NEW ZEALAND

NGO Combined Coalitions Submission

To the Universal Periodic Review

Fifth Session of the UPR Working Group, May 2009

Submission 1: Action for Children and Youth Aotearoa.

Submission 2: Human Rights Foundation, New Zealand Council of Trade Unions, Peace Movement Aotearoa, Women's International League for Peace and Freedom, Christian World Service, Pax Christi, Indonesia Human Rights Committee.

Submission 3: Aotearoa Indigenous Rights Trust, Peace Movement Aotearoa, Foundation for Peace Studies Aotearoa-NZ Inc, INA (Maori, Indigenous & South Pacific) HIV/AIDS Foundation, Maori Party, Network Waitangi Otautahi, Ngati Kuri Trust Board, Ngati Raukawa Trust Board, Pacific Centre for Participatory Democracy, Pax Christi Aotearoa NZ, Quaker Treaty Relationships Group, Tamaki Treaty Workers, Tauiwi Solutions, Te Runanga o Nga Kaimahi Maori o Aotearoa, Treaty Tribes Coalition, Wellington Treaty Educators Network, and Women's International League for Peace and Freedom (Aotearoa); supported by Christian World Service and Human Rights Foundation.

Executive Summary

1. The following combined submission summarises three joint submissions made by coalitions of non-governmental organisations in Aotearoa New Zealand. In doing so we express mutual support and shared concerns.

2. The summaries are provided as follows:

- **Submission 1: Action for Children and Youth Aotearoa (ACYA):** With a focus on children, ACYA provides information under sections stipulated in the General Guidelines for the preparation of information under the Universal Periodic Review

- **Submission 2: Human Rights Foundation, et al:** With a broad approach, though emphasising human rights and counter-terrorism, the submission provides information under sections stipulated in the General Guidelines for the preparation of information under the Universal Periodic Review

- **Submission 3: Aotearoa Indigenous Rights Trust and Peace Movement Aotearoa, et al**: This submission has a focus on indigenous peoples' rights and the Treaty of Waitangi, providing information under sections stipulated in the General Guidelines for the preparation of information under the Universal Periodic Review.

3. **Contact for the NGO combined coalition submission:**

Human Rights Foundation, email margo.hrf@ihug.co.nz

Submission 1: Action for Children and Youth Aotearoa

I. NORMATIVE AND INSTITUTIONAL FRAMEWORK

1. Scope of international obligations

Removal of Reservations to the Convention on the Rights of the Child

4. New Zealand ratified the Convention in 1993. The Committee on the Rights of the Child asked New Zealand to remove its Reservations (1996 and 2003) but this has not happened.

5. ***Age mixing in prisons and other places of confinement*** There has been some progress made on separating boys under 18 years from adults in prisons.

6. ***Minimum age for employment*** There has been no substantive progress in setting a minimum age for employment. New Zealand has yet to Ratify ILO Convention 138 Minimum Age. We note that there is still no minimum wage protection for child employees or workers aged under 16 years.

7. ***Children not lawfully in New Zealand*** The Immigration Bill 2007 proposes to exempt providers of compulsory education (primary and secondary schools) from liability should they provide educational services to children unlawfully in New Zealand.

8. *Recommendation*
New Zealand undertakes to withdraw the Reservations to the Convention on the Rights of the Child by January 2010

Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

9. This Optional Protocol was signed in 2000 but is not ratified because ratification requires amendment to the Adoption Act 1955.

10. *Recommendation*
New Zealand set a timeframe to ratify this Optional Protocol.

The Declaration on the Rights of Indigenous Peoples

11. New Zealand was one of only four United Nations member states to vote against the Declaration last year, and is now one of only three that continues to oppose it.

12. *Recommendation*
New Zealand supports the Declaration on the Rights of Indigenous Peoples.

Tokelau

13. Tokelau is a non-self governing territory. We are concerned that the 600 children of Tokelau who are New Zealand citizens are not accorded the rights and protection of the Convention on the Rights of the Child.

14. *Recommendation*
New Zealand and Tokelau work together to ensure the children of Tokelau have the same opportunities to enjoy their rights as other New Zealand children.

2. Legislative framework

Legislation affecting children

15. CRC has twice requested a review of all legislation that affects children, both to age effectiveness and on wider issues. This has not happened.

16. *Recommendation*
Government carry out a comprehensive review of all legislation affecting children.

Delegations of Authority - Local government - lack of application of human rights treaties

17. Government agencies and entities carrying out delegated tasks under State legislation, and funded by the State, are not excused from knowing of and being directed to meet the requirements of this Convention and the other international human rights treaties. This is not the policy of the Minister for Local Government.

18. *Recommendation*
The UN Council clarifies the need for the State to give direction to legally established local entities to meet UN Treaty obligations.

3 Institutional and human rights structure

Maintaining the function and effectiveness of the office of the Commissioner for Children

19. The budget of the Commissioner has not been increased for three years. The newly elected Government has proposed the office should be subsumed in other entities. This would be strongly opposed by children's advocates.

20. *Recommendation*
Government increases the budget allocation to the Office of the Commissioner for Children and maintains its statutory independence

New Zealand Action Plan for Human Rights

21. Governments were slow (mid-2007) to direct agencies to progress matters in the HRC Action Plan 2005-2010. HRC's Mid-term Review (October 2008) shows implementation has been either slow or non existent.

22. *Recommendation*
Government formally endorse the New Zealand Action Plan for Human Rights.

4 Policy measures

Research, evaluation and of strengthening the political decision processes

23. No evaluation has been undertaken in New Zealand of the effect of increased legislative oversight and monitoring on the wellbeing of children. Other countries use a range of techniques to

protect children, such as a senior Minister for children, a Parliamentary Select Committee, or child impact reporting.

Absence of a comprehensive policy for children

24. There is no evidence of a policy for children, and Government does not have a comprehensive approach to the issues affecting children.

25. *Recommendation*s
Government to produce a comprehensive policy and implementation plan for children
Work with interested parties to increase the monitoring of the effects of legislation on children

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. Implementation of international human rights obligations

1. Equality and non-discrimination

26. There are considerable inequities in wellbeing of children. A range of indicators demonstrate that Maori and Pacific children are systemically disadvantaged. Many children with disabilities have limited opportunities to enjoy their rights, especially their rights to education.

27. *Recommendations*
Government give priority to implementing a comprehensive programme to progressively reduce and eliminate discrimination experienced by Maori and Pacific children

2. Right to security of person

28. The Government is to be commended on changing legislation to protect children from physical discipline in their home. However rates of violence against children remain high and services are stretched.

29. *Recommendation*
Government to give priority to the development and implementation of a programme to eliminate violence against children.

3. Right to an adequate standard of living

30. Children are much more likely than adults to be living in poverty - especially Maori children, Pacific children, children in one-parent families, and children who have a disability or have a family member with a disability. Child poverty rates have fallen, but there has been little improvement in the standard of living of the poorest children because social assistance discriminates against children when parental income does not come from paid work.

31. *Recommendation*:
Government to give priority to reducing and eliminating child poverty, especially among the poorest children.

Submission 2: Human Rights Foundation, et al

I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations

32. The New Zealand government has not ratified the Convention relating to the Status of Stateless Persons, nor the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

- *Recommendation*: The government should ratify the Conventions.

33. The New Zealand government was one of four countries to vote against the UN Declaration on the Rights of Indigenous Peoples.

- *Recommendation:* The government should support domestic and international application of the Declaration on the Rights of Indigenous peoples

B. Constitutional and legislative framework

34. The New Zealand Bill of Rights Act (NZBORA) does not enjoy protected status. The Attorney-General may bring to the attention of Parliament any provision of a Bill that appears to be inconsistent with the NZBORA, but this is insufficient to guarantee full respect for human rights.

35. Economic, social and cultural rights are not explicitly protected in domestic law. Neither the NZBORA nor the Human Rights Act include economic, social and cultural rights. This reflects a lack of support for the justiciability of ESCR at government level which needs to be addressed.

- *Recommendation*: Review domestic human rights legislation to give the Bill of Rights protected status, and to incorporate economic, social and cultural rights

C. Policy measures

36. The government has not formally endorsed the Human Rights Commission's New Zealand Action Plan for Human Rights. A Cabinet decision in July 2007 directed Chief Executives of government departments to consider priorities in the Action Plan in their annual planning and reporting processes, and to engage in dialogue with the Human Rights Commission on implementation of the Plan. However implementation has been slow and patchy.

- *Recommendation*: Formally endorse the Human Rights Commission's National Action Plan for Human Rights

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. Implementation of international human rights obligations

Refugees, asylum seekers and migrants

37. Overall, the perspective of security services and border control has dominated in recent approaches to immigration, threatening to undermine the fulfillment of New Zealand's domestic

and international human rights obligations and the institution of asylum. This trend is reflected in the Immigration Bill of July 2006, which has not yet been passed.

38. Whilst treatment of asylum seekers might have improved, their access to asylum has been severely curtailed. This decline is concurrent with the growth of the New Zealand government's own off-shore practices, often carried out in conjunction with Australia, particularly its increased emphasis on interdiction and advanced passenger screening processes imposed on airlines.

39. A small percentage of asylum seekers are detained in correctional facilities, primarily the Auckland Central Remand Prison. Prison authorities segregate asylum seekers where possible, however a penal institution is inappropriate for the detention of asylum seekers.

- *Recommendations*: Review the Immigration Bill
- Ensure that interdiction practices and other border control activities do not compromise the right to asylum
- End the detention of asylum seekers in correctional facilities

Human Rights and counter-terrorism

40. In June 2005, the government established the Immigration Profiling Group (IPG). The IPG has created a climate of fear and uncertainty among refugee communities which is in contradiction to the supposed goal of settlement.

41. Section 1140 in Part IVA of the Immigration Act provides for the issuance of Security Risk Certificates for individuals suspected of terrorist activity. There is nothing in the legislation to prevent human rights abuses such as indefinite detention without charge or prolonged solitary confinement. Section IVA was exempt from the review of the Immigration Act which resulted in the Immigration Bill of July 2006 and the legislation remains in place.

42. The Terrorism Suppression Amendment Act 2007 eroded safeguards against inappropriate designation as a terrorist. It eliminated judicial review of terrorist designations and created the offence of committing a 'terrorist act', which could lead to human rights breaches.

- *Recommendations*: Disestablish the Immigration Profiling Group
- Reform the immigration security certificate system to meet international fair trial standards
- Reform New Zealand law to ensure judicial review of terrorist designations and to remove the unnecessary offence of 'terrorist act'

Administration of Justice

43. In August 2008, the Police Commissioner announced his decision to introduce the Taser gun into the New Zealand Police arsenal.

- *Recommendation*: The introduction of Taser stun guns should be suspended until there has been a thorough and independent investigation into Taser use and its effects. Any subsequent decision must be made at Ministerial level, not by the Police Commissioner alone, with every effort made to ensure a meaningful democratic process.

Women's issues

44. There are unacceptably high levels of family and sexual violence against women in New Zealand, particularly Maori, Pacific and minority women. Concerns have been raised about the adequacy of facilities and provision for women prisoners, both while in prison vis-a-vis their male counterparts, and after release. Concern has been expressed about the gaps that remain in the protection of women against discrimination by private as well as public sector actors and the lack of

legal mechanisms to address this, especially in the areas of equal opportunity and equal pay for work of equal value.

- *Recommendations:* Reform New Zealand law to effectively protect the rights of victims of sexual violence
- Reform New Zealand law to close the gaps in protection of women against discrimination
- Ensure the rights of women prisoners, and their infants and babies, are met

Protecting Economic, Social and Cultural Rights

Legal enforcement

45. The government generally asserts that economic, social and cultural rights cannot be enforced in court. New Zealand takes this position internationally as well and is unlikely to ratify the Optional Protocol to the ICESCR. The government has stated that it remains skeptical about the utility of establishing a complaints mechanism for ESC rights, which it holds as ill-defined and not easily subjected to quasi-judicial assessment.

46. We support the explicit inclusion of economic, social and cultural rights in New Zealand's Bill of Rights. New Zealand could also consider, as has been recommended by the Canadian Human Rights Commission, the inclusion of 'social condition' to the enumerated prohibited grounds of discrimination in our domestic law.

- *Recommendations*: Support legal enforcement of economic, social and cultural rights in domestic courts
- Ratify Optional Protocol to the International Covenant on Economic, Social and Cultural Rights if adopted by UN General Assembly

International justice and New Zealand as an international citizen

47. In December, 2006, the Attorney General intervened in the arrest of former Israeli military Chief of Staff Moshe Ya'alon who was visiting Auckland at the time. The Judge had stated that a 'prima facie' case existed that General Ya'alon had contravened the Geneva Convention. However, Attorney-General Michael Cullen issued a permanent stay of the court proceedings.[1] The Attorney-General's intrusion into the court process was considered highly unusual.

- *Recommendation*: Adopt a policy preferring prosecution and non-interference in court proceedings with respect to individuals accused of committing international crimes subject to universal jurisdiction

48. New Zealand's human rights advocacy is often weak, and limited to expressions of concern that are not backed up by actions.

- *Recommendations*: Reevaluate its international human rights responsibilities and obligations as set out in the United Nations Charter, the Universal Declaration of Human Rights and other international human rights instruments such as the Geneva Convention
- Take a strong and consistent stand with respect to documented human rights abuses and breaches of fundamental freedoms and rights

[1] Hon Michael Cullen, Attorney General "Comment on Moshe Ya'alon Case" 1 December, 2006 http://209.85.173.104/search?q=cache:x3Eb4V5z9FUJ:www.beehive.govt.nz/release/comment%2Bmoshe%2Bya039alon%2Bcase+Moshe+yaalon&hl=en&ct=clnk&cd=5&gl=nz&lr=lang_en retrieved 29 October, 2008

Submission 3: Aotearoa Indigenous Rights Trust and Peace Movement Aotearoa, et al

Indigenous Peoples' Rights and the Treaty of Waitangi

Executive Summary

49. This submission provides information about the New Zealand (NZ) government's approach to indigenous peoples' rights and the Treaty of Waitangi (the Treaty). It is submitted jointly by the Aotearoa Indigenous Rights Trust, Peace Movement Aotearoa, Foundation for Peace Studies Aotearoa-NZ Inc, INA (Maori, Indigenous & South Pacific) HIV/AIDS Foundation, Maori Party, Network Waitangi Otautahi, Ngati Kuri Trust Board, Ngati Raukawa Trust Board, Pacific Centre for Participatory Democracy, Pax Christi Aotearoa NZ, Quaker Treaty Relationships Group, Tamaki Treaty Workers, Tauiwi Solutions, Te Runanga o Nga Kaimahi Maori o Aotearoa, Treaty Tribes Coalition, Wellington Treaty Educators Network, and Women's International League for Peace and Freedom (Aotearoa); and is supported by Christian World Service and Human Rights Foundation.

50. Our comments, both general and specific, are based on referenced parallel reports[2] submitted to UN treaty monitoring bodies and Special Procedures, and are focused on the rights contained in particular in three of the international instruments that NZ is a state party to: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

51. Reference is made throughout to the Treaty of Waitangi (the Treaty) - based on the internationally recognised 1835 Declaration of Independence and signed by representatives of the British Crown and Maori in 1840 - whereby hapu and iwi Maori (the indigenous peoples of Aotearoa NZ) were guaranteed the continuance of tino rangatiratanga (sovereignty or independence). This can be seen as somewhat analogous to the right of self-determination of all peoples as articulated in the shared Article 1 of the ICCPR and ICESCR, and in that sense the NZ government's approach to the Treaty clearly falls within the scope of the state party's obligations under those instruments, and others.

52. The information in the submission falls within B, C and D of the UPR guidelines. There are eight main sections:

- **NZ's Approach to Indigenous Peoples' Rights** - focuses on the government's negative position on the UN Declaration on the Rights of Indigenous Peoples as a significant indicator of its general approach to indigenous peoples' rights;

- **The Right of Self Determination** - outlines the government's failure to recognise this right with respect to hapu and iwi Maori. This is not only problematic in itself, but can be seen as the

[2] See, for example, NGO report to the Committee on the Elimination of Racial Discrimination from: Aotearoa Indigenous Rights Trust at http://www2.ohchr.org/english/bodies/cerd/docs/ngos/airtrust.doc - Peace Movement Aotearoa at http://www2.ohchr.org/english/bodies/cerd/docs/ngos/pma.pdf - Maori Party at http://www2.ohchr.org/english/bodies/cerd/docs/ngos/maoriparty.doc - Treaty Tribes Coalition at http://www2.ohchr.org/english/bodies/cerd/docs/ngos/TTC_New_zealand.pdf

underlying foundation from which other human rights violations arise. These include, but are not limited to: the right to freedom from racial discrimination, ICERD generally (and other instruments); the right to free, prior and informed consent on matters directly related to their rights and interests, ICERD General Recommendation 23 (and elsewhere); the right to enjoy their own culture, Article 27, ICCPR; to take part in cultural life, Article 15, ICESCR; and other rights originating in the Universal Declaration of Human Rights such as access to, and protection of, the law; and to own property alone, as well as in association with others, and not be arbitrarily deprived of it;

- **Lack of Constitutional Protection for Human Rights** - covers the lack of protection from violations of human rights arising from Acts of Parliament, due to NZ's constitutional arrangements, which is a breach of the requirement for an "effective remedy" in all of the international instruments. While this situation continues, it is also a breach of the obligation to take measures to prevent a recurrence of any human rights violation. The lack of protection applies to everyone, but is a particular concern for hapu and iwi Maori as minorities within a majoritarian political system;

- **The Political Environment** - summarises some features of NZ society and government that negatively impact on the protection of the human rights of Maori;

- **Foreshore and Seabed Act 2004** - an example of legislation that breached the Treaty and the human rights of Maori;

- **Treaty of Waitangi Settlements** - an example of government policy and practice which impacts negatively on Maori;

- **'Anti-Terrorism' raids and Maori communities -** an example of racially discriminatory treatment of Maori communities;

- **Government Responses to UN Human Rights Oversight** - provides some examples of the government's lack of respect for UN treaty monitoring bodies and Special Procedures.

Conclusion

53. The submission concludes that while NZ is generally not considered to be an egregious violator of human rights, there is certainly much that can be improved in its performance with regard to indigenous peoples' rights and the Treaty. For a state that describes itself as a "credible and committed" candidate for election to the Human Rights Council, it fails to meet a surprising number of the legally binding human rights obligations contained in the instruments it is a party to.