- Improving public access to human rights information – understanding of human rights issues in the community.
- Prisoner support mechanisms inadequate.
- Disabled accessibility – infrastructure and education.
- Senior citizens – care, poverty, support –
- Restoration of benefit levels – abatement rates – universalisation of Working for Families – ethnic disparities – Maori and Pacific Islanders.
- Health – mortality/morbidity - mental health issues.
- New Zealand's position on the Optional Protocol to ICESCR.
- LGBT rights - UN rollback.
- Political and civil rights education.
- Employment disability.
- Local government accountability.
- Older workers' rights.
- Rights and conditions of people in detention (international).

Participants agreed that New Zealand's human rights situation has **improved** in a number of areas including:

- Decent work on the agenda.
- Working for Families.
- Income related state housing.
- Access to primary health care.
- Social report.
- Taskforce on violence – funding of NGOs.
- Cultural equity.
- Wider recognition of disabilities issues eg sign language.
- Signing and ratification (pending) of Convention on the Rights of Persons with Disabilities.
- Prostitution Law Reform Act – puts human rights at heart of protection of sex workers.
- LGBT gains.
- More public discussion on human rights – New Zealand Action Plan on Human Rights – 15,000 people consulted.
- Changes to New Zealand curriculum on human rights education.
- Establishment of NZ superannuation scheme
- International human rights framework and monitoring and establishment of UN Human Rights Council.
- Improvement of women representation on public sector boards.

A number of **priority actions** were also identified including:

- Review of settlement.
- Ratification of core ILO Conventions/better compliance – 138 and 183.
- Rights of indigenous peoples.
- No review of S59 legislation.
- Sign the DRIP.
- Benefits benchmarked to average wage as for national superannuation.
- Preventative rather than punitive approach to justice.
- Ratification of UN Convention Against Corruption.
- Universal national superannuation (women's status) – need to ensure achievements are not lost.
- Right to financial education as part of school curriculum.
- Remove Disparities in ACC rules - “natural disability”.
- Developing fair trade agreements – make human rights a central component.
- Reducing children.
- Announcement of support for the DRIP at General Assembly Opening 2008.
- Government to monitor human rights performance of NZ companies overseas.
- New Zealand Government keeps up with developments in human rights law.
- ILO/UN Migrant Workers Conventions on right of sex workers.
- Restorative justice extension.
- Improve education on human rights – as stipulated under Article 42.
- Human rights framework in public policy setting/monitoring
- Income inequalities – ethnicity.
- Ratify Convention on the Rights of Persons with Disabilities.
- End enforced treatment/detention.
- Accessibility of information.
- Inclusive education for all.
- Business New Zealand position on ILO Conventions.
- Youth justice.
- Monitoring of cultural equity.

- Develop fair trade agreements – impact statements and human rights implications.

Some participants noted they would need more time to reflect internally on New Zealand's key human rights challenges, progress and key priorities.

The Human Rights Commission and the Ministry of Foreign Affairs and Trade thanked those present for their contributions.

**Meeting of civil society organisations to receive feedback on New Zealand's draft national report under the Universal Periodic Review of the UN Human Rights Council  
Wellington, 2 March 2009**

A Public Consultation meeting was held on Monday 2 March 2009 to allow Wellington based stakeholders to discuss, and give feedback on New Zealand's draft national report under the Universal Periodic Review (UPR) of the UN Human Rights Council. The meeting was chaired by MOJ and MFAT.

A total of 25 participants attended the meeting. The New Zealand Human Rights Commission (Susan Biggs, Bill Hamilton, Michael White) joined the following civil society organisations in attendance: Peace Movement Aotearoa (Edwina Hughes); UNICEF NZ (Barbara Lambourn); Amnesty International (Rebecca Emery, Patrick Holmes); Human Rights Foundation (Ced Simpson); Wellington Peace Foundation (Rod Alley); UNIFEM NZ (Alana Bowman, Rae Julian); Council for International Development (Pedram Pirnia, Justin Kemp); Council of Trade Unions (Eileen Brown); Problem Gambling Foundation (Kitty Chan); Mental Health Foundation (Susan Cuthbert); NZ Council of Christian Social Services (Stephen Olsen); IHC (Wendy Proffitt).

Apologies were received from the Office of the Children's Commissioner.

Stuart Beresford (Ministry of Justice) outlined the purpose of the meeting: to inform on the process used for preparing New Zealand's draft national report, and to seek direct feedback and views from participants on the draft report to inform New Zealand's Ministers before submission of the final report. Michael McBryde (Deputy Director of the United Nations, Human Rights and Commonwealth Division of MFAT) gave a brief presentation of the UPR process. Richard Kay then outlined New Zealand's process for drafting the report: the key themes, resources drawn on and challenges faced.

Susan Biggs from the New Zealand Human Rights Commission (NZHRC) emphasised the importance of these consultations, and encouraged those present to make the most of the opportunity to engage with the Government on its human rights priorities, and make submissions on the draft report.

On a related issue, Stuart Beresford began discussions by recognising the difficulties involved in engaging in the treaty body process generally. The Minister of Justice has directed MOJ to identify options to improve the process for preparing reports, and for how the reports (and subsequent recommendations) are received by the government. Treaty body reporting should not simply be seen as a compliance issue, but about engaging on human rights issues, and on the recommendations.

MOJ would welcome any comments people have on the process, and will be discussing the matter with the NZHRC.

**General comments on the report**

- Edwina Hughes: What period does the report cover?
  - The report is current up to December 2008; the start date for coverage is open-ended.

- Eileen Brown commented that events that have taken place since December 2008 (both domestically and internationally) will impact on the human rights situation in NZ, and on the report. She noted that NGOs have no means of feeding in (in writing) any concerns they have arising over this period. Edwina Hughes noted that the Working Group and the recommendations made will cover events right up until the date of hearing.
- Rod Alley: International humanitarian law should be included in the report. This would not just be for the benefit of improving the national report, but for also setting the scope of the UPR generally, so that international humanitarian law is covered by States where it is more of an issue than it is in NZ.
- Ced Simpson agreed that a comprehensive treaty body reporting process was necessary, and highlighted that reports needed to be harmonised.
- Edwina Hughes: Maori consultation: The number of hapu/iwi consulted was insufficient, as was the fact that initial consultations were held only in Christchurch, Wellington and Auckland. This was something that could be improved for next time.
- Bill Hamilton: noted that there had been much criticism around the term “consultations”.

### Introduction

- Rae Julian: The reference that “in 2000 all of the major constitutional positions were held by women” is somewhat disingenuous given that only one is held by a woman today. It should be updated to reflect this.
- Eileen Brown: Highlighting New Zealand’s ranking in the Global Gender Gap Report diminishes the objective of achieving gender equity in NZ.

### Section One: Methodology and Consultation Process

- MFAT: This section will need to be updated to reflect the current consultation process agreed to by Cabinet.

### Section Two: Background of Country

- Edwina Hughes:
  - 1) The reference in 2.1 to the separation of powers contradicts latter mention in the section of Parliamentary supremacy;
  - 2) the section fails to refer to the fact that there is no effective remedy for human rights violations in New Zealand’s legal structure;
  - 3) 2.4 should also list the instruments to which NZ is not a party (including Optional Protocols) and any reservations it has made to human rights treaties.
- Bill Hamilton:
  - 1) 2.1: the relationship between the constitution and the Treaty of Waitangi is not clear in this section (reference of NZ’s “unwritten constitution” and the Treaty as a “founding document”);
  - 2) 2.1 (para 2) The role of tikanga Maori should be incorporated as it also influences the way in which our system operates (eg: it is included in some court judgments). This could be updated and linked to the Maori Party-National Party Agreement.
  - There is no date beside “English” when listing the official languages of NZ.
- Ced Simpson: 2.6 para 3: need to clarify that the NZBORA only covers some civil and political rights, not economic, social and cultural rights, as the report currently

implies. This is important given the question in NZ of the justiciability of economic, social and cultural rights.

- Rebecca Emery: 2.7 para 2: include figure for how many New Zealanders have sought HRRT adjudication.

## Section Three: Promotion and Protection of Human Rights

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

- Edwina Hughes:
  - 3.1 para 5: It is not enough to simply say 'many Maori disagreed' with the Foreshore and Seabed Act. The report needs to say that there will be a review of the Act.
  - 3.1 para 8: this para should include what the government is going to do about Maori concerns about the government's position on the DRIP. It should also set out the government's stance on the DRIP.
  - There is no mention of the government's position on ILO169.
- Bill Hamilton:
  - should be more than about redress and the settlement process, but about Maori and the Government moving forward together through other means as well;
  - it gives the wrong impression to say that we have one of the largest indigenous populations
  - clarify the government position on the DRIP
- Alana Bowman: Foreshore and Seabed Act discussion could include a footnote to the contentions between government and Maori, and also on why the government was unable to support the DRIP
- Edwina Hughes: The section should also make clear that ICERD, the Special Rapporteur and the Waitangi Tribunal have been critical of the NZ position.

### 3.2 Gender

- Susan Biggs/Rae Julian: several of the recommendations on pay equity have been frozen, and working parties are being scrapped. This section needs to be updated.
- Rae Julian:
  - again need to make clear that women do not currently hold all the senior constitutional positions;
  - no mention of the CPAG action in relation to Working for Families, and that it was beneficiaries who didn't get the assistance.
- Alana Bowman: there is a lack of discussion on women's health, especially around the situation of women and childbirth, and the effects of ACC exclusion of disease.
- Eileen Brown:
  - First sentence: unsure if we can say NZ has always given priority to the advancement of the rights of women. More accurate to say we have a 'strong history' in this area;
  - The various references to pay equity need to be grouped together
  - While we rank highly comparatively, the report should recognise that the gender pay gap has been difficult to change. The section also needs to be updated in light of the decision to discontinue pay investigation – an important component of adjusting for pay equity.
  - CEDAW Committee has also noted NZ is not meeting its obligations on pay equity, and given a pay gap of 12% (and an even wider gap if comparing

overall lifetime earnings and labour market involvement), then the absence of the CEDAW recommendations is derelict.

- Alana Bowman:
  - sexual health is not mentioned, nor is the existence of random femicide (the large number of homicides that result from women being abducted);
  - women's declining position in trades should also be included given the current economic climate

### 3.3 Children and Young People

- Barbara Lambourn:
  - Report should note that the Committee on the Rights of the Child has twice recommended the removal of NZ's reservations to UNCROC, but that the government has failed to do so;
  - The Agenda for Children, while a worthy initiative, is no longer used to guide policy makers. There is no unit within any government agency to promote, coordinate, implement or monitor how the document's principles are being applied;
  - Need to note that child poverty is at an unacceptably high level (currently affecting 230,000 children, or 15-22%)
- Edwina Hughes (on behalf of ACYA): failure to ratify the OP on the Sale of Children should also be included.
- Wendy Proffitt: there is a disjunct between the statement (para 2) that every child has the right to free education at a state school, and the disparities in educational outcomes mentioned in the final paragraph. These disparities need to be expanded upon (e.g.: in light of the fact that there is currently a case being brought by the IHC in relation to education under the available complaints process)
- Bill Hamilton:
  - good to see the new curriculum is mentioned in para 2. Should mention it will be in place from 2010, and that it includes a parallel curriculum for the kaupapa Maori stream;
  - supports calls for strengthening the paragraph on disparities, especially for Maori children (could draw from the NZHRC's approach).

### 3.4 Senior Citizens

- Eileen Brown: need greater mention of the pressures on services for elderly care, particularly residential care.

### 3.5 Family Violence

- Alana Bowman:
  - The current status of the Taskforce for Action on Violence within Families, and the Ministerial Team is unknown. When the Taskforce came into place, Te Rito was largely abandoned and now serves as a funding tool;
  - Need to include the criticism included in the review of the Domestic Violence Act: that the primary problem was with implementation;
  - Need a greater explanation of sexual assault/domestic violence occurrence, arrest and prosecution.
- Barbara Lambourn: include the current roll-out of a programme to attend to the needs of children who are victims of domestic violence (through 46 advocates).
- Susan Biggs: need to refer to the upcoming referendum on s59 amendments in August 2009.

### 3.6 Disabilities

- Susan Biggs: need to include the first review of the NZ Disability Strategy, released in 2008
- Wendy Proffitt:
  - need to mention that ODI, as the government focal point is under resourced;
  - figures from the Health and Disability Commissioner show that very few complaints are received around the provision of disability services and that this raises issues around the accessibility and the adequacy of promotion of the complaints process;
  - The government's response to the Select Committee Inquiry Report came out in February 2009.
- Edwina Hughes: include the fact that NZ has not signed the OP to the CRPD, and our position on it.
- Stuart Beresford: include government announcement of a Ministerial Committee on Disability Issues.
- Eileen Brown: Include the repeal of the Disabled Persons in Employment Act (although is a qualified success given the number of exemptions that limit its effect)
- Wendy Proffitt: noted that the last institution was closed in 2006 (although people don't entirely have the choice of where to live, given the "Group Homes" set up around the country).

#### 3.6.1 Mental Health

- Susan Cuthbert: the report doesn't mention the process of de-institutionalisation that has taken place since the 1990s, and the concerns surrounding some psychiatric practices, access to services and lack of funding.

### 3.7 Ethnic Diversity and Tolerance

- Rae Julian: the inclusion of Maori in para 1 implies that Maori are another ethnic minority in NZ, and fails to distinguish between Maori and other ethnic groups such as Pacific Islanders and Asians.
- Alana Bowman: would be helpful to include the current percentages of populations so that this can be compared with the 2026 figures (even if as a footnote).
- Bill Hamilton: 'remove 'colour' from list of areas of discrimination
- Ced Simpson:
  - Suggest using term 'Asian ethnicities' rather than Asian ethnicity to reflect that not all 'Asians' are the same, (although recognising that 'Asian ethnicity' is the group referred to in the NZ census);
  - Should refer to the Immigration Bill and include the concerns raised (by the NZHRC, and the UNHCR)

#### 3.7.1 Migrants

- Eileen Brown: Could expand on the Recognised Seasonal Employment Scheme: the successes and horror stories. This is an important part of what is happening in terms of migration in NZ.
- Rod Alley: mention the free movement of labour between Australia and NZ;

#### 3.7.2 Interfaith Dialogue

## **Section Four: Identification of Achievements, Best Practices, Challenges and Constraints**

## General comments

- Rod Alley: include MMP as an achievement
- Ced Simpson: would like to say the development of the National Action Plan on Human Rights was an achievement. Despite what happened to it, there was eventually a government response, and it did raise awareness amongst government agencies around human rights.

### 4.1.1 Refugee Quota

- Edwina Hughes: the refugee quota should be removed as a best practice example as it is misleading given the numbers of refugees who are not accepted
- Ced Simpson: this is a useful para – overall the numbers may be falling, but the fact we maintain a quota is good internationally. Include a qualification that the numbers accepted are dropping.

### 4.1.2 Increased Resources for Public Health

- Edwina Hughes: last sentence not entirely correct that all New Zealanders are entitled to free hospital care – delete.

### 4.1.4 Maori Language Strategy and Broadcasting

- Bill Hamilton: the focus is on Maori being used by Maori, but a significant positive advancement has been the mainstreaming of Te Reo. Also include the increasing number of non-Maori New Zealanders who watch Maori TV.

### 4.1.5 Civil Union Act 2004

- Alana Bowman: clarify the position on whether the Civil Union Act recognises foreign marriages between same-sex couples.

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

- Edwina Hughes: the inclusion of this paragraph is interesting; question the value of an open invitation where the government doesn't take it seriously.
- Rae Julian: could remove this para as many countries have these invitations, so not really an achievement.
- Ced Simpson: this is a useful para to have.
- Bill Hamilton: yes, the inclusion is interesting given the government's treatment of his report. However, he did come, and he was given full access and facilitated during his visit. Also note that he was the only one who has come to NZ in a formal capacity.

## 4.2 Challenges and Constraints

- Eileen Brown: The Government's new legislation on first 90 days of employment is a human rights issue if people have no redress for personal grievances.

### 4.2.1 Victim's Rights

- Stephen Olsen: mention refugees rights to Tribunal processes?

### 4.2.2 Human Rights and Countering Terrorism

- Need more information on the timeline/deadlines (if any) for the Law Commission's review (end of para 2).
- Edwina Hughes:

- Remove the final sentence of para 1 as the Special Representative expresses his appreciation to all responses received
- Description of the use of firearms and other weapons in training camps has not yet been established, as the matter is currently before the courts – insert word ‘alleged’.
- Rod Alley: will there be anything on the possibility of the courts issuing declarations of inconsistency, and the courts’ reluctance to do so?
- Ced Simpson: broaden this section to include the Immigration Bill. This section seems to be about the challenges of NZ meeting its international obligations and ensuring its security – can we look to give it broader scope to reflect this?
- Stuart Beresford: we could look at the title of the section, introducing the idea of security, given that the Bill is about crime more generally, not just counter-terrorism.

### **Section Five: Priorities**

- Bill Hamilton: the first priority is ongoing and long-term. What about including more short-term priorities for protection given the current economic pressures (eg: housing, food, work)?
- Susan Biggs: ‘Priorities’ should have an explanation of what they mean and how they intended to be achieved (especially the first one).
- Rae Julian: concern that there is no mention of the impact of violence on women, particularly given that a large section of the report is about them, and because women are more likely to be disadvantaged in the current economic climate. Could we get rid of the first priority and make it more specific, and frame it as wanting to realise women’s potential?
- Ced Simpson: it would be useful to know what the government has in mind for explaining its priorities to the NZ public.

### **Concluding comments**

MOJ and MFAT thanked participants for their open comments, noting that the points raised have been extremely useful. Submissions on the report would be welcomed. MFAT will report comments provided on the draft report back to Ministers.

**Meeting of Maori to receive feedback on New Zealand's draft national report under  
the Universal Periodic Review of the UN Human Rights Council  
Christchurch, 11 March 2009**

A hui was held in the morning of Wednesday 11 March 2009 to discuss and give feedback on the New Zealand's draft national report under the Universal Periodic Review (UPR) of the UN Human Rights Council. The meeting was hosted by Te Puni Kokiri and was chaired by the Ministry of Foreign Affairs and Trade (MFAT). The Ministry of Justice (MOJ) also attended.

A total of 7 participants attended the meeting. The New Zealand Human Rights Commission (Tina Marsh) joined the following in attendance: Rewiti Marsh (Ngati Porou ki Waitaha Inc), Carolynn Bull, Harrata Pitana, Pura Parata, Dayle Takitimu (Te Whanau-a-Apanui (Bay of Plenty)), Sacha McMeeking (Te Runanga o Ngai Tahu).

Martin Wikaira (MFAT), outlined the purpose of the Hui: he stressed that it was not a consultation on the draft report, rather it was about informing Maori on the UPR and the process used for preparing New Zealand's draft national report, further it was an opportunity to seek direct feedback and views from participants on the draft report to inform New Zealand Ministers before submission of the final report. Alana Messent (MFAT) gave a brief presentation on what the UPR is, and the key timelines for New Zealand's review. Richard Kay (MFAT) then outlined the process for drafting the report: the key themes, resources drawn upon and challenges faced. Participants were also encouraged to present their comments in the form of written submissions.

### **General comments on the report and consultation process**

Strong concerns were raised regarding the process and depth of consultation with Maoridom, and that the time allowed for consultation was inadequate.

- Carolynn Bull commented that while a balance must be struck between self-praise and self-criticism in the report, and in the answers to the Working Group of the Human Rights Council, New Zealand's explanations should uphold the integrity of the country. For example to say the government was "disappointed" it could not support the DRIP was dishonest and misleading. Such misstatements also left the government open to further criticism.
- Dayle Takitimu agreed with Carolynn's comments, and of the need to be honest that New Zealand voted against the DRIP, to take ownership of the decision and New Zealand's advocacy against it. Dayle also commented that NGOs appeared 'hand-picked' for the earlier consultations.
- Pura Parata noted that when Maori were referred to in the report it was always in a negative light. Pura also suggested putting all abbreviations in full, to make the report easier to follow.

### **Introduction**

#### **Section One: Methodology and Consultation Process**

- Sacha McMeeking commented that labelling the August round of discussions as "consultation" was misleading, especially when it was stated in August that what occurred was not enough to constitute consultation.

- Rawiti Marsh questioned what would happen if we did not meet the UN deadlines/timeframes and instead explained to the UN that this was because the time allowed was not adequate in the New Zealand context.

## **Section Two: Background of Country**

### **2.1 Constitutional, Political and Legal Structure**

- Sacha McMeeking commented that while she appreciates the section is trying to provide an objective statement of fact on the Treaty's status, this is not easy in this context. The section fails to reflect the criticisms of both UN treaty bodies, constitutional commentators and Maori, and there is a need for self-reflection (see for example the shadow report to ICERD).
- Dayle Takitimu commented that despite the Treaty's constitutional status being of critical importance, it was reduced to only one sentence. She asked whether it would be possible to cross-reference other points of view/reports to flag to readers the different interpretations on the constitutional status.

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

- Carolynn Bull queried why so much space was devoted to Tokelau, in 2.2 and an annex. Carolynn also noted that the second para covers some of the first, and could therefore be shortened.
- Richard Kay explained that covering Tokelau in an annex was consistent with our practice in treaty body reports. The annex was not included in New Zealand's 20 page limit.

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

- Carolynn Bull suggested that the section could be strengthened by reference to the language in the preamble to the Human Rights Act, and the link to international obligations. Carolynn also questioned the accuracy of saying that the New Zealand Human Rights Commission (NZHRC) has the power to resolve disputes, when its mandate is to assist in resolving cases. Carolynn suggested including the number of cases dealt with by the NZHRC.
- Dayle Takitimu suggested referring to the NZHRC's report.

### **2.4 International Commitments**

- Carolynn Bull recalled that work was done in the early 1990s on a Pacific Charter of Indigenous Rights, which New Zealand was committed to at the time. This is something positive we were involved in and perhaps it could be included.
- Dayle Takitimu suggested that this section was a more logical place to include the government's position on the DRIP, rather than in 3.1.

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

### **2.6 Human Rights Legislation**

- Carolynn Bull commented that the delegation will need answers as to why BORA is subordinate legislation. While this is stated in para 1, it isn't satisfactorily answered in para 2.

- Carolynn Bull also suggested mentioning (in para 5) the strong education arm to the NZHRC that does a lot to promote human rights in the country.
- Carolynn Bull noted that questions are also likely to be asked about what other human rights checks are available in Cabinet papers, aside from discrimination statements. She also noted that the word “disability perspective” would not be well received by people with disabilities.
- Carolynn Bull also commented that it would be more honest if the exceptions to the Human Rights Act were also included.

## 2.7 Remedies, Compensation and Rehabilitation

- Dayle Takitimu noted that para 2 on the HRRT’s power to declare legislation/government decisions inconsistent with BORA gives the false impression that the legislation would fail. The para should be amended to clarify that the legislation remains in force.
- Dayle Takitimu suggested including the number of times New Zealand has been taken to the various international treaty bodies. This should include also the communication procedures Maori have used, not just individual complaints.
- Sacha McMeeking agreed and pointed out that the fact these procedures were used attests to the fragility of our domestic human rights framework.

## Section Three: Promotion and Protection of Human Rights

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

- Sacha McMeeking commented on the way in which this section is cast. The human rights angles of the “relationship” are not visible, and the relationship between the Treaty and constitution is not discussed. Also, the way settlements are framed fails to reflect CERD’s finding that they should not be characterised as “special measures”. The figures used surrounding the value of settlements also needs to be updated.
- Sacha McMeeking queried the description of the transfer of Mount Maunganui, when in reality they are within the settlement framework and should be labelled as such. These ‘initiatives’ referred to as relationship enhancement tools are in fact rights recognition tools.
- Carolynn Bull agreed and added that honesty and integrity in the descriptions was called for.
- Dayle Takitimu asked whether para 2 could include the statement that only approximately 2% of Tribunal recommendations are taken up by the government, and that the value of the land returned is at about 2% of what Maori were stripped of, so as to put the Tribunal/claims in their proper context.
- Sacha McMeeking would like to see the non-binding status of the Tribunal reflected in the section, as this has been before the treaty bodies before.
- Dayle Takitimu suggested that the sentence on what the settlement usually includes (ie the apology) misses the fact that the process is also about advancing and rectifying human rights breaches, and is not just about economic compensation. The paragraphs refer to ‘claims’ to the Treaty, but the word most often used in Treaty jurisprudence is breach. The paras should reflect that it is a process to restore historical breaches of rights.
- Carolynn Bull noted that the description of the Foreshore and Seabed Act (FSA) as vesting ownership in the government raises the question of in whom they were previously vested. Carolynn also noted that it removed the right of Maori to claim for a remedy in court.

- Dayle Takitimu pointed out that only one agreement (and not ‘a number’) has been reached recognising customary interests. The Attorney General has also made it clear that negotiations to date would not be honoured, and others put on hold while the FSA review is underway. The paragraph therefore fails to reflect where the current government is at.
- Sacha McMeeking commented that to describe Maori as disagreeing with the FSA is offensive because it is passive and fails to fully reflect the fact that Maori pursued all constitutional avenues to oppose the Act. The use of the word ‘dialogue’, and what it means in terms of the FSA, also needs to be clarified given the discrepancies between the government’s perception of what is required, and CERD’s recommendation that it involve discussions around amending the FSA.
- Sacha McMeeking also noted that para 7 on addressing social inequalities fails to reflect the fact that New Zealand approaches these as rights issues, whereas here it is framed as the State as benefactor.
- Dayle Takitimu commented that it is a stretch to describe the Maori Potential Approach as ‘derived from’ the aspirations of Maori, when in reality it was led by TPK and delivered to Maori. The Approach should be clearly labelled as a government policy.
- Carolynn Bull pointed out that the FSA can’t be looked at in any other way than as discrimination on the basis of race, although she noted that the government was unlikely to accept this and include it in its report.

### 3.2 Gender

- Carolynn Bull suggested including statistics of Maori women in the section – for example of Maori women in major roles. The description of the pay gap having ‘plateaued’ also isn’t spelled out as clearly as it might be. Carolynn commented that the para on support to solo, work-ready parents is stated in the positive, but fails to factor in issues surrounding the rights of children and families (eg: the CPAG case, family welfare, work life balance and the social pressure to return to work).
- Carolynn Bull highlighted further positive developments in the rights of transgender people in the recognition of transgender people in the Births, Deaths and Marriages Act following gender reassignment, and the ACC funding of some operations.

### 3.3 Children and Young People

- Dayle Takitimu queried how much of the section will still be current under the new government.
- Richard Kay agreed that a lot of the previous government’s initiatives will come out.
- Tina Marsh suggested the inclusion of the dual cultural system in the New Zealand education system.
- David Ormsby suggested including the recent release of the Maori curriculum as this is a significant, and positive, shift from the past where the curriculum was simply translated into Maori.
- Martin Wikaira suggested also including the number of institutions right across the education spectrum, that have grown from the development of a dual cultural system.
- Dayle Takitimu recommended including basic statistics around the young Maori population, highlighting that youth issues are exacerbated amongst Maori because of this demographic.

### 3.4 Senior Citizens

### 3.5 Violence within Families

- Carolynn Bull commented that she was pleased with this section, but would also include 1) the existence of mandatory programmes for when protection orders are made; 2) the opportunities provided to victims, especially children ???; 3) the strengthening of criminal laws to reinforce a zero-tolerance society, such as creating the specific assault of male on female; 4) the provision of greater police training on the frontline; and 5) funding of NGOs across ethnic and cultural groups in recognition of the need to reach different communities in dealing with the fallout from domestic violence.
- Carolynn Bull also recommended re-thinking the para on the Families Commission to reflect the difficulties it has in carrying out its mandate with vigour, given its status as an Autonomous Crown Entity and not an entity independent of government.

### **3.6 Persons with Disabilities**

- Carolynn Bull commented that it was good to see persons with disabilities given their own section of the report.

#### **3.6.1 Mental Health**

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

- Carolynn Bull noted that the Race Relations Act was enacted early in the 1970s, and could be included alongside the Human Rights Act earlier on in the report. Carolynn also raised the possibility of including the (new) hate crimes legislation against inciting violence.

#### **3.7.1 Migrants**

#### **3.7.2 Interfaith Dialogue**

## **Section Four: Identification of Achievements, Best Practices, Challenges and Constraints**

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

- Carolynn Bull suggested a few further areas in which Te Reo Maori is being used more widely to include in 4.1.4: the singing of the national anthem in both languages, the use of Maori on national television, particularly in the news and weather, and the work of churches to also translate their documents into Maori.
- Carolynn Bull commented on the need to more accurately describe how Stavenhagen's conclusions were treated, and the personal criticism of him by the government.
- Dayle Takitimu questioned why so much detail was provided in 4.1.7. It appears as an ad hoc example, which is not an every day occurrence in New Zealand, and is given undue weight.
- Richard Kay explained that MFAT did have a specific audience in mind when including this example, in the interests of sharing best practice.

### **4.2 Challenges and Constraints**

- Carolynn Bull recommended that MFAT check whether or not there was a sunset clause in the Victims' Rights Act (4.2.1).

## **Section Five: Key Human Rights Priorities**

- Dayle Takitimu suggested explaining how the priorities were decided and any linkages to programmes of work so that people can find out more information, and measure progress in our next UPR.  
Dayle Takitimu also commented that the priorities section again focuses on settlement issues, and not on the wider, ongoing honourable implementation of the Treaty. The Treaty settlement process should not be seen as the end of government's obligations around the Treaty: the treaty is the basis for an ongoing relationship.

**Meeting of civil society organisations to receive feedback on New Zealand's draft national report under the Universal Periodic Review of the UN Human Rights Council  
Christchurch, 11 March 2009**

A public consultation meeting was held in the afternoon of Wednesday 11 March 2009 to allow Christchurch-based stakeholders to discuss, and give feedback on New Zealand's draft national report under the Universal Periodic Review (UPR) of the UN Human Rights Council. The meeting was chaired by the Ministry of Foreign Affairs and Trade (MFAT). The Ministry of Justice (MOJ) also attended.

A total of 11 participants attended the meeting: the New Zealand Human Rights Commission (NZHRC) (Joanna Collinge, Bruce Coleman, Karolin Potter, Tina Marsh) joined the following civil society organisations in attendance: Mental Health Foundation (Ciaran Fox), Community Law Canterbury (Marissa Johnpillai), Network Waitangi Otautahi (Katerine Peet), Amnesty International (Inez Grim and Natalie Baird), Disabled Persons Assemble (Anna Mitchell) and the Christchurch Ethnic Council (Jim Fraser).

Richard Kay (MFAT), outlined the purpose of the meeting: to inform on the process used for preparing New Zealand's draft national report, and to seek direct feedback and views from participants on the draft to inform Ministers before submission of the final report. Alana Messent (MFAT) gave a brief presentation on what the UPR is, and the key timelines for New Zealand's review. Richard Kay then outlined the process for drafting the report: the key themes, resources drawn upon and challenges faced. Participants were also encouraged to present their comments in the form of written submissions.

## **Introduction**

- Katherine Peet commented that the Treaty of Waitangi was not a treaty between the "Government and the indigenous" as described in the draft report. The report should highlight that it was a treaty between two sovereign nations, drawing from the research and work of Matthew Palmer, and the Prime Minister's statements at Waitangi recognising that things needed to be remedied. The report should also make clear that the Waitangi Tribunal has no binding powers, and therefore should not refer to this as a partnership with Maori.

## **Section One: Methodology and Consultation Process**

- Richard Kay explained that this section would be updated to reflect the latest round of consultations.

## **Section Two: Background of Country**

### **2.1 Constitutional, Political and Legal Structure**

- Katherine Peet highlighted a contradiction in the section in that it refers to both Parliamentary supremacy and the separation of powers. She also asked that it be made clear that Maori having a direct say in Parliament (para 6) is not the result of any constitutional arrangement/link to the Treaty, but is the result of the MMP system of proportional representation.

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

- Natalie Baird commented that the unique status of the Cook Islands and Niue meant they 'missed out' in the UPR process, and that this should be more clearly spelt out in the report.
- Karolin Potter noted that next time, Cook Islanders and Niueans in New Zealand could be consulted through the Ministry of Pacific Affairs.

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

- Karolin Potter suggested that the Race Relations Office, which pre-dated the NZHRC be included.

### 2.4 International Commitments

- Richard Kay explained that the paragraph on NZAID will need to be updated.
- Natalie Baird suggested the inclusion of a short paragraph on the instruments NZ has not signed/ratified/supported, as it would be useful to have this in one place (eg: DRIP, Optional Protocols, Migrant Workers Convention and Enforced Disappearances). Katherine Peet supported this, and also suggested including ILO 169 in the list.
- Katherine Peet commented that the current reference to NZAID was very rosy. Against the current context of discussions around the future of NZAID, she highlighted the lack of opportunity for the public to engage and seek remedies on wider human rights issues such as the upcoming Ministerial decision, and others such as the subservient status of the NZBORA.
- Joanna Collinge suggested that given the concerns raised about a variety of constitutional matters, the report could include notice of the planned review of constitutional arrangements, and present it as an opportunity to strengthen the promotion and protection of human rights. It could even be a priority the government sets for itself in Section Five.
- Katherine Peet emphasised that both individual and collective rights should be included in any new arrangements.
- Natalie Baird (and Katherine Peet) raised the significant civil society concern over the possible merging of NZAID with MFAT, and suggested that this concern could be included in the report (just as public concern/disagreement is included in other areas of the report).

### 2.5 Incorporation of International Treaties

#### 2.6 Human Rights Legislation

- Marissa Johnpillai commented on the treatment of the NZ Bill of Rights Act (BORA), and the lack of checks and balances in place to ensure that BORA is protected and upheld. In light of its subservient status, it is a gloss to say that despite the criticisms, rights are protected. Marissa also commented on the use of urgency to push through law.
- Ciaran Fox supported this comment on BORA, noting that it was only recently that BORA was recognised as covering people undergoing compulsory treatment.
- Katherine Peet commented that the fact there was no legal constraint on Parliament was a serious omission in the rights framework.
- Natalie Baird also suggested the report recognise that our human rights protections are concerned primarily with civil and political rights, not economic, social and cultural (ESC) ones, and that a separate paragraph be included on ESC rights.

- Katherine Peet agreed with the above and suggested that the report acknowledge that ESC are not covered under the BORA.

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

- Katherine Peet noted that the first paragraph gives an untrue impression that there are effective remedies for those whose rights are breached under the Human Rights Act. This should be clarified, for example by explaining that the Foreshore and Seabed Act breached the rights of Maori.

## **Section Three: Promotion and Protection of Human Rights**

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

- Katherine Peet suggested the title refer to 'Indigenous Peoples'. She also noted the section was very focussed on the Treaty settlement process, when it should also focus on the continuing relationship. She also noted that the Treaty is not only about Maori, but about setting out the relationship between the indigenous peoples and everyone else – it is about giving rights to all.
- Natalie Baird suggested firstly that the para 5 note that Maori and others disagreed with the Foreshore and Seabed Act. Secondly, para 5 should also refer to the Stavenhagen visit, including alongside the CERD report. Thirdly, in relation to the DRIP, it would be useful to mention any possible reviews of the government's position.

### **3.2 Gender**

- Richard Kay explained that the section would have to be updated in light of changes in pay equity policies.
- Karolin Potter commented on the failure to include the issues specific to men, such as high imprisonment rates, violence, and problems with education (eg: literacy and tertiary education success).
- Katherine Peet commented that the gender section was too long in terms of the relative length of the report and that it should be shortened to make room for other issues, such as a greater focus on the Treaty as an overarching framework for peoples to work together.

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

- Natalie Baird raised the possibility of addressing child poverty in this section, but Richard Kay explained that it was covered as a key challenge in Section Four.
- Katherine Peet suggested the section cover the issues around the CPAG (Child Poverty Action Group) case (ie: the prima facie discrimination against people who have a dependent child or dependent children but who are not eligible for tax credits because they receive their main income by way of a benefit paid by the Government).
- Marissa Johnpillai commented that there was no mention of the lack of a minimum working age in New Zealand, or of the fact that there is no minimum wage for those under 16.
- Joanna Collinge noted that there is no mention of New Zealand's reservations to the Convention on the Rights of the Child.

### **3.4 Senior Citizens**

- Jim Fraser commented that the Gold Card is still in its infancy and that it is yet to deliver many benefits.
- Marissa Johnpillai suggested including the discrimination and abuse experienced by the elderly in consumer matters. Anna Mitchell suggested that consumer issues not be confined only to the elderly.

### 3.5 Violence within Families

- Katherine Peet noted the failure to include work being done with men, by men in this area, and suggested it be highlighted as a unique approach in New Zealand.
- Natalie suggested mentioning the upcoming referendum on section 59.

### 3.6 Persons with Disabilities

- Marissa Johnpillai suggested including the issue of access of children to schools where special needs funding was required, in light of the complaint that is being taken up by the IHC.
- Katherine Peet suggested mentioning the Disabled Persons Community Welfare Act provision of 28 days care to help people stay in their homes.
- Anna Mitchell commented that the section was very statistical, and about who did what, rather than what's being done currently. But she felt this was acceptable in light of the fact that implementing disabled person's rights came under the Section Five Priorities.

#### 3.6.1 Mental Health

- Ciaran Fox noted their concern over the reference to the Mental Health Commission as 'independent', given that it reports directly to the Minister of Health. He also commented that there is no 'independent' body that monitors implementation of the Mental Health Act.
- Anna Mitchell disagreed with the description of mental health services as 'becoming more responsive' in light of the drop in admission rates. This was not a factual statement as there is no way of telling if the decrease is due to better treatment.
- Ciaran Fox noted that this description glosses over the issues faced in this area given the continuation of practices such as seclusion and electro-convulsive therapy (ECT) and that these practices may be inconsistent with CAT.

### 3.7 Ethnic Diversity and Tolerance

- Katherine Peet asked whether there was any reference to the HRC Race Relations Commissioner in the report? The Diversity Action Plan was raised as a success.
- Adam Dubas explained that it was mentioned under 2.3 and best practices.
- The NZHRC noted that its Race Relations statement was released today. Richard Kay undertook to update the section in light of the recent release, and would also include a description of what most of the complaints came in for.

#### 3.7.1 Migrants

#### 3.7.2 Interfaith Dialogue

## Section Four: Identification of Achievements, Best Practices, Challenges and Constraints

- Joanna Collinge explained that the NZHRC submission on the draft report will include the challenges faced by the financial crisis, and the need for a commitment from the government to protect the most vulnerable during these times.
- Katherine Peet suggested that the report also include a section on a clean environment, so that in four years time there will be a baseline to which we can refer back to on this issue.

#### 4.1 Achievements and Best Practices

- Jim Fraser questioned how we could say we are protecting the rights of sex workers in para 4.1.6 when three have died on Christchurch streets and suggested deleting the reference.
- Bruce Coleman noted that this was a direct quote from the Review Committee's report, relating to employment rights and health and safety.
- Richard Kay suggested that they could look at something around the safety aspect. He also commented that MFAT may have to look to cull back the section in order to achieve better balance between achievements and challenges.

#### 4.2 Challenges and Constraints

- Katherine Peet the reference to training camps given that the issue is currently before the courts, that they were charged with firearm, not terrorism offences, and that these are allegations only at this stage. Karolin and Marissa Johnpillai also supported the removal of this reference, or the need to include the work alleged to make the situation clearer.
- Ciaran Fox noted that the Acts could be seen as a step backwards in terms of human rights, particularly in light of the comments of the Solicitor General.
- Tina recommended removing the word 'Urewera'
- Katherine Peet recognised that addressing the human rights challenges involved in countering terrorism was a good start, but that this should not focus on Maori.
- Natalie Baird suggested including the Immigration Bill.
- Richard Kay agreed that this needed including.

#### Section Five: Key Human Rights Priorities

- Karolin Potter recommended combating violence generally, rather than just women and children.
- Ciaran Fox suggested that if there is little scope to change the government's list of priorities then could there be a separate section of civil society priorities instead.
- Katherine Peet commented that again the focus on Maori was in relation to Treaty settlements, but could instead include take into account the different approach of the new government, for example through the commitment to a constitutional review committee.
- Natalie Baird referred to the importance of having SMART priorities: specific, measurable, achievable, reviewable and time-bound.
- Joanna Collinge explained that the NZHRC submission had more detailed priorities, including access to education.

**North Island Hui to receive feedback on New Zealand's draft national report under  
the Universal Periodic Review of the UN Human Rights Council  
Rotorua 12 March 2009**

A Hui was held on Thursday 12 March 2009 to allow North Island Maori to discuss, and give feedback on New Zealand's draft national report under the Universal Periodic Review (UPR) of the UN Human Rights Council. The Hui was facilitated by MFAT. MOJ and TPK also attended.

A total of 13 participants attended the meeting. The New Zealand Human Rights Commission (Paula Pirihi) joined the following in attendance: Murray Henare (Tairāwhiti HRC Network), Tracy Miller (Kite Ropu I Te Ora Trust), Jason Pou (Rangikura & Co), Tawhiu Mokehu (TPK), Taparoto Nicholson (Tika Consultants), Maxine Rennie (Moatua Whangai), Areta Koopu (former Human Rights Commissioner), Annette Sykes (Ngati Makino), Raewyn Bennett (Ngatangata ahikaaroa), Tone Sanday (University of Bergen, Norway), Gerry Pouwhare (Ngati Haka Patuheuheu), Tony Wihapi (Te Arawa ki Tekutai).

Martin Wikaira (Ministry of Foreign Affairs and Trade), outlined the purpose of the Hui: he stressed that it was not a consultation on the draft report, rather it was about informing Maori on the UPR and the process used for preparing New Zealand's draft national report, further it was an opportunity to seek direct feedback and views from participants on the draft report to inform New Zealand Ministers before submission of the final report. Paul Rothville (Ministry of Foreign Affairs and Trade) gave a brief presentation on what the UPR is, and the key timelines relating to New Zealand's review and preparation of the report.

## **Introduction**

Ngairie Whata questioned the reference that New Zealand "was the first country to aspire to a national partnership with indigenous people". Whata further noted that a reference in the report to Maori people as "special" was racist – in New Zealand all people should be equal.

## **Section 1: Methodology and Consultation Process**

A number of participants noted that their attendance at the Hui would unfortunately be limited due to the need to attend other Hui also being held in Rotorua that day. While there had been an intention to provide a more detailed overview of the process used to determine what was included in the draft report, it was the strong desire of participants to dispense with further presentations. A consistent view was that the Hui should be the opportunity for those attending to be heard, and further, that to justify people's attendance, the final report needed to pick up on the views presented at the Hui. This was a theme that was returned to frequently during the Hui. Martin Wikaira noted that all views raised during the Hui would be presented back to Ministers. While all feedback would be taken seriously there was no guarantee provided of how the final report might reflect all comments and suggestions received. This ultimately was a decision for Ministers to make.

Tony Wihapi questioned whether the report reflected the views of the previous government given the way it was written. The draft report was absent in many areas of current reality including a lack of reference to the current governance relationship including the Maori Party. Martin Waikara noted in response that the report had been written during the term of

the previous government and would need updating. New Ministers would need to be satisfied with the report before finalising it.

Tony Wihapi also suggested that notice of the meetings on the draft report was very short and inadequate. Wihapi noted the issues covered in the draft report were very important and as a result he had travelled from Te Puke especially for the meeting. As a general comment he further noted that while it was “ok” to present a positive picture the report needed to be a true account of New Zealand and in its current form it was not. Areta Koopu suggested that consultation on the report should start earlier in future.

Raewyn Bennett queried on what basis consultation on the draft report had been agreed, particularly in terms of deciding who was invited to the Hui. Martin Wikaira noted in response that Ministers had agreed that the draft report be released for consultation with relevant stakeholders including Maori. He noted that the timeliness of consultation was less than ideal, and that New Zealand had already missed the UN’s deadline for submission of the report. Delays had been inevitable given the general election held in November 2008. There had been a need to brief new Ministers on the draft report and the UPR in general. Cabinet had agreed to delay the submission of New Zealand’s report in order to allow for sufficient consultation with relevant stakeholders to take place. In terms of attendance at the Hui, TPK had been invited to identify from its networks who could be invited to the Hui.

Areta Koopu noted that overall the report was still too positive about the human rights situation in New Zealand. Koopu noted that from her experience of dealing with the UN it still relied heavily on its dealings with the state. It is very difficult for individuals to get an audience with the UN. The New Zealand government report therefore needed to reflect the concerns of New Zealand people.

Taparoto Nicholson echoed these comments in noting that there were areas of the report that simply glossed over the issues. In the future there needed to be proper consultation on the report. Nicholson noted that it was positive that the UN was reviewing New Zealand but New Zealand’s own report needed to be much more balanced than the current draft.

Tony Wihapi queried who would be receiving the report and ultimately which Ministers would be presenting the report to the UN. Martin Wikaira noted in response that the report would be going to a group of Ministers including the Minister of Foreign Affairs, Minister of Justice and Minister of Maori Affairs.

Raewyn Bennett noted that the report lacked context – it was too general and unclear what the basis for much of the information was. Bennett suggested that it needed an accompanying and fuller report.

## **Section 2: Background of Country**

Annette Sykes questioned the content of 2.1 (Constitutional, Political and Legal Structure). In particular Sykes noted that the Treaty of Waitangi should guarantee governance for Maori but this section of the report presents the Treaty in quite a different way. Sykes further noted in this regard that contrary to the way it has been presented in the draft report, the Treaty has constitutional status. The fact that the constitutional status of New Zealand will be reviewed over the next 3 years is an omission from the report.

Jason Pou suggested that a reference needed to be added to 2.4 (International Commitments) on the Kyoto Protocol. He noted that its application within New Zealand had been biased. Specifically it favoured private as opposed to collective property rights. Annette Sykes also queried this section's reference to international commitments. She questioned why for example why certain international obligations were prioritised over others, noting FTAs as an example. In these agreements international obligations were judged to be more important than obligations to Maori. The government's stance on the DRIP seemed in stark contrast – here the majority of the UN had reached an agreement that New Zealand stood away from. Jason Pou suggested that the government's approach to mining was another example of where the government was discriminating against Maori under the cover of "international commitments". Tony Wihapi echoed the comments that the Treaty of Waitangi needed to be prioritised over other international agreements.

Areta Koopu noted that 2.6 (Human Rights Legislation) refers to the Human Rights Amendment Act 2001 – this was an important legislative change however the draft report does not refer to the Hui that were held at the time and the significant number of issues raised during these. Annette Sykes noted that an important omission from this section of the report was a reference to the Kyoto Protocol and the CNI settlement. These had significant implications for Maori – an example being that Maori needed to pay a penalty to convert land from its existing use. This made a lot the land that had been returned to Maori through settlements virtually useless, particularly in the case of forests where upkeep of the land and the forests required significant costs equivalent at times to 6 times the value of the land. This has become a poverty trap. Jason Pou took this point further to note that in many instances there was a real opportunity to use the land productively in the form of farms or market gardens etc, but this was being restricted.

Murray Henare suggested that this section should note the importance of CLCs. The potential closure of many of these due to funding issues was a real problem for Maori who are big users of the service. The important service that CLCs provide would become even more so as the financial crisis impacts on New Zealand.

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

Ngairé Whata suggested that the characterisation of Maori in the report 3.1 (Treaty of Waitangi and the Rights of Indigenous People) was incorrect. There is an absence in the draft report to the process of colonisation of New Zealand. The true status of the Treaty of Waitangi should be stated in the report. New Zealand's position on the DRIP also needs to be spelt out.

Ngairé Whata further questioned what might be the best way to present Maori human rights issues in the report. The draft report should present the current health situation as it relates to Maori. Maori health is a significant issue – Whata noted that work was currently underway on a draft Declaration on Indigenous Health as this was such an important issue.

Tony Wihapi also noted issues relating to Maori were not accurately reflected in the draft report. Wihapi made a comparison with the US and the situation of African Americans – Maori he noted were different, Maori are the indigenous native people of New Zealand and this needed to be brought out more clearly in the report. New Zealand's position on the DRIP was "shocking in the extreme". In New Zealand Maori do not have political power as they are "ruled by the tyranny of the majority". This process started in the Bay of Plenty (reference to Bay of Plenty Regional Council Maori Constituency Empowering Act). For

Maori basic human rights are not a reality when they are dictated to by the majority. Access to the political decision makers was difficult and this had implications for many issues concerning Maori. While the existence of the Maori Party in the new government was a positive change there was still no guarantee that real outcomes would be achieved – this would remain the case until there was constitutional change in New Zealand.

Murray Henare noted that a reference needed to be added to the report on the implications of the land rating system for Maori. This was a significant issue where the way in which land was valued was leading to overly high rates payable for collective ownership. In some instances this was likely to force Maori off the land. It also impacted on ability to secure loans from banks given their systems were more suited to individual as opposed to collective ownership. Ngairi Whata echoed this in a broader point that in New Zealand the law generally favours one kind of culture over another. Land should be rated differently based on the way it is used. In a similar way, local bodies are also prejudicing against Maori based on the way of living which is different to the majority. Annette Sykes noted that Section 7 of the Rating Act is helpful in some respects but unfortunately it is not being applied.

Murray Henare also noted that there were many sections of the report that were patronising of Maori and these needed to be addressed in the final report. Taparoto Nicholson suggested that one example of this was the first sentence of 3.1 which notes that Maori are “one of the largest and most dynamic indigenous people”. Nicholson further noted that an issue that was not addressed in the draft report, and needed to be addressed, is the fact that much legislation, while not human rights legislation per se, impinges on the enjoyment of Maori human rights.

Raewyn Bennett noted that the high incarceration rate for Maori was a significant omission from the report. Underlying issues leading to the high statistics were poverty and crime.

Annette Sykes noted that 3.2 (Gender) was a poorly written section of the report. Sykes referred to the Choices Plan referenced in the report – this was not a programme that had been welcomed by Maori. Sykes went on to say that many of the programmes referenced in the report were iniquitous to Maori and hence she questioned on what basis they had been included in the draft report. Sykes also noted that Maori women do not feature well in positions of power and this needed to be referenced in the report. The fact that there were very few Maori women negotiators impacted on Maori women as a whole.

Ngairi Whata noted that there was no reference in the report 3.3 (Children and Young People) to the impact of violence against Maori children. Whata noted that Maori children had the highest death rate in the world through violence.

Annette Sykes noted that it was an inequity that Tekohanga reo did not receive the same funding as other kindergartens.

Maxine Rennie suggested that taking children away from family was a breach of human rights – relevant government agencies did not engage with whanau, hapu and iwi.

Areta Koopu suggested that the report needed to note specifically New Zealand’s reservations to UNCROC.

Tony Wihapi questioned the statistics on child poverty, noting that anecdotally most would say it is getting worse and not better.

Areta Koopu suggested that 3.4 (Senior Citizens) should refer to the increasing number of older Maori. Koopu noted that only a few years ago Maori did not register in the Senior Citizens category, however, increasing numbers are now living past 65. The relative number of older Maori was however still low. Koopu also noted that the government was not providing sufficient subsidies for hearing aids – many older Maori who needed such devices could still not afford them.

Annette Sykes noted that 3.5 (Violence within Families) was silent on the elimination of violence against women. Sykes went on to note that the most effective work being undertaken to address this issue was being done by the voluntary sector, but those organisations do not receive funding – the 15 Maori Women’s Refuges were an example of this – they see the bulk of women. The Taskforce mentioned in the draft report (Taskforce for Action on Violence within Families) was not working according to Sykes.

Tony Wihapi noted that New Zealand’s record on violence within families was appalling. Wihapi went on to note that funding was not being provided to implement initiatives aimed at addressing the problem. Furthermore, communities were not being involved in the solutions, rather they were forced to follow some government model that did not work.

Ngairé Whata suggested that the government had a responsibility here, as in many cases it was their policies that had created the problem. Whata noted that previously Maori people had jobs and as a result they were proud people – in those times violence within families was never an issue – the problem has only emerged through privatisation and the subsequent loss of jobs.

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

Annette Sykes suggested that 4.2.2 (Human Rights and Countering Terrorism) was factually incorrect. Important information had been left out of the draft report on what happened in a Ruatoki – unlawful searches for example were a fundamental breach of human rights but the report is silent on this. Sykes went on to note that the incident led to complaints by the community involved to the UN Special Rapporteur on Countering Terrorism. The draft report as currently written sanitises the whole issue.

#### **Section 5: Key Priorities**

Murray Henare suggested that economic development targeted at job creation as well as education be added as priorities. Henare noted that in many areas there were significant natural resources which provided a good opportunity for industry, but in those same areas more and more people were moving away. This results in the breakdown of traditional family networks and all its associated issues. Many communities now suffered from transiency of the population, and equally many people are now more isolated than they once were. Drug growing is a problem in such places and a lot of resources are squandered on trying to eradicate the drugs. It would be much more worthwhile however if those same resources went into developing industry in isolated areas.

Annette Sykes recommended that this section be completely rewritten. Returning to an earlier theme she noted that constitutional reform was a key priority for Maori. Maori were not after “settlements” – realising cultural self determination was critical. At present Maori

faced significant barriers to economic development through government policies and these needed to be addressed.

Ngairé Whata echoed a similar concern about the current status of the Treaty of Waitangi in urging the need for constitutional reform. She noted that the Local Government Act excludes Councils from the Treaty and its obligations. A disturbing issue for Maori was a recent legal decision that confirmed that local government were not obligated to consult with Maori. This was a breach of human rights. Whare noted that work done by the UN (UN Human development reports) had shown there was a clear link between political rights and poverty/economic status.

Tony Wihapi presented a further reason for the importance of constitutional change referring to the increasing numbers of other populations within New Zealand. The constitutional relationship needed to be addressed urgently.

Raewyn Bennett suggested that rectifying New Zealand's position on the DRIP should be listed as priority for New Zealand. This was a sentiment echoed by all those who attended the Hui. Ngairé Whata suggested that New Zealand's presentation of the report in May was an opportunity to communicate a revised position on DRIP.