

New Zealand National Universal Periodic Review Report

Introduction

1. New Zealand has a proud tradition of promoting and protecting human rights at home and overseas. As the first State in the world to give women the right to vote in national elections, New Zealand celebrated 120 years of women's suffrage in 2013. At the same time, the Government recognises where there are on-going challenges and works to address these.

2. New Zealand has developed a unique national identity as a diverse bicultural and multicultural nation in the South Pacific with European, Māori (New Zealand's indigenous people), Pacific, Asian, African and American communities. The signing of the Treaty of Waitangi¹ was a seminal event, establishing a partnership between British representatives and Māori, underpinning New Zealand's bicultural national identity and exerting a powerful influence on New Zealand's human rights story. New Zealand's diverse population is represented in Parliament and shapes views on upholding and developing an inclusive society.

3. The Government welcomes the 2nd cycle Universal Periodic Review (UPR), which provides an opportunity to take stock of New Zealand's progress in protecting and promoting human rights and has prompted productive engagement and debate between the Government and stakeholders.

4. In recognition of on-going challenges, key priorities of the New Zealand Government as noted in the present report are:

- Strengthening the partnership between Government and Māori by continuing to support Māori to realise their potential and continuing the momentum on achieving fair, just and durable settlements of historical claims under the Treaty of Waitangi;
- Improving the protection of children against abuse and neglect;
- Reducing violence within families and its impact on women and children;
- The on-going implementation of the Convention on the Rights of Persons with Disabilities (including accession to the Optional Protocol and the New Zealand Disability Strategy);
- Advancing the Constitutional Review process; and
- Ensuring any human rights impacts of the Canterbury Earthquakes are accounted for in the on-going decisions around the rebuild.

I. Methodology and consultation

5. This report follows the general guidelines adopted by the Human Rights Council for the 2nd cycle UPR (A/HRC/DEC/17/119). Chapter I corresponds to paragraph A of the general guidelines (methodology); chapter II corresponds to paragraph B (developments, in particular normative and institutional developments); and chapter III corresponds to paragraphs C, D, E and F (situation on the ground; follow-up to the previous review;

¹ The Treaty of Waitangi, signed on 6 February 1840, is a founding document of New Zealand. The Treaty is an agreement, in Māori and English, between the British Crown and about 540 Māori *rangatira* (chiefs). It is a broad statement of principles on which the British and Māori made a political compact to found a nation state and build a government in New Zealand.

achievements and challenges). As New Zealand has not requested technical assistance, paragraph G does not apply. At the time of its 1st UPR review in May 2009, New Zealand responded favourably to 56 recommendations. These are cited throughout the text as subheadings. Government priorities are included up front in the introduction to the report. The reference framework for this report is the Universal Declaration of Human Rights.

6. Tokelau is a dependent territory of New Zealand and we continue to be internationally responsible for the fulfilment of obligations contained in treaties that have been extended to Tokelau. It is standard practice for New Zealand to include Tokelau in its reports on human rights treaties that apply to Tokelau. This report includes an annex on Tokelau's human rights situation. The Government of Tokelau has been consulted about this section of the report.

7. Preparation for New Zealand's 2nd national UPR report, including the consultation process, was managed by the Ministry of Foreign Affairs and Trade in collaboration with other government agencies, including the Ministry of Justice. Both Ministries have maintained close contact with New Zealand's National Human Rights Institution, the New Zealand Human Rights Commission.

8. Prior to drafting the UPR, public consultations were held in six centres across New Zealand, managed by the Ministry of Foreign Affairs and Trade with substantive involvement from Te Puni Kōkiri,² the Ministry of Justice and the New Zealand Human Rights Commission. Following ministerial and departmental consultations, the draft report was released for public comment. Recognising New Zealand's constitutional relationships with Cook Islands, Niue and Tokelau, their respective governments, as stakeholders, were invited to comment on the draft report. Efforts were also made to engage their New Zealand-based communities in consultations.

9. Consultation meetings were attended by a broad range of civil society organisations, *iwi* (Māori tribe/s), and individuals who raised specific human rights issues including: the rights of persons with disabilities; New Zealand's constitutional framework for protection and enforcement of human rights (including economic, social and cultural rights); Treaty of Waitangi issues; the partnership between the Government and Māori; access to justice; child abuse and neglect; socio-economic inequalities; over-representation of Māori and institutional racism (real and/or perceived) in the justice system; gender discrimination; forced marriage; violence against women; aged persons concerns; sexual orientation and gender identity issues; cultural preservation and the environment versus economic development; and the human rights impact of the Canterbury earthquakes. The Government acknowledges these concerns and is committed to finding ways to engage on them, including in the body of this report and through the UPR process.

Recommendation 64: consultation with civil society in follow-up to the first UPR

10. The Government has engaged in substantive consultations with stakeholders and civil society since the 1st UPR review. The Ministry of Justice and the New Zealand Human Rights Commission met with civil society after New Zealand submitted its responses to the recommendations and the Ministry of Justice prepared a mid-term review of implementation. All relevant documents have been posted online together with a

² Te Puni Kōkiri is a government agency that works within the public sector, and with Māori communities, to support Māori collective success at home and globally. Te Puni Kōkiri means a group moving forward together.

consultations schedule. Some concerns have been raised around this consultation process. In acknowledgement of these concerns, the Government is committed to structured, organised and regular engagement with civil society to discuss follow-up to 2nd cycle UPR recommendations. A list identifying those agencies holding primary responsibility for implementing accepted recommendations will be published online at the conclusion of this review cycle.

II. Background and framework: developments since the previous review

A. Constitutional and legislative framework

11. New Zealand does not have a single written constitution. New Zealand's constitution is based not only in the Constitution Act 1986 and other legislation such as the New Zealand Bill of Rights Act, but also in the Treaty of Waitangi, court decisions, constitutional practice and the wider context of New Zealand's international obligations.³ New Zealand's constitutional arrangements continue to evolve through the development of increasingly diverse institutional arrangements to recognise and engage with the interests of Māori and through negotiation and acceptance of new international commitments. In addition to these processes, the Government also established an independent Constitutional Advisory Panel, which designed and managed a process that provided an opportunity for all New Zealanders to contribute to discussions on New Zealand's constitutional arrangements in the first half of 2013. The Panel's report will be finalised by the end of 2013. Advancing the Consideration of Constitutional Issues process is a key priority for the Government.

12. In keeping with its constitutional structure, New Zealand meets its international obligations not only through legislation but also through judicial decisions and through government policy and practice. The New Zealand Bill of Rights Act 1990 is the key piece of human rights legislation covering primary civil and political rights. This legislation includes a requirement that the Attorney-General alert Parliament to any draft legislation that appears to be inconsistent with human rights obligations. Further, New Zealand courts have a strong presumption that all legislation must be interpreted consistently with international human rights obligations.

Recommendations 21 and 29: the status of the Treaty of Waitangi

13. The Treaty of Waitangi is a founding document of New Zealand and forms a key component of our constitutional arrangements. It underpins the on-going process of negotiated settlement of historical grievances and the work of the Waitangi Tribunal. New Zealand has, however, continued to review the form of recognition of the Treaty in its constitutional and human rights systems. The role and status of the Treaty and related issues of Māori representation in local and central government form part of the Constitutional Advisory Panel's terms of reference

³ Further information on New Zealand's constitutional arrangements and legislative framework is set out in our first national report (A/HRC/WG.6/5/NZL/1).

Recommendations 15-20: integration of international obligations into domestic law

14. New Zealand agrees that international human rights obligations should be appropriately implemented domestically. New Zealand's longstanding practice is to accept international obligations only after reviewing and, where necessary, amend relevant legislation, policy and practice. New Zealand continues to review domestic legislation to allow ratification of further human rights instruments, withdrawal of reservations, and accession to petition procedures.

15. While economic, social and cultural rights are not currently referred to in the Bill of Rights Act, New Zealand gives effect to these rights through longstanding public provision of social assistance, health, education and other measures, each backed by legislation. Consideration of whether additional rights, such as property rights, should be included is one of the terms of reference for the Constitutional Advisory Panel.

16. The Constitutional Advisory Panel is tasked with consulting New Zealanders on the status of the Bill of Rights Act with respect to other legislation. The question of whether New Zealand should adopt a supreme and/or entrenched constitution, including human rights obligations, is a long-standing one and has been raised by stakeholders during the consultation process for this report.

B. Human Rights Policy Measures

17. New Zealand's 1st National Action Plan on Human Rights (2005-2010) was prepared by the New Zealand Human Rights Commission and other stakeholders. The Government instructed agencies to consider implementing the Action Plan's priorities as part of normal business. Departments were encouraged to respond to requests from the Commission for information and to identify work meeting the Action Plan's priorities in organisational documents. The Commission is currently preparing the 2nd National Action Plan on Human Rights in close consultation with the Government and stakeholders. The Government has committed to work with the Commission, NGOs and civil society to develop the 2nd Plan, which will follow on from, and be directly informed by, New Zealand's 2nd UPR process.

C. Scope of International Obligations

Recommendation 22: National Action Plan for Human Rights

18. During the reporting period, New Zealand has moved to support several international human rights instruments; worked to review and reform legislation, policy and practice currently subject to reservations; and engaged in dialogue with treaty bodies over possible withdrawal, for instance over its extension of health and education services to unlawfully resident children in a move towards withdrawing the reservation to Article 2 of the Convention on the Rights of the Child.

Recommendations 3 and 8-13: support for Conventions and Declarations

19. New Zealand ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on 20 September 2011. New Zealand moved to support the United Nations Declaration on the Rights of Indigenous Peoples in April 2010. This statement of support affirmed New Zealand's commitment to the common objectives of the Declaration and the Treaty of Waitangi, which continues to form the basis of the relationship between Māori and the Government.

20. New Zealand is considering becoming party to the most recent treaty, the International Convention for the Protection of All Persons from Enforced Disappearance. Legislative amendments would be necessary for New Zealand to ratify the Convention. This includes creating a specific offence related to enforced disappearances.

21. The Government recognises the importance of individual complaints procedures, particularly in relation to issues as serious as racial discrimination. The Government considers that existing domestic and international complaint procedures (including under the ICCPR) are adequate but may reconsider whether to make a declaration under Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination in the future.

22. New Zealand is fully committed to combating racism, racial discrimination, xenophobia and related intolerance, and remains supportive and actively engaged in global efforts to that end. Accordingly, New Zealand engaged constructively in the preparatory discussions on the Durban Declaration, which remains a point of reference domestically when discussing discrimination.

D. Promotion and protection of human rights; cooperation with human rights mechanisms

23. New Zealand engages and cooperates constructively with treaty bodies and special procedures, and supports the work of the OHCHR, including through the provision of annual non-earmarked financial contributions. New Zealand has a standing open invitation to all United Nations Special Procedures mandate holders, which will continue without restrictions. The Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples visited New Zealand in 2010. In April 2013, the Sub-Committee on the Prevention of Torture visited New Zealand; the Government is looking forward to receiving the Committee's report and continuing a constructive dialogue. The Government looks forward to working with the Working Group on Arbitrary Detention, which plans to visit New Zealand in March-April 2014.

Recommendations 23 and 24: implementation of treaty body recommendations

24. New Zealand has engaged in good faith with the recommendations of treaty bodies and special procedure on indigenous peoples. Government agencies work closely together to assess treaty body recommendations and identify where progress can be made. In many cases, the recommendations align with existing Government objectives.

Recommendations 38 and 39: CERD recommendation on racially motivated crimes

25. New Zealand has not yet been able to progress recommendations 38 and 39. In 2010, the Review of Crime and Criminal Justice Statistics Report was completed and included specific consideration of gathering information regarding crimes of prejudice, which includes racially motivated crime. The report concluded that, given the problems experienced in overseas jurisdictions where this information is collected, the worth of its collection in New Zealand needed to be further assessed and validated. New Zealand Police will continue to make full use of the Crime and Safety Survey – a victimisation survey providing a source of knowledge around the extent of “hate crime” in New Zealand - to monitor trends. New Zealand Police has also supported the establishment of local initiatives designed to facilitate reporting of race-based discrimination, harassment and other racist incidents, for example the “Report It” website⁴ in Christchurch, and the “Speak Out”⁵ system in the Tasman region.

26. In addition, New Zealand Police and the Race Relations Commissioner collate racially motivated incidents, which are published in the annual Race Relations report. New Zealand Police treat racially motivated incidents as a priority and the Sentencing Act 2002 provides that hostility towards a racial group is an aggravating factor in sentencing (section 9(1)(h)).

III. Follow-up to the previous review, achievements and challenges

27. This section assesses the implementation of the remaining accepted recommendations from the 1st UPR cycle and refers to new achievements, challenges and constraints. Since New Zealand’s last review, the Canterbury earthquakes of 4 September 2010 and 22 February 2011, along with an estimated 13,000 aftershocks, have had a devastating impact on the people of Canterbury, including New Zealand’s second largest city, Christchurch. The earthquake resulted in 185 deaths and injured 11,432. Total estimated rebuilding costs are equivalent to approximately 20% of New Zealand’s GDP.

28. The Government is committed to ensuring any human rights impacts are accounted for in the on-going decisions around the rebuild. The Government has invested considerable resources in the recovery and rebuild process, including through the provision of infrastructure essential for health and transport and a significant housing repair and rebuild programme.

A. Equality and non-discrimination

29. New Zealand has comprehensive legislation and policy measures in place to promote equality. These include robust non-discrimination provisions in human rights legislation, and a variety of laws, policies and practices in the education, employment, health and social welfare sectors. New Zealand is committed to identifying and addressing gaps in information to better understand the causes of inequality. When developing policies, all government departments must identify the human rights implications, including unlawful discrimination, of proposed policies and legislation and include this assessment in papers considered by Cabinet (the executive branch of the Government).

Recommendations 25 - 27, 30 -32, 61: addressing inequalities

⁴ www.report-it.org.nz

⁵ www.speakout.org.nz

30. The Government accepts that the social, economic and cultural gains experienced by wider New Zealand over the past two decades have not been experienced by many Māori or Pacific families. The Government considers that, income support and other forms of social protection, where there has not been corresponding investment in the building of resilience amongst *whānau* (families), has in part compounded the cycle of social deprivation by increasing the dependency of some individuals and families on social assistance from the State. The Government believes that paid work is the best way to address socio-economic disparities or inequalities, allowing low-income families to move out of poverty over the long-term. While policies are targeted by the needs of individuals, not ethnicity, the Ministry of Social Development is specifically working to reduce the number of Māori and Pasifika clients on a benefit by developing a range of formal and informal partnerships, including industry partnerships, training and development arrangements, and promoting Māori participation in pathway programmes.

31. New Zealand's social assistance programmes aim to ensure an adequate standard of living and provide opportunities for all to participate fully in society, regardless of ethnicity or gender. Recent reform of the system has helped to improve social and economic outcomes. The Government has introduced welfare reforms based on the advice of the Welfare Working Group, an independent advisory group appointed by the Government. These changes are intended to improve social and economic outcomes for individuals, families and New Zealand; improve outcomes for children by helping parents out of poverty through paid work; and reduce the likelihood of long-term dependency among those who begin receiving a benefit at a young age. Overall eligibility for a benefit and levels of financial assistance have been unaffected but more intensive support is now provided to people capable of working but who are likely to remain on a benefit long-term without that support.

32. In addition, the Government recognises that there are considerable gaps and fragmentation in delivery of key services to vulnerable *whānau* (families). The Government is looking to address these gaps in the health space through *Whānau Ora* (family health). Launched in 2010, *Whānau Ora* is intended to change this by increasingly integrating services in primary health, social services and early childhood education coupled with active engagement by welfare agencies.

33. The Government also recognises that success in education can significantly improve outcomes for Māori. The updated Māori Education Strategy, *Ka Hikitia: Accelerating Success 2013-2017* (meaning "to step up or lengthen one's stride") has a particular focus on tertiary education and implementation of the Māori Language in Education Strategy, *Tau Mai Te Reo* ("may the Māori language blanket the land"). *Ka Hikitia* includes actions to improve the two factors essential to the educational success of Māori children and young people: quality provision, leadership, teaching and learning supported by effective governance; and strong engagement and contribution from parents, *whānau* (families), *iwi* (Māori tribe/s), Māori organisations, communities and businesses. The Ministry of Education is undertaking activity for the new *Ka Hikitia* Strategy at national and regional levels. Programmes and policies will be targeted and tailored to be effective for and to encourage work in collaboration with Māori.

34. High rates of child poverty are also a cause for concern in New Zealand.⁶ In recognition of child poverty issues, the Government is focused on addressing the needs of vulnerable and at-risk children and their families, investing nearly \$333 million over four years from 2010 in a combination of national and community-based initiatives. One example is the Government's \$9.5 million investment over five years to help extend the KickStart school breakfast programme, which was extended to five days a week in higher needs schools in 2013, with all schools eligible from 2014. The Government will also provide \$500,000 a year over three years to help charity KidsCan provide health products, raincoats and shoes for children in need. Another example is the Government's \$45 million Rheumatic Fever Prevention Programme to support vulnerable children,⁷ including through working with Australia to collaboratively identify a potential vaccine.

35. Recognising the need for better data to understand factors influencing children's outcomes, the Government has invested \$26 million in a longitudinal study of child development in New Zealand. The study, "Growing up in New Zealand", collects information about 7000 children from before birth and over their life course, providing a flow of information about their development and wellbeing with good coverage of New Zealand's ethnic and social diversity. The specific information on factors influencing children's outcomes will be used to inform social policy.

(a) Māori

36. A key priority for the Government is to strengthen the partnership between the Government and Māori by continuing to support Māori to realise their potential and continuing the momentum on achieving fair, just and durable settlements of historical claims under the Treaty of Waitangi.

Recommendation 58: Foreshore and Seabed Act 2004

37. The Government reviewed the Foreshore and Seabed Act 2004 (the 2004 Act) in 2009 in response to international and domestic concerns about its discriminatory effect on Māori. Following extensive dialogue with Māori and the general public, Parliament repealed the 2004 Act and enacted the Marine and Coastal Area (*Takutai Moana*) Act 2011 (the 2011 Act).

38. The Government considers that the 2011 Act achieves an equitable balance of the interests of all New Zealanders in the common marine and coastal area. It restores customary interests in the common marine and coastal area that were extinguished by the 2004 Act and creates a framework for translating those interests into new legal rights that are inalienable and enduring. It also guarantees free public access to these areas for all New Zealanders except for the special areas that already exist, for example, working port areas, naval bases or *wāhi tapu* (recognised burial grounds). The 2011 Act enables Māori to seek recognition of their rights by engaging directly with the Government or by applying to the High Court. The Government has received 18 applications for direct engagement and the High Court has received 12 applications.

Recommendation 59 and 60: settlement of historical Māori land claims

⁶ An estimated 19% of New Zealand children are living in poverty

⁷ This programme aims to reduce the incidence of rheumatic fever by two-thirds to 1.4 cases per 100,000 people by June 2017

39. New Zealand has a well-developed system for settling historical land claims, known as the Treaty settlement process. Through this process, the Government is actively pursuing efforts to comprehensively settle land claims with Māori claimant groups that have asserted breaches by the Government of the Treaty. The Government is seeking to negotiate settlements that are timely, fair and durable. Treaty settlements contain a variety of redresses, including a Government apology or financial, commercial and cultural redress, which may include offers to purchase properties and the gifting-back of cultural sites. The Special Rapporteur on the Rights of Indigenous Peoples has described this process as one of the most important examples in the world of addressing historical and on-going grievances. Over the reporting period the Government has significantly increased resources dedicated to the settlement process, including through providing additional funding to the Office of Treaty Settlements and to Māori claimants to assist their participation in the settlement process. The Ministry of Justice has also established a Post Settlement Commitments Unit, primarily to look at measures to ensure durability of settlements.

Recommendations 33 and 34: Māori and the criminal justice system

40. The Government recognises that the rate of imprisonment and community sentences and orders for Māori pose a significant challenge for it and for Māori communities. In December 2012, Māori made up 51.4% of the prison population (Māori comprise approximately 15% of the New Zealand population). The Government is committed to addressing this overrepresentation through the "Drivers of Crime" initiative. Priority areas for action include: increasing at-risk communities' uptake of maternity and early parenting support; addressing conduct and behaviour issues through education and health services; reducing harm from alcohol; and improving access to interventions for offenders to reduce reoffending and escalation.

41. As a result of this initiative, the number of young Māori coming to court decreased between 2008 and 2012 by approximately 30%, from 2,403 to 1,623. However, the rate of young Māori appearing in court is still four times that of non-Māori at 403 per 10,000 of population aged 14-16 compared with 101 non-Māori. Māori account for 54% of all young people appearing in Youth Court and 71% of child offenders appearing in the Family Court. The Government launched a Youth Crime Action Plan in October 2013, focusing on reducing apprehensions, prosecutions and recidivism, particularly for Māori.

42. New Zealand Police is developing a Decision Making Model to address inconsistencies in the way in which apprehensions of children and young people are resolved. This will improve consistency in decision-making through reducing subjective judgements susceptible to bias. New Zealand Police is also working with *iwi* (Māori tribe/s) in a number of areas to provide alternative means of resolving apprehensions of children and young people without involving the formal justice system. Coupled with this, Te Puni Kōkiri has developed a macro-modelling tool to explore the loss of Māori potential from Māori in the criminal justice system and illustrate alternative futures.

43. The Commissioner of Police's Māori Focus Forum has agreed a joint programme of work, "The Turning of the Tide", to enable all Māori to live full and prosperous lives, free from crime and road trauma. The programme has set specific targets within two periods (2012/13 - 2014/15 and 2014/15 - 2017/18) to reduce: the proportion of first-time youth

and adult offenders who are Māori; the proportion of repeat youth and adult offenders who are Māori; the proportion of repeat victims who are Māori; the number of Police (non-traffic) apprehensions of Māori resolved by prosecution; and the proportion of casualties in fatal and serious crashes who are Māori.

44. Other recent work includes the establishment of *Rangatahi* (youth) Courts where key functions of the Youth Court are carried out on *Marae* (traditional meeting places) under Māori protocol; the establishment of a Māori-centred rehabilitation and reintegration unit at Mangaroa Prison; and Mātāriki Courts, which allow the *whānau* (family), *hapū* (sub-tribe) and *iwi* (tribe) of the offender to address the court at sentencing. These alternative systems are premised on the idea that reconnecting young Māori with their culture and involving families and *iwi* (tribes) in the process contribute to reduced risks of reoffending.

(b) Women

45. New Zealand has a long and proud history in addressing women's rights but there are on-going challenges. Key priorities of the Ministry of Women's Affairs include: reducing violence against women (while New Zealand has legislation in place to protect women, one in four New Zealand women experience sexual violence or violence by a partner at least once in their lifetime); improving women's economic independence; and promoting the participation of women in governance.

Recommendations 40 – 44: gender parity in the labour market

46. Pursuant to the Human Rights Act and the Bill of Rights Act, it is unlawful to discriminate on the basis of sex in New Zealand. Furthermore, when developing policies, a gender implications statement is required for all papers submitted to the Cabinet Social Policy Committee. The Ministry of Women's Affairs provides advice to other government departments on gender implications in policy papers.

47. The gender pay gap between men and women has narrowed as women gain qualifications that enable them to enter well paid occupations, and vertical segregation has decreased in most highly skilled occupations. There is more to be done, however, and the Government is taking steps to further women's economic independence. The Ministry of Women's Affairs' work to reduce the gender pay gap and promote women's labour force participation includes: a study on career aspirations and pathways of men and women in engineering; research on economic returns from women's skills; support for industry and education-led initiatives; and professional networks to increase the profile of women in non-traditional work. The Government is also working to better utilise women in Canterbury earthquake recovery efforts, working with employers, training providers, government agencies and other organisations to find ways to help women into sustainable, meaningful employment that supports the rebuild of the city, directly benefitting Canterbury businesses, the regional economy, women, and families.

48. Since 2009, progress has been made in increasing women's representation in senior management roles, particularly in the public sector. The Government aims to increase the participation of women in governance to 45% in the public sector by 2014 (including 45% women on state sector boards by 2014) and over 10% in the private sector by 2014. In the public sector, as at December 2012 40.5% of ministerial appointees were women,

slightly down from 41.1% in 2011.⁸ The State Services Commission regularly monitors the public sector workforce, including women's participation in senior management. The 2012 annual Human Resource Capability Survey of Public Service Departments showed 42.1% of women in senior leadership in the state sector overall, the highest percentage since the survey was started in 2000. The Commission, in partnership with public service CEOs, has developed a new centrally-coordinated talent identification and leadership development initiative for senior public servants; of those candidates ready to step into a CEO role, 82% are female.

49. The Office of Ethnic Affairs also has a current focus on developing the leadership capabilities of New Zealand women who identify their ethnic heritage as Asian, Continental European, Middle Eastern, Latin American or African. Programmes include leadership training and mentoring, coupled with opportunities for networking and peer support. The Office also runs a nomination service whereby government agencies advise the Office of upcoming vacancies in statutory positions so that ethnic women (and men) on its database can be encouraged to apply.

50. New Zealand's employment relations legislation provides eligible employees with the statutory right to request a variation to their working hours. Employers must consider these requests. Following a review of the legislation, the Government plans to extend the right to request flexible working arrangements to all employees, not just those with caring responsibilities. A bill to give effect to this extension is due to be reported back to Parliament in December 2013. Legislation also requires employers to provide appropriate facilities and breaks for employees who wish to breastfeed, where reasonable and practicable. A Code of Employment Practice provides guidance to employers around this provision.

Recommendation 43, 45: women in the private sector

51. The Government is committed to increasing the participation of women in governance on New Zealand stock exchange (NZX) top 100 and state sector boards, through targets as opposed to quotas. At 30 June 2012, the 10% Government target for women on NZX top 100 boards had been exceeded: in 2012, there were 14.75% women on NZX top 100 boards compared with 9.32% in 2010. The Ministry of Women's Affairs helped launch a group of private sector champions called the "25 Percent Group", which established a voluntary goal of 25% of women on private sector boards by 2015. The Ministry's Leadership Pipeline Project contributes to a shared understanding among decision-makers of key issues affecting career progression of women in senior management, executive and board roles in New Zealand. The project aims to identify and support initiatives that will increase the number of women in leadership roles. The Ministry's recent report, *Realising the Opportunity: Addressing New Zealand's leadership pipeline by attracting and retaining talented women*,⁹ provides an opportunity to influence employers to consider how unconscious bias, career breaks, and flexible working affect women in leadership.

52. The Government is also working to increase representation of women in the health sector, the judiciary and local government: the Ministry of Women's Affairs actively participates in opportunities to nominate suitable women to vacancies on health-related State sector boards; the three most senior justice positions in New Zealand are held by

⁸ Ministry of Women's Affairs (2011, 2012) *Gender Stocktake of State Sector Boards And Committees*

⁹<http://mwa.govt.nz/documents/realising-opportunity-addressing-new-zealand%E2%80%99s-leadership-pipeline-2013>

women (Minister of Justice, Chief Justice and Ombudsman); and the New Zealand Local Government Commission is working with the Electoral Working Party to publish documents to encourage people to stand in the 2013 local government elections and to vote, promoting greater gender and ethnic diversity.

(c) Persons with disabilities

53. New Zealand has a long-standing commitment to promoting the rights of persons with disabilities. The vision promoted in the New Zealand Disability Strategy is of an inclusive society where persons with disabilities can fully participate. The Disability Strategy was developed in partnership with persons with disabilities and their representative organisations in 2001, reflecting the Government's recognition of the importance of a process inclusive of these groups in the development of all matters affecting them. The Government acknowledges that work remains to ensure the full realisation of human rights for persons with disabilities, including with respect to physical protection and support, independent living, equal employment opportunities, access to health services and information, pay equity, accommodation and accessibility and family impacts. These on-going challenges were raised consistently in UPR consultations. The on-going implementation of the Convention on the Rights of Persons with Disabilities (CRPD), including accession to the Optional Protocol and the New Zealand Disability Strategy, is a key priority for the Government.

54. To aid monitoring and implementation of the CRPD, the Government has designated and provided funding for an independent mechanism under the Convention to promote and protect the rights of persons with disabilities and monitor implementation of the CRPD, comprising the New Zealand Human Rights Commission, the Office of the Ombudsman and the Convention Coalition, a group of representative organisations. In the 2013 budget, funding for the Convention Coalition was set at \$275,000 per year. A further \$1.5 million over three years has been continued for the promotion of lifetime (or universal) design in housing. New Zealand is actively considering acceding to the Optional Protocol to the CRPD, a move strongly supported by disability sector organisations in New Zealand.

Recommendation 28: economic and social rights of persons with disabilities

55. Enjoyment of economic and social rights, on an equal basis with others, is key to achieving the inclusive and participatory vision of the New Zealand Disability Strategy. In recognition of the need to improve the lives and choices of persons with disabilities, the Government's Ministerial Committee on Disability Issues (an inter-Ministerial group responsible for the coordination of government policies and practices on disability issues) has agreed a Plan of Action that focuses on three key areas: 1) "Enabling Good Lives is about providing persons with disabilities greater choice and control over support services, including more mainstream and natural supports; 2) the focus on employment, specifically increasing the number of persons with disabilities in paid employment, will also have flow-on effects of improving enjoyment of rights and participation on an equal basis; 3) there is a focus on ensuring that the rebuild of Christchurch following the earthquakes is inclusive of persons with disabilities, recognising the need to address some disability-specific concerns of the rebuild process.

56. In an effort to broadly improve the lives of persons with disabilities and their families, the Government on 1 October 2013 introduced the Funded Family Care scheme, which invests \$23 million per year in supporting family carers of persons with disabilities. Funded Family Care allows parents and resident family members of up to 1,600 adults with disabilities with high and very high needs to be paid for the disability support they provide.

57. The Government recognises that challenges faced by persons with disabilities are often exacerbated by multiple and intersecting forms of discrimination, for example, for Māori, women or children with disabilities, and has developed specific programmes to address these intersects. The rights of Māori and Pacific persons with disabilities to healthcare services, for example, are being strengthened the Ministry of Health's *Whaia te Ao Marama* (pursuing the world of enlightenment) Māori Disability Action Plan for Disability Support Services (2012 - 2017), which provides strategic direction for actions to address support needs and priorities of Māori with disabilities and their families through Ministry-funded Disability Support Services. Key priorities include: improved outcomes for Māori persons with disabilities, including through providing culturally appropriate services; better support for families; partnerships with Māori involving inclusion and support of Māori persons with disabilities within their community of choice; and responsive disability services for Māori through promoting better access to information, resources and services. The Ministry is also currently updating *Faiva Ora* (work for life) National Pasifika Disability Action Plan to support Pacific persons with disabilities and their families. A key concern is to improve family support options for Pacific families given that disability support for most Pacific persons with disabilities is provided in the community, often within families.

58. The Ministry's work programme on the health of persons with intellectual disabilities has focused on addressing lack of information and understanding about the health of this group. The Government acknowledges that persons with intellectual disability have poorer outcomes than those without and that there are continuing disparities for this group.¹⁰ The Ministry has completed a literature review and case studies on ways to improve the health of persons with intellectual disability, which will be published in late 2013. The Ministry will engage with this sector on how to make health care more accessible and explore health improvement options. Work on improving the health of persons with intellectual disability will also be recognised in the planned update of the Government's Disability Action Plan in late 2013.

59. Also key to an inclusive society is the need to challenge negative or prejudicial attitudes around disability. For this reason, in 2013, the Government extended and increased the budget for the "Think Differently"¹¹ campaign, aimed at improving attitudes and behaviour towards persons with disabilities, to \$6 million over two years.

Recommendation 46: resources for children with disabilities

60. The Ministry of Education is working to implement the Government's vision for special education, *Success for All – Every School, Every Child*. The Government has set a target of 100% of schools demonstrating inclusive practices by 2014 and has a programme of activities to achieve this. These activities aim to strengthen school accountability, reduce

¹⁰ <http://www.health.govt.nz/publication/health-indicators-new-zealanders-intellectual-disability>

¹¹ www.thinkdifferently.org.nz

bureaucracy and increase the quality and quantity of support that students receive, leading to confident schools, students, parents/caregivers, *whānau* (families), and communities.

61. The Ministry is working with schools to build teacher capability and is supporting schools to self-review their inclusiveness. The Ministry is also working with education and disability sector representatives to develop resources and materials to help professional learning and development providers assist classroom teachers. In 2009 the Government committed \$51 million to increase support for children and young people with high or very high needs. The Early Intervention Service provides specialist support for children with a developmental or learning delay, or a behaviour or communication difficulty that significantly impacts their ability to participate and learn.

62. Recognising that families of children with disabilities also require additional support, the Ministry of Health has increased the coverage of children's services, establishing nationwide access to a range of individualised community and home-based services, in partnership with families, to improve outcomes and quality of life for children and young persons with disabilities. These aim to keep the family unit intact or maintain a family-like environment, retaining family connections and social networks.

(d) Sexual orientation and gender identity

63. New Zealand has taken several recent steps to improve the rights of lesbian gay bisexual transgender, intersex and questioning (LGBTIQ) persons. In May 2013, the New Zealand Parliament adopted marriage equality legislation: The Marriage (Definition of Marriage) Amendment Act 2013, which specifies that a marriage is between two people regardless of their sex, sexual orientation, or gender identity. As a result, same-sex married couples will be eligible, under the Adoption Act 1955, to apply jointly to adopt a child. The Government has also taken steps to improve the rights of trans-gender people since 2009. The Marriage Amendment Act, for example, enables people to continue to be married regardless of a change in their legal gender.

64. New Zealand also introduced transgender passport options in December 2012 to remove unnecessary obstacles for applicants wanting to record a change in their gender identity. A passport may now be issued in an applicant's preferred sex, including "X" (indeterminate/unspecified), without the need to amend these details on the applicant's birth or citizenship record. Policies were also updated to reflect that, since 2009, certain overseas-born transgender people may also seek a declaration from the Family Court recognising their preferred sex as well as the 2008 Family Court decision, which confirmed that courts will take a "case-by-case" approach to applying the relevant statutory threshold and that applicants do not necessarily need to have full reassignment surgery.

65. The New Zealand Human Rights Commission has received complaints from transgender people of discrimination on the basis of disability and sex. Its complaints process provides one way of addressing such discrimination. The Ministry of Health

changed its guidelines on availability of gender reassignment surgery in 2011¹² but work still remains to ensure equitable access to health services and health outcomes for transgender people. The Commission considers that amendment to the grounds of discrimination in the Human Rights Act to specifically include gender identity would help to clarify some of the issues. The Government's view is that discrimination on the grounds of gender identity is already prohibited under the Human Rights Act as sex discrimination.

(e) Racism

Recommendation 35: steps to eradicate racism, racial discrimination, xenophobia and related intolerance

66. New Zealand is committed to continued action to address racism, racial discrimination, xenophobia and related intolerance. It is unlawful for anyone in New Zealand to publish, distribute or use words in public that incite hostility against or bring into contempt any group of persons who are in or may be coming to New Zealand on the grounds of the colour, race or ethnic or national origin of that group of persons.

67. New Zealand participates in global efforts, such as the United Nations Alliance of Civilisations, and regional programmes, such as the Asia-Pacific Regional Interfaith Dialogue, which bridge the divide between cultures and foster intercultural cooperation and understanding. The Office of Ethnic Affairs has applied a domestic focus to these initiatives as a proactive step to maintain New Zealand's social cohesion. The *Building Bridges* programme, for example, creates connections between Muslim and non-Muslim communities to counter Islamophobia and foster Muslim participation in all aspects of New Zealand society.

Recommendation 36: addressing racism and xenophobia in the education curricula

68. In 2007 the school curriculum was revised and now the Treaty of Waitangi, cultural diversity and inclusion are three of eight principles required to underpin all school decision-making. Intolerance, xenophobia and racism are expected to be explored and addressed through these principles and other curriculum elements, including in the Social Sciences learning area. On-going monitoring of curriculum implementation in schools has demonstrated that some schools have required greater support in understanding and responding to the complexities of cultural diversity and embedding inclusive practices than others. The Government continues to provide targeted support in these areas.

69. Recognising that bullying behaviour in schools is sometimes linked to xenophobia and racism and can have detrimental effects on students' health, wellbeing and learning, the Ministry of Education in 2013 convened a cross-sector bullying prevention group to improve support for schools to address bullying. The group comprises representatives from a number of relevant agencies and sector organisations, including the Human Rights Commission. A guide highlighting students' rights is being developed to help schools to prevent bullying behaviour by creating safe, positive learning environments and to respond effectively when bullying incidents occur.

Recommendation 37: protection of migrants and minority groups

¹² <http://www.health.govt.nz/publication/gender-reassignment-health-services-trans-people-within-new-zealand>

70. The Government recognises that migrant workers face risks of exploitation but is confident their special needs are met by existing legislation. In June 2013, New Zealand's Immigration Minister announced further measures to combat the exploitation of migrant workers and confirmed that unlawful, exploitative behaviour will not be tolerated in New Zealand. Proposed changes will see exploitative employers face imprisonment, fines, and in some cases deportation back to their country of origin. Changes have also been made to immigration operating practices, preserving the immigration status of victims of exploitation who come forward with complaints.

71. The Government's strategies for settling new migrants and refugees are based on the principle that settlement outcomes result from a two-way engagement between newcomers and the host community. Settlement resources have been produced for new migrants to better understand how New Zealand workplaces function, how New Zealanders differ in the way they work, and to inform them of their rights and responsibilities as employees. Companion resources have also been produced for New Zealand employers of migrants to promote better understanding and support for migrants settling in the workplace and in the local community.

B. Right to life, liberty and security of the person

(a) Family violence

72. Violence within families unacceptably affects the lives of thousands of people in New Zealand. Research on the New Zealand experience confirms that men are responsible for two-thirds of the deaths of children aged 14 or under. Victims of the most severe and lethal cases of family violence are predominantly women and children. Women with disabilities are a particularly vulnerable group. Family violence affects families from all cultures, classes, backgrounds and socio-economic circumstances but Māori are significantly over-represented as both victims and perpetrators of violence in families. Violence experienced by LGBTIQ people in family relationships also remains a challenge. Reducing violence within families and its impact on women and children is a key priority for the Government.

Recommendations 52, 54, 55: increasing efforts to combat violence against women

73. In October 2012, the Government reconvened the Family Violence Ministerial Group to provide oversight to a whole-of-government approach to addressing violence within families. The Ministerial Group has endorsed the Taskforce for Action on Violence within Families Programme of Action 2012/2013, which recognises that action on family violence is a feature of the Government's current priority programmes as well as a numerous on-going programmes. The latest strategy includes new priority areas of work with a strong focus on producing evidence that will inform effective investment in family violence interventions.

74. The Campaign for Action on Family Violence¹³ has played a key role in mobilising communities to get involved in family violence prevention work. The Campaign comprises television advertising, support for community-led projects to prevent family violence, media advocacy work, the development of written resources, an information line and website and social media information and advice. The Campaign Taskforce works with

¹³ www.areyouok.org.nz

communities to change attitudes and behaviour towards violence within families through leadership, changing attitudes and behaviour, safety and accountability, and effective support services. Research shows that one in three people report taking some form of action to prevent family violence as a result of the Campaign. Figures are higher for Māori (44%) and Pacific (55%) audiences.

75. To address the overrepresentation of Māori in this area, the Government is also looking at ways to draw on Māori values and traditions. For example, The *E Tū Whānau* (“stand up family” or “take action”) Programme of Action for Addressing Family Violence (2013-2018) recognises and draws on the power and effectiveness of Māori oral traditions to help address violence within Māori *whānau* (families). The initiative emphasises the concept of culturally relevant community action to change attitudes and behaviours. An increase in funding over the next four years will expand services to focus on Pasifika, migrant and refugee communities who are also vulnerable and need culturally relevant support and assistance.

76. New Zealand’s Domestic Violence Act 1995 aims to reduce and prevent domestic violence by recognising that all forms of domestic violence, including physical, sexual and psychological violence, are unacceptable and ensuring effective legal protection for victims. The Act provides a civil court process for issuing protection orders to victims and their children. Perpetrators named in protection orders are required to desist from further violence and attend approved “stopping violence” programmes. The Family Court Proceedings Reform Bill, passed by Parliament in September 2013, amends the Domestic Violence Act to protect victims and improve “stopping violence” programmes.

77. Legislative changes have increased the immediate protection for victims of domestic abuse. New Zealand Police can now issue Police Safety Orders, under which an alleged perpetrator is removed from the family home for up to five days. Police believe these Orders have been effective; an evaluation is underway and will be published on completion. The criminal courts can also issue protection orders when sentencing domestic abuse offenders. This extends the protection of the Domestic Violence Act 1995 to people who may not have felt able to apply for a protection order through the civil court process.

78. In February 2013, the Government consolidated ministerial responsibility for the sexual violence sector into one senior minister, evidence of its commitment to improving services for sexual violence. In May 2013, New Zealand Police, *Te Ohaakii a Hine* (a plea to look after our women) – National Network Ending Sexual Violence Together and other rape crisis specialists launched an information pamphlet for victims of sexual assault outlining victims’ rights during an investigation and detailing the investigation process.

79. While forced underage marriage and female genital mutilation are believed to be emerging issues in New Zealand, there is a lack of data to quantify the scale of these issues, as victims rarely come forward because of cultural and safety reasons. Six Government agencies signed a joint letter of agreement in December 2012 outlining roles and responsibilities and committing to a collective response for victims of forced marriage.

Recommendation 53: more accurate measuring of the extent of domestic violence

80. New Zealand Police is working with Statistics New Zealand to develop a new set of official statistics on victims of crime, which will include the relationship between victim and offender. This will promote better understanding of the nature and extent of domestic violence in New Zealand. Police also implemented the Ontario Domestic Assault Risk

Assessment tool in July 2012, an actuarial tool which predicts the likelihood of further intimate partner violence. Early evaluation of this tool in New Zealand has produced promising results and confirms that the new approach to family violence risk assessment is an improvement on the previous system.

(b) Children (*Recommendations 50 and 51: preventing child abuse*)

81. A significant number of children in New Zealand are being abused or neglected, many by their parents or caregivers or by adults associated with their parents or caregivers. In the 12 months to 30 June 2012, 152,800 care and protection notifications¹⁴ were made to Child, Youth and Family (a service of the Ministry of Social Development) and there were 21,525 substantiated findings of abuse.¹⁵ In addition, there are a significant number of children who, while they may not be victims of substantiated abuse or neglect, are in circumstances that put them at risk of maltreatment. A key Government priority is to improve the protection of children against abuse and neglect.

82. In 2012, the Minister for Social Development launched the White Paper for Vulnerable Children and the Children's Action Plan, which focuses on children at significant risk of abuse and neglect, and those who have been abused or neglected, recognising the importance of universal, targeted services to promote child well-being and early intervention. The White Paper involves extensive reforms and changes across the health, education and social sectors, including: a public awareness initiative about warning signs for abuse and where to seek help; a new cross-agency response for children at risk; a Vulnerable Children's Board comprising social sector chief executives with accountability for delivering reforms; a new Strategy for Children and Young People in Care to improve long-term outcomes for children in State care; a comprehensive children's workforce action plan; and a systematic approach to tracking and flagging high-risk adults.

83. In September 2013, the Government introduced a Vulnerable Children Bill giving effect to proposals in the White Paper. Provisions in the Bill aimed to better protect children from abuse and neglect through co-ordinated and collaborative action, including: requiring key Government chief executives to collaboratively produce and report progress on implementing a vulnerable children's plan; requiring key State services, District Health Boards, and school boards and contracted or funded services to have child protection policies in place; implementing new standard safety checks for employees in Government and Government-funded children's workforce and a restriction on employing persons with disqualifying offences; allowing for new civil orders to be made against those who pose a high risk of abusing or neglecting children in future, restricting them contact with classes of children or specific children; and placing an onus on a parent of a subsequent child to demonstrate their safety to parent in instances where another child was permanently removed from their care due to abused or neglect or the parent was convicted of the murder, manslaughter or infanticide of a child in their care. All agencies are committed to working together to implement these changes.

84. While the Children's Action Plan has a key focus on identifying and responding to risk of maltreatment, this work is situated within wider Government strategies to address factors that place children at risk in the first place. The White Paper sets out what the

¹⁴ These do not represent the number of children who were notified as some children are notified more than once.

¹⁵ These do not represent the number of children with abuse and neglect findings as some children have multiple substantiations.

Government is doing to both build protective and resilience factors and address those factors that place children at risk. Central to its approach is improving support to parents, strengthening and extending the existing government services universally available to all children, and addressing wider social problems such as poverty, inadequate housing, alcohol-related harm and mental health issues.

C. Administration of justice and the rule of law

85. New Zealand has instituted strong and independent police and judicial authorities. The rights of all New Zealanders are protected in a vibrant democratic system allowing for the expression and representation of diverse points of view. New Zealand has ranked at the top of Transparency International's Corruption Perceptions Index (either first or tied) as the least corrupt country in the world for the last seven years. The Government is committed to upholding the rule of law and promoting access to justice for all New Zealanders.

(a) Legal Aid

86. A key component of Government efforts to facilitate access to justice in New Zealand is through the provision of legal aid. The overarching purpose of the Legal Services Act 2011 is to promote access to justice by establishing a system that provides legal services to people of insufficient means. The Legal Services Act was amended in 2013 to enable legal aid funding to be prioritised to those who have a greater need for legal assistance. Practice standards for legal aid providers were introduced in 2011 to improve the quality of legal aid lawyers, including reports of language barriers and time constraints. Standards include improving client communication; ensuring sufficient time is available before taking on cases; and recognising cross-cultural issues.

(b) Correctional Services

Recommendation 47: treatment of prisoners in private prisons

87. The Corrections Act 2004 requires administration of all prisoners' sentences in a safe, secure, humane and effective manner. Under the Act, privately managed prisons must comply with the same domestic laws and international standards relating to prisoner welfare and management as publicly managed prisons. Like public prisons, private prisons must provide regular reports to the Chief Executive of the Department of Corrections including details of prisoner complaints, incidents of violence or self-harm involving prisoners, disciplinary proceedings, escapes and attempted escapes, and prisoner deaths.

88. Privately managed prisons are subject to oversight by monitors appointed by the Chief Executive, and can also be subject to specific investigations by experts within the Department if issues arise regarding the contractor's management of the prison or prisoners within their custody. The Chief Executive is accountable at all times for the welfare and wellbeing of prisoners held in a privately managed prison or a prison managed by the Department.

Recommendation 49: separate juvenile detention facilities

89. New Zealand has separate units for the small number of young male prisoners (2.6% of all prisoners) under the age of 18. There is no separate unit for female prisoners under the age of 18 because there have been fewer than five at any time throughout New Zealand, but they can be separated from the mainstream female prison population

where appropriate. All young prisoners are managed in a manner that takes into consideration their unique rehabilitative needs.

90. A joint thematic review of young persons in police detention was launched in December 2010 by the Independent Police Conduct Authority as part of a mandate under the Optional Protocol to the Convention Against Torture. The review identified a number of challenges and made recommendations including: continuing to work with the Independent Police Conduct Authority to improve conditions of detention and the treatment of young people in their custody; Police and Child, Youth and Family are developing information sharing protocols with specific regard to youth custody; considering the needs of young people when building new or altering existing Police stations; reviewing how youth custody issues are treated to ensure the approach remains current and to provide on-going analysis and evaluation; and developing national guidelines on identifying and using local options for transporting young people between residences, their places of arrest and court.

D. Migrants, refugees and asylum seekers

(a) Trafficking in persons *(Recommendation 56)*

91. New Zealand adopted a whole-of-government Plan of Action to Prevent People Trafficking in 2009. The Plan includes action points on improving intelligence collection, sharing intelligence with international partners and engaging with international fora. Government agencies are working in collaboration with the non-Government sector on enhancing victim identification by raising awareness of exploitation and trafficking amongst front line NGO staff and the general public. Government-led trafficking training has continued during 2013. It will be complemented by a joint Government / NGO trafficking conference in June 2014 and public awareness campaign in late 2013.

92. The Government has recently agreed to make changes to New Zealand's trafficking framework by ensuring that legislation clearly defines the elements of the trafficking offence; ensuring that the trafficking offence contains the elements of action, means and exploitative purpose; and removing the transnational element of the offence. It is intended that these amendments will be included in an Organised Crime and Anti-Corruption Bill that will be introduced in Parliament in late 2013. New Zealand also plays a leading role in the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime to foster cooperation in the region. The Government has seconded a person to work within the Bali Process Regional Support Office in Bangkok and will continue to collect and share information on trafficking and exploitation as it arises. There have been no offences of Trafficking in People by Means of Coercion or Deception over the last four years and one offence of Smuggling of Migrants in 2011/12.

(b) Refugees and Asylum Seekers

93. New Zealand is one of a limited number of countries that accepts for resettlement an annual quota (750, plus or minus 10%) of refugees referred by the United Nations High Commissioner for Refugees (UNHCR). New Zealand values the work of the UNHCR and will continue to engage with it in resettling refugees through the Refugee Quota Programme.

94. In 2012 the Government approved the New Zealand Refugee Resettlement Strategy, a whole-of-government approach to delivering improved refugee resettlement outcomes so

that refugees more quickly achieve self-sufficiency, social integration and independence. The Strategy is being implemented progressively within existing funding, and applies in the first instance to quota refugees arriving in New Zealand after 1 July 2013. There will be a stronger focus under the Strategy on employment-related services as part of the wider government agenda to move people off welfare support and into employment. The Mangere Refugee Resettlement Centre, which plays a crucial role in helping quota refugees adapt to their new life in New Zealand, will be rebuilt in stages, so it can continue to receive quota refugees under New Zealand's Refugee Quota Programme.

95. The Government recently made changes to New Zealand's immigration legislation through the Immigration Amendment Act. The Act and associated policy measures aim to ensure New Zealand is able to manage effectively and efficiently a mass arrival of irregular and potentially illegal migrants, and to make New Zealand a less attractive destination for people smugglers.

E. Human rights and counter-terrorism (*Recommendations 62 – 63*)

96. Procedural guarantees in anti-terrorist legislation are vital and must be applied in accordance with international human rights obligations. The Government considers that the Terrorism Suppression Act 2002 contains a range of procedural guarantees to adequately ensure the protection of human rights and observance of international obligations. There are presently no proposals to amend or reduce these protections.

97. New Zealand has reviewed and reformed legislation governing external and communications intelligence-gathering, both in order to recognise technological changes and in response to an inquiry that criticised the operation of the legal safeguards previously in place and to court findings that unlawful intelligence-gathering had occurred. The reforms included express requirements of proportionality and necessity; the strengthening of the two independent oversight entities, the Inspector-General of Intelligence and Security and the Commissioner of Security Warrants; a new role for the Privacy Commissioner and reinforcement of parliamentary oversight. Further, and as part of the process of parliamentary consideration and public submissions, the reform legislation was reviewed for consistency with human rights standards in published legal advice and was amended to include a specific duty to act in accordance with human rights safeguards and in a manner that facilitates democratic oversight. While the conduct of intelligence-gathering is always a controversial issue, the Government considers that the legal constraints now in place, together with robust oversight mechanisms, are consistent with relevant human rights standards.

F. Right to Health

98. Health is the second largest area of public spending, after education. New Zealanders are living longer lives, and spending longer in good health but the health and disability sector faces significant challenges: an ageing population; more people living longer with multiple, long-term conditions; and access to new technology and medicines. Disparities in health outcomes for Māori and Pacific people, refugees, older people and vulnerable children remain unacceptably high. New Zealand's youth suicide death rates remain high compared to OECD countries.

99. UPR consultations highlighted public concerns around New Zealand's abortion laws, including on-going issues around equity of access, for example, in rural populations. In New Zealand it is a criminal offence to perform an abortion in circumstances other than

those prescribed by law. The law allows abortion to be performed up to 20 weeks into a pregnancy if there is serious danger to the life or to the physical or mental health of the woman. An abortion performed more than 20 weeks into a pregnancy is lawful only if it is necessary to save the life of the pregnant woman or prevent serious permanent injury to her physical or mental health. Legal abortion in New Zealand is safe for women - there have been no mortalities since current abortion laws came into effect - and illegal abortions are extremely rare. The Government acknowledges that there are a range of other factors associated with unwanted pregnancy and that the issue remains socially and culturally divisive. The Government currently has no plans to review the law on abortion.

Concluding remarks

100. Reports and country visits by international experts have consistently referred to New Zealand's very high level of human rights protection overall. The Government recognises, however, that significant on-going challenges remain and that further improvement is necessary. The Government will draw on the dialogue within the framework of the New Zealand's UPR assessment and the recommendations from States to provide guidance on the future direction for action on human rights in conjunction with New Zealand's current human rights priorities.

Annex to New Zealand's National Report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council Resolution 5/1

Tokelau

Methodology/Consultation Process

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

Background information on Tokelau

2. Tokelau consists of three atolls Atafu, Nukunonu and Fakaofu (the former two with a single village, the latter with two). The atolls are separated from each other by 60–100 km of open ocean and are located about 500 km to the north of Samoa. The total land area of Tokelau is 12 sq. km, and the population is 1411 (2011 Census). In addition to Tokelauan, English and Samoan are widely spoken on the atolls.

Constitutional Status and Government

3. Tokelau is a non-self-governing territory, and has been administered by New Zealand since 1926. Tokelau is considered "part of New Zealand" under the Tokelau Act 1948 (NZ) and Tokelauans are New Zealand citizens. In practice Tokelau remains substantially self-governing. The Tokelau General Fono is the national legislative and executive body. When the General Fono is not in session the Council for the On-going Government of Tokelau becomes the executive Government.

4. Tokelau has its own courts. Each island has a Village Court and a Law Commissioner who administers criminal matters. Jurisdiction of the Law Commissioners is limited. Law Commissioners have power only in respect of offences punishable by a fine (of any amount) or a term of imprisonment of less than one year. The maximum sentence that a Commissioner can impose is \$150 fine or 3 months imprisonment. Serious offences are referred to the High Court of New Zealand.

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

6. The *Joint Commitment for Development* signed by New Zealand and Tokelau in 2011, sets out what Tokelau and New Zealand have committed to do over the term of the agreement so as to achieve Tokelau's vision and development for the future. New Zealand remains the largest bilateral donor to Tokelau, with New Zealand's economic support amounting to around 75% of Tokelau's recurrent budget, and we are committed to this funding being used effectively and efficiently.

7. Tokelau and New Zealand completed a review of progress against the *Joint Commitment for Development Results Framework* in April 2013. The most significant results achieved this year include:

- Interim Shipping Charter providing a safe, regular service to Tokelau;
- 90% plus reduction in use of diesel for electricity (original target 70%);
- 200% increase in fisheries revenues since 2011 (original target 50% by 2015);
- 81% of students proceeding to further education beyond Year 11 (increase from 30% in 2006).

8. Whilst Tokelau continues to face a range of challenges, in particular around its geographical isolation, New Zealand remains committed to working together with Tokelau – not only, to continue to ensure each of the three atolls have essential services, but to develop our relationship over time.

9. Although the relationship between Tokelau and New Zealand continues to evolve, the underlying constitutional structure remains. The choice to remain a territory brings with it responsibilities and benefits for Tokelau and New Zealand, which must be guarded and worked at for the relationship to remain strong. Tokelau remains important to New Zealand.

Tokelau and the International Community

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

11. With New Zealand's support, Tokelau participates in certain regional organisations in its own right, and is an associate member of a number of other organisations, including the Secretariat of the Pacific Community, the South Pacific Regional Environmental Programme, the Forum Fisheries Agency, the South Pacific Applied Geoscience Commission and the Council of the University of the South Pacific. Observer status was granted to Tokelau by the Pacific Islands Forum in October 2005. Tokelau is also an associate member of the World Health Organisation and UN Educational Scientific and Cultural Organisation.

Promotion and Protection of Human Rights

12. The Constitution of Tokelau 2007 provides that the individual human rights for all people in Tokelau are those stated in the Universal Declaration of Human Rights and reflected in the International Covenant on Civil and Political Rights. Those rights are to be exercised with proper regard to the rights of other individuals, and to the community to which the individual belongs. A person may apply to the Council for the On-going Government for protection of any of their rights.

Women

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

Employment

14. The Public Service is the major employment provider on each of the three atolls. The Public Service Rules 2004 and Public Services Human Resources Manual provide for the protection of certain labour rights, for example, there are processes to ensure that appointments are made on merit and provision of salary scales.

15. There is no organised export sector and limited private sector activity. By necessity, however, a number of families operate family run micro-businesses.

16. Within the public sector, there is only provision for a limited form of "maternity leave". During village consultations on the Human Resource Manual in early 2013, a number of requests were made for amendments to be considered in this area (to include provision for women employed less than a year and for women to continue to receive pay during the first two months of maternity leave instead of receiving a grant after two months of returning to work). Maternity leave is an area that Tokelau has indicated will be considered in the expected review of the Human Resources Manual.

17. The Tokelau Public Service is a multi-racial organisation with 44.3% of the national workforce comprised of non-Tokelauans. The Tokelau Public Service Code of Conduct is a key document that governs the performance and conduct of its workforce. All public servants regardless of their gender, religion, nationality or political opinion are guided by this document. All public servants are expected to read and understand all provisions in the Code of Conduct and to closely observe them at all times.

18. Copies of the Code of Conduct are provided to all heads of national departments as well as to the three villages through their Taupulega Offices (Village Council Office). Staff are encouraged to consult the Code of Conduct or to discuss with their Director or the Human Resource Manager, any issue they may have regarding the application of the Code of Conduct, or if they feel they have breached the Code of Conduct.

19. The Tokelau Public Service does not tolerate or accept any form of discrimination amongst public servants. There has not yet been any complaint against the public service for discrimination and Tokelau would try its best to maintain that clean record.

20. The Council for the On-going Government of Tokelau is the Employer for the Public Service (via the General Manager, National Public Service). As such all discrimination cases would be addressed according to policies of the public service.

Education

21. Tokelau children and young people have access to free education up to sixteen years of age. Primary, senior secondary and foundation tertiary education is provided on each atoll. Ensuring the on-going quality of education remains a challenge because of Tokelau's remoteness, small population and difficulties around recruiting and retaining trained teaching staff. Whilst improving, there is limited statistical data available to track student achievement and progress. A student tracking system is hoped to be in place by January 2014. Latest information from the Consolidated Sector Report for July-December 2012 indicates not all targets are being met in the education space.

Health

22. Tokelau is committed to quality health services and education facilities for its people. Schools and hospital facilities are being upgraded and increasing emphasis is being given to primary health care efforts.

23. New Zealand is hopeful that Tokelau will focus its attention on completing the Infrastructure Development Projects (IDP), which include two schools on Fakaofu and Atafu atolls and a new hospital on Nukunonu atoll. With Tokelau's continued efforts, the completion of these buildings will provide improved health and education services to Tokelau and Tokelauans.

24. In the health space, there are growing issues with rates of non-communicable diseases and other lifestyle related illnesses. A Health Sector Review is planned, together with a population database with benchmarked indicators to enable disease trends to be mapped, tracked and detected. Key statistical data on the health status of Tokelau's population is unavailable, which severely limits the amount of information available in key areas including mortality rates, obesity levels, immunisation rates and prevalence of key diseases. Latest information from the Consolidated Sector Report for July-December 2012 indicate not all targets are being met in the health space.

Fair Trial

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

Identification of achievements, best practices, challenges and constraints

Achievements and Best Practice

26. In 2003 the General Fono outlined Human Rights Rules for Tokelau, which were incorporated as Article 16 of Tokelau's Constitution endorsed by the General Fono

following the second referendum in 2007. The Principles of Partnership between Tokelau and New Zealand signed in 2003 provide a platform for Tokelau's constitutional development.

Challenges and Constraints

27. Tokelau faces a range of challenges to fully realising human rights in the areas of health and education. Shortcomings in the health and education systems include constraints on resources and the economies of scale inherent in very small atoll communities. Health and education infrastructure, which continues to bear the brunt of the harsh and exposed environment, is being upgraded through a major infrastructure development programme funded by New Zealand. Human resource constraints are also an on-going issue and Tokelau faces the challenge of retaining skilled teachers and medical practitioners on its atolls.

28. Isolation is a major challenge for Tokelauans in realising human rights. There are no air services to and from the atolls and shipping services remain limited. They are being improved through a substantial, long-term shipping project (currently underway) in which a purpose built ship, suited to the conditions, will significantly improve transportation services to Tokelau.

29. In June 2012, the Administrator of Tokelau signed a contract for a two year shipping charter service between Apia and Tokelau, which was a significant step forward to achieve safe and secure transport for Tokelau. In February 2013, the Ministry of Foreign Affairs and Trade issued a tender for a new vessel to service this route. On 12 August, the Ministry went to the market seeking firm quotes from selected shipyards for the ship construction, with responses due on 9 September 2013.

30. The new ship design is based on user specifications that were provided by a representative cross section of Tokelau in late 2012. This new vessel will provide a critical service providing a vital lifeline. New Zealand is committed to provision of a safe and effective service.

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

32. Since 2008 the focus of the relationship between New Zealand and Tokelau has been addressing the core requirements of the three atoll populations, following the decision by the leaders of Tokelau and New Zealand that there should be an appreciable period of time before Tokelau would undertake any further act of self-determination. This decision was made following self-determination referenda in 2006 and 2007 where Tokelauans signalled that the timing and conditions were not yet right for constitutional change.

33. From New Zealand's point of view, much remains to be accomplished by Tokelau to ensure core services are delivered for the people of each atoll before conditions for any future referendum could be seen to be met. Present rates of achievement continue to indicate this will be some time in the future. New Zealand remains committed to working in partnership with Tokelau to continue to ensure each of the three atolls have essential services. This continues to pose challenges with such a small population base, skill shortages and a relative lack of resources. Tokelau continues to make progress in strengthening the governance and administrative capability of the public service, including the *Taupulega* (village councils).

Capacity Building

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