

# UPR MONITOR

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## UNIVERSAL PERIODIC REVIEW, 5<sup>TH</sup> SESSION STATE UNDER REVIEW REVIEWED ON 2 FEBRUARY 2009, MORNING

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### Overview

New Zealand was reviewed under the universal periodic review (UPR) on Thursday 7 May 2009. The delegation was headed by Mr Simon Power, Minister of Justice. Although Mr Power was the only member of the delegation to take the floor and respond to questions, other delegates included representatives from the Department of Crown Law, the Department of Labour, the Department of Corrections, the Ministry of Foreign Affairs and Trade, and the Permanent Mission of New Zealand to the UN in Geneva.<sup>1</sup> The delegation was well-prepared and proved capable of responding to the majority of questions posed.

There was a good level of participation in the review, involving 36 States from all regional groups. However, with the exception of Argentina, it was notable that only European States submitted advance written questions to New Zealand.<sup>2</sup> There was general praise for New Zealand's human rights efforts. States also expressed appreciation for its openness, candour, and transparency about its human rights record. On a substantive level, the majority of questions or recommendations centred on the situation of indigenous persons, in particular the Maori population. Other issues of note included women's rights, violence against women and children, counter-terrorism, international obligations, cooperation with international mechanisms, and the rights of persons with disabilities.

New Zealand was cooperative and attempted to respond to most of the issues raised, with the exception of concerns related to counter-terrorism. The delegation acknowledged that challenges remain for New Zealand and its self-critical approach was appreciated by States such as The Netherlands and the United States (US).

<sup>1</sup> <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights7May2009AM.aspx>, last accessed 08/05/09.

<sup>2</sup> Czech Republic, Germany, The Netherlands, Sweden, United Kingdom of Great Britain and Northern Ireland, Denmark and Hungary.

## General Information on New Zealand

- New Zealand is not currently a member of the Human Rights Council.
- The members of the troika for the examination of New Zealand were the Philippines, Italy, and Mauritius.
- According to the State report, New Zealand held two stages of national consultations. The first phase occurred in August 2008 when civil society organisations and NGOs were given the opportunity to contribute towards the elaboration of the draft report. The second phase took place in February-March 2009 when the draft report was released for public comment and another series of public meetings were held.

## Information submitted to the Working Group

The **national report** of New Zealand is comprehensive and detailed and covers most of the issues raised during the interactive dialogue.<sup>3</sup> It is also reflective of the information submitted by UN bodies and NGOs. The report provides concrete cases and examples and refers to specific laws, measures, and initiatives of the Government. The report acknowledges shortcomings and admits that there is still a lot of work ahead for New Zealand.

The **OHCHR compilation** of information focuses on various issues. These include; the legislative framework for human rights in New Zealand and the constitutional status of human rights acts, international conventions, and bodies; equality and non-discrimination of Maori; violence against women; child abuse; privatisation of prison services; human trafficking; the age of criminal responsibility; counter-terrorism; and the rights of migrants and asylum.

Fifteen other stakeholders, comprised of fourteen NGOs<sup>4</sup> and one national human rights institution, submitted information for the **OHCHR summary of stakeholders' information**. The New Zealand Human Rights Commission (NZHRC) suggested that human rights protections in New Zealand are fragile due to the existing legal framework. Concerns about discrimination against Maori and disparities in relation to housing, education and employment, among others, between Maori and non-Maori were also voiced.<sup>5</sup> Violence and discrimination against women and children,<sup>6</sup> prison service practices,<sup>7</sup> failure to support the *Declaration on the Rights of Indigenous Peoples*, and poverty levels<sup>8</sup>, were further issues raised. Key issues reflected those of the State and OHCHR compilation reports with no considerable discrepancies visible among the three.

## Interactive Dialogue

### Presentation by the State

The opening presentation of New Zealand lasted twenty minutes and focused on the situation of indigenous persons in the country. It also referred to the need to increase the limited number of women in senior management positions and the unacceptability of violence against children. Mr Power drew attention to New

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<sup>3</sup> A/HRC/W.6/5/NZL/1.

<sup>4</sup> Including three joint submissions. For full details please see A/HRC/WG.6/5/NZL/3.

<sup>5</sup> Amnesty International Aotearoa New Zealand (AIANZ), Cultural Survival (CS), JS1 (Joint Submission 1), JS2 (Joint Submission 2), New Zealand Human Rights Commission (NZHRC)

<sup>6</sup> AIANZ.

<sup>7</sup> Caritas Aotearoa New Zealand (CANZ), Friends World Committee for Consultation (Quakers), Joint Submission 3 (JS3), Mental Health Foundation of New Zealand (MHFNZ), NZEI (NZEI Te Riu Roa), Shaki Community Council Inc. (SCC).

<sup>8</sup> AIANZ, NZHRC.

Zealand's positive role and contribution to the drafting of the *Convention on the Rights of Persons with Disabilities* and the *Cluster Munitions Convention*. The State updated the Working Group on developments since the submission of the national report. The presentation was useful and detailed and demonstrated New Zealand's openness to dialogue.

## Themes and Issues

### *Land Ownership*

There was a strong focus on issues concerning the Maori population. Such issues were broad-ranging and covered topics such as the constitutional status of the Treaty of Waitangi. Norway recommended the continuation of public discussion on the status of the treaty with a view to the possibility of enshrining it as a constitutional norm. India requested further information on the number of claims settled and outstanding under the Waitangi Treaty and also expressed its concern about existing constitutional weaknesses relating to the protection of the rights of the Maoris. With regard to the settlement of land claims, Mr Power indicated in his opening presentation that it is the aim of the government to achieve just and durable settlement of land and resource claims by the year 2014. He also highlighted the fact that the new Government has entered into an historic formal agreement with the Maori party which includes the establishment of an expert and independent ministerial panel to review the Foreshore and Seabed Act 2004. The panel is expected to provide a written report to the Government for consideration by the end of June 2009.<sup>9</sup> Both Mexico and Bangladesh recommended that New Zealand continue discussion on the Foreshore and Seabed Act with the Maori people and South Africa questioned whether any progress has been made to either repeal or amend that law. Angola questioned how the Government intends to compensate Maoris for loss of land while Switzerland urged New Zealand to pursue efforts to settle territorial land claims.

### *Disparities between Maori and non-Maori population*

Several States expressed concern about continuing disparities between the Maori and non-Maori population in relation to housing, education, employment and health and recommended measures to narrow these gaps.<sup>10</sup> Argentina requested further detail on the policies being employed in order to reduce disparities in areas such as employment, health, education, and income, and Austria sought more information concerning the implementation of policies to change the reality of 'life on the ground' for the Maori population. In this context, several States recommended the ratification of International Labour Organization (ILO) *Convention 169*<sup>11</sup> and support for the UN *Declaration on the Rights of Indigenous Peoples*.<sup>12</sup> Mr Power declared that, although there are no current plans to ratify *ILO Convention 169*, a number of specific domestic laws exist which allow for the customs and methods of indigenous people to be considered. In 2010, a broad constitutional review is due to be undertaken and the issue of *ILO Convention 169* will be addressed. Mr Power explained that while some of the provisions in the UN *Declaration on the Rights of Indigenous People* were considered incompatible with domestic law, many of the rights enshrined in the Declaration have been enjoyed in New Zealand for many years. Furthermore, the new Prime Minister has indicated that he would like to see a move toward support for the Declaration if its compatibility with the domestic framework can be ensured.

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<sup>9</sup> Turkey commented that it hoped the report of the review panel will contribute towards the finding of a solution.

<sup>10</sup> For example, Japan, Jordan, Angola.

Russia recommended improved access to all areas of social life and Turkey recommended the continuation of targeted actions to improve the social situation of Maori.

<sup>11</sup> Argentina, Brazil, Iran, Mexico, Norway

<sup>12</sup> Austria, Iran, Mexico, Pakistan.

In light of the current global economic situation, China enquired whether the Government of New Zealand has any specific measures in place to reduce the negative effects on Maoris.<sup>13</sup> In response, Mr Power pointed to various targeted initiatives of the Government including the convening in January 2009 of a Maori Economic Summit by the Minister of Maori Affairs and the establishment of a Maori Affairs Ministerial Taskforce on Economic Development.

### **Discrimination**

Iran observed that stereotyping by the media<sup>14</sup> exacerbates the problem of discrimination against the Maori and asked how the Government of New Zealand is planning to respond but this question was not addressed by the delegation. The over-representation of Maori as both victim and perpetrator of violence, and the disproportionately high rate of incarceration of Maori were further causes of concern, leading to Canada's recommendation that institutional bias be combated and Sweden's remark that the Government of New Zealand must act to ensure that there is no discrimination in the criminal justice system.

### **Women and Employment**

Regarding women's rights, France asked whether the Government has implemented measures to respond to the concerns of the Committee on the Elimination of Discrimination Against Women (CEDAW) about the absence of a detailed definition of discrimination against women in national legislation. Ukraine enquired about what measures the Government is taking to respond to another CEDAW concern, that of the lack of legal mechanisms to address discrimination in employment. To help achieve gender equality, Norway recommended the establishment of gender quotas on the boards of companies and Canada suggested the establishment of targets to improve the representation of women in senior management and to ensure equal pay. South Africa recommended the repealing or amending of laws to ensure more comprehensive protection of women. Brazil emphasised the necessity of reinforcing women's rights in the labour market, Argentina advocated the implementation of policies to speed up the increase in the representation of women at local government level and in other sectors, and Angola expressed its view that the Government of New Zealand must continue to adopt policies to ensure full gender parity.

### **Violence Against Women**

Various States spoke of the need to reduce domestic violence rates.<sup>15</sup> Australia and the United Kingdom requested further information on efforts to reduce domestic violence, the latter also recommended a better measuring of domestic violence. Austria questioned whether the Government of New Zealand has any plans to raise the low conviction rates for violence against women and Bangladesh asserted the importance of addressing the underlying causes of domestic violence and racially motivated crimes.<sup>16</sup>

States also engaged New Zealand in discussion on the following themes: counter-terrorism,<sup>17</sup> trafficking,<sup>18</sup> rights of persons with disabilities,<sup>19</sup> racism,<sup>20</sup> access to education for lower income families,<sup>21</sup> the high

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<sup>13</sup> Similarly, Slovenia enquired whether the government has any specific strategy based on ethnicity to strengthen the rights of Maoris

<sup>14</sup> South Africa drew attention to the fact that the media is involved in negative stereotyping of minority women in particular, while the Maldives questioned to what extent negative stereotyping in the media exacerbates inequalities.

<sup>15</sup> For example, Azerbaijan, Iran.

<sup>16</sup> Sweden also emphasised the necessity of addressing the causes of domestic violence and the need to increase efforts to combat it.

<sup>17</sup> Iran, France, Germany (recommended dropping amendments to terrorism act), Switzerland (highlighted the necessity of respecting international human rights obligations).

suicide rate among young people,<sup>22</sup> the age of criminal responsibility,<sup>23</sup> and the privatisation of prison management.<sup>24</sup>

### Adoption of Report

The Working Group on the UPR considered the report on the review of New Zealand on 11 May 2009. New Zealand kept all of the 64 recommendations it received pending. It will provide responses to all of these in time for the 12<sup>th</sup> session of the Human Rights Council in September 2009.

In its comments, New Zealand also said that it would provide additional answers on a bilateral basis where it was not possible to answer exhaustively during the review.

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<sup>18</sup> Austria (referred to CEDAW's concern of no reports of trafficking in New Zealand), Malaysia (spoke of the need to document cases of trafficking and share information), South Africa (enquired about support mechanisms for victims of trafficking) and the United States (claimed there was a need for a more comprehensive definition of trafficking).

<sup>19</sup> Mexico and Australia praised New Zealand's work in this area while Nigeria proffered that children with disabilities in New Zealand are not fully integrated and recommended that the government commit more services to children with disabilities.

<sup>20</sup> Algeria, Mexico, Pakistan and Russia recommended support for the Outcome Document of the Durban Conference.

<sup>21</sup> Germany.

<sup>22</sup> China.

<sup>23</sup> Czech Republic.

<sup>24</sup> Japan.

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