Joint submission to the Universal Periodic Review of New Zealand

Fifth session of the Working Group on the UPR, 4 - 15 May 2009

Indigenous Peoples' Rights and the Treaty of Waitangi

Executive Summary

1. 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[1] 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.

2. 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).

3. 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.

4. The information in this submission falls within B, C and D of the UPR guidelines[3]. There are eight sections below:

A) 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;

B) 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 is also the underlying foundation from which other human rights violations arise;

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[1] Annex A provides information about the submitting and supporting organisations

[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

[3] General Guidelines for the Preparation of Information under the Universal Periodic Review, Human Rights Council, 27 September 2007. Decision 6/102 at http://ap.ohchr.org/documents/E/HRC/decisions/A_HRC_DEC_6_102.pdf

C) 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. This lack of protection applies to everyone, but is a particular concern for hapu and iwi Maori as minorities within a majoritarian political system;

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

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

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

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

H) 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.

5. We appreciate this opportunity to contribute to the UPR process, and thank you for your attention to our comments. For any clarification of the points below, or further information, please contact Aotearoa Indigenous Rights Trust, email aotearoaindigenousrightstrust@gmail.com and Peace Movement Aotearoa, email pma@xtra.co.nz

A) New Zealand's Approach to Indigenous Peoples' Rights

6. The government's position on the UN Declaration on the Rights of Indigenous Peoples (the Declaration) is a significant indicator of its general approach to indigenous peoples' rights.

7. NZ was one of only four states to vote against the Declaration when it was adopted by the General Assembly in September 2007. It persistently and consistently opposed the passage of the Declaration during the negotiations conducted at the UN, especially over the final five years of negotiations.

8. NZ has relentlessly attempted to weaken indigenous peoples' land rights norms to standards that are less than those developed by the human rights treaty monitoring bodies, in particular the Committee on the Elimination of Racial Discrimination (CERD) generally, and specifically in relation to the provisions of General Comment 23: Indigenous Peoples. For example, NZ sought to delete any reference to indigenous peoples' material relationship with their traditional lands, to water-down references to indigenous peoples' land ownership under indigenous peoples' customary law; to protect non-indigenous peoples' land rights relative to indigenous peoples' land rights; and to avoid reasonable obligations to provide restitution and compensation for illegitimate takings of indigenous peoples' traditional lands and resources.

9. NZ's position on the Declaration has been criticised by indigenous peoples and human rights non-governmental organisations here and around the world.

10. NZ has not consulted hapu and iwi Maori about its position on the Declaration, and the government has refused to discuss it with Maori organisations since before 2002. Officials in government delegations to negotiations on the Declaration have been hostile to Maori participating in those meetings.

11. Notwithstanding NZ's rigid position and unhelpful attitude, the Declaration is now a normative framework by which all states including NZ should be measured. For example, during the periodic reviews of Peru and Ecuador, both states mentioned the UN Declaration on the Rights of Indigenous Peoples vis-a-vis their indigenous policies. This is an appropriate precedent, which NZ should also follow.

12. We also note that whilst NZ raised specific concerns in the General Assembly with only four articles of the Declaration it did, however, agree with the Declaration's core principles. This was raised by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People (the Special Rapporteur) in his recent report to the Human Rights Council:[4]

> "While the explanatory statements of the four States that voted against adoption of the Declaration (Australia, Canada, New Zealand, and United States of America) showed disagreement with the wording of specific articles or concerns with the process of adoption, they also expressed a general acceptance of the core principles and values advanced by the Declaration."

B) The right of self determination

13. As the Special Rapporteur aptly stated:

> "The Declaration affirms in its article 3 the right of indigenous peoples to self-determination, in terms that restate the common provisions of article 1 of the two 1966 International Covenants. Reflecting the state of contemporary international law in relation to this principle as well as the demands of indigenous peoples themselves, the affirmation of self-determination in the Declaration is deemed compatible with the principle of territorial integrity and political unity of States."[5]

14. The government's failure to respect a Maori right of self-determination remains a constant concern. Not only does international law recognise this right, but the Treaty guarantees the continuance of tino rangatiratanga/self determination, as referred to above.

15. Furthermore, the government's failure to recognise the right of self determination when it comes to Maori, can be seen as the 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 (UDHR) 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.

16. NZ must address these issues as a matter of priority if it is to have any credibility amongst the international community as a defender of human rights.

C) Lack of Constitutional Protection for Human Rights

17. NZ's ability to protect the human rights of Maori, and others, is seriously hampered by its constitutional structure[6]. There is no provision for the continuance of tino rangatiratanga as laid out

[4] See UN document, A/HRC/9/9, para 35
[5] See above note 4, para 37
[6] See, for example, 'Mission to New Zealand', Report of the Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People, E/CN.4/2006/78/Add.3

in the Treaty, nor indeed for even any power sharing among the parties to the Treaty; rather the constitutional arrangements emanate from a historically imposed Westminster system based on majority rule.

18. NZ operates under the most fundamental version of Parliamentary sovereignty compared to all other Commonwealth countries, even that of the United Kingdom (which is constrained by the European Convention on Human Rights and other obligations). For example, the legislature is not legally bound to comply with domestic human rights law, nor with international instruments. The NZ Bill of Rights Act 1990 and the Human Rights Act 1993 are not enforceable as against the legislature meaning parliament can pass discriminatory legislation such as the Foreshore and Seabed Act 2004. If legislation is found to breach either Act, the only remedy is a declaration that it is inconsistent with the right to freedom from discrimination. There is no requirement for the government to modify or repeal discriminatory legislation. This state of affairs has been described by the government as "[striking] the balance between the need for robust scrutiny and respect for Parliamentary sovereignty".[7] This highly irregular situation of a state party deciding that politicians are best placed to decide whether or not human rights obligations will be met, is not only a breach of the requirement for state parties to the international instruments to provide effective remedies, but while it continues, is also a breach of the obligation to take measures to prevent a recurrence of any human rights violation.

19. The Human Rights Committee noted these concerns in its 4th periodic review of NZ where it stated:[8]

> "Article 2, paragraph 2, of the Covenant requires States parties to take such legislative or other measures which may be necessary to give effect to the rights recognized in the Covenant. In this regard the Committee regrets that certain rights guaranteed under the Covenant are not reflected in the Bill of Rights, and that it has no higher status than ordinary legislation. The Committee notes with concern that it is possible, under the terms of the Bill of Rights, to enact legislation that is incompatible with the provisions of the Covenant and regrets that this appears to have been done in a few cases, thereby depriving victims of any remedy under domestic law.
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> "The State party should take appropriate measures to implement all the Covenant rights in domestic law and to ensure that every victim of a violation of Covenant rights has a remedy in accordance with article 2 of the Covenant."

20. The Treaty is not legally enforceable against the legislature either, and requires legislative incorporation to be enforced generally. In 2006 the government supported a Bill in Parliament to delete the principles of the Treaty from all legislation, as part of an agreement with a minor political party. This caused unnecessary and unwarranted distress for Maori over the seventeen month period before it was voted out. Furthermore, in recent years the government has refused to include references to the Treaty in new legislation, for example, the Policing Act 2008 and Climate Change Response (Emissions Trading) Amendment Act 2008; and has given directions that there will no longer be any direct references to the Treaty or its principles in new policy, actions plans or contracts in (for example) the health and disability sector.

21. The Waitangi Tribunal's recommendations are not binding on the Executive or the legislature and are increasingly frequently dismissed and criticised by the government. The courts have refused to review the fairness of Treaty settlements reached between iwi and hapu and the Crown on the basis that they are political matters.

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[7] Draft Third Periodic Report on NZ's Implementation of the ICESCR, Ministry of Justice, September 2008
[8] See UN document CCPR/CO/75/NZL, para 8

22. Because Maori economic, social and cultural rights are not justiciable, they remain unenforceable. The Committee on Economic, Social and Cultural Rights raised this issue in their response to the government's 2nd periodic report and recommended the following:[9]

> "21. Affirming the principle of the interdependence and indivisibility of all human rights, the Committee encourages the State party to reconsider its position regarding the justiciability of economic, social and cultural rights. Moreover, the Committee points out that the State party remains under an obligation to give full effect to the Covenant in its domestic legal order, providing for judicial and other remedies for violations of economic, social and cultural rights. In this respect, the Committee draws the attention of the State party to its general comment No. 9 on the domestic application of the Covenant."

23. The legislature's omnipotent power is aggravated by the legislature's institutional and political structure. There is only one house and the legislature is dominated by the Executive. The majority of the members of the governing party also hold Executive positions. Thus there is no effective remedy for human rights violations as is required by all of the international instruments.

D) The Political Environment

24. The following general characteristics of NZ society and government impact negatively on respect for, and protection of, the human rights of Maori.

25. Firstly, the government and indeed New Zealanders generally support human rights and value their reputation as a human-rights abiding nation. However, there is a serious gap between the rhetoric and the reality. When contentious Maori issues arise, the government is quick to focus on the impact Maori rights will have on other New Zealanders' interests and then to prioritise the interests of non-Maori, in the name of human rights. For example, the government confiscated all Maori property interests in the foreshore and seabed allegedly to preserve non-Maori "rights" to access NZ's beaches, when access was not in fact at stake. Further, NZ was one of the principal proponents of including references to "third-party rights" in the Declaration , seemingly contrary to the objective of securing an international instrument on *indigenous peoples*' rights and without recognition that others rights are already well-covered by a plethora of binding human rights instruments. NZ has historically and in the present day been quick to support the "human rights" of non-Maori at the expense of the human rights of Maori.

26. Secondly, the government and New Zealanders generally want the "tainting" of NZ's colonial history, which includes massive loss of Maori land and resources, and the illegitimate assumption of authority over Maori, "dealt with" so that New Zealand can "move on". A recent example of how this translates in practice was the legislative imposition in 2006 of a final deadline of September 2008 for the submission of all historical claims (as defined by an arbitrary date) to the Waitangi Tribunal. New Zealanders collective desire to "put Maori issues behind them" has an enormously negative impact on Maori because it leads to a sense of "impatience" with Maori claims and of "Treaty fatigue" that undermines NZ's ability to face up to its history and acknowledge that the impact of historical injustice cannot simply "go away". Terminating the historical jurisdiction of the Waitangi Tribunal is an arbitrary and unilateral imposition that will have a significant prejudicial impact on hapu and iwi Maori unable to research their histories within the requisite timeframe, the probability of which is high due to the erosion of capacity brought about by the ongoing processes of colonisation.

[9] See UN document, E/C.12/1/Add.88, para 21

27. Thirdly, Maori rights and the Treaty are central issues in NZ society and politics. While this means that Maori issues are constantly on the NZ agenda, it usually translates into Maori issues becoming a political football, at the expense of Maori interests, especially during elections.

28. All of the above phenomena occur in the context of Maori being at the bottom of almost every socio-economic indicia as has been noted by the Human Rights Committee[10] and the Committee on Economic, Social and Cultural Rights.[11]

29. Employment statistics are one illustration of this point. In periods over the last 3 years, the Maori unemployment rate has been at least twice that of non-Maori, and at least three times that of Pakeha (European New Zealanders); For example, in September 2005, the Maori unemployment rate was 9.4%; the non-Maori unemployment rate was 3.1%; and the Pakeha unemployment rate was 2.4%. In March 2007, the Maori unemployment rate was 8.6%; the non-Maori unemployment rate was 3.7%; and the Pakeha unemployment rate was 2.9%.[12]

30. Women, and in particular Maori women, are more likely to be in low- paid jobs than men. Maori women workers still remain clustered into occupational groups especially service and sales, health and community, and manufacturing. Many of these industries and occupations are low-earning and low-paying. The government could improve this situation by increasing the minimum wage and index to two-thirds of the average wage in line with the recommendations of the 1973 Royal Commission on Social Security, and include responsible contracting policies in Government procurement processes to ensure gender equity and strengthen employment legislation to increase collective bargaining.

E) Foreshore and Seabed Act 2004

31. The Foreshore and Seabed Act 2004 (FSA) is an example of legislation that breaches the Treaty and the human rights of Maori, as defined in domestic legislation and the international instruments. It indicates that NZ is apparently incapable of meeting even the minimal required standard of obtaining the free, prior and informed consent of hapu and iwi Maori over matters directly related to their rights and interests. The impact of the FSA the should be a matter of concern for the Human Rights Council as it undermines, in particular, Maori existing and potential political, economic and cultural rights. For example:

- the statutory tests to have customary rights or territorial customary rights recognised are inconsistent with Maori customary law;
- the statutory tests to have customary rights or territorial customary rights recognised are extremely difficult to meet. Many academics consider them the most difficult tests in the Commonwealth;
- fee-simple titles in the foreshore and seabed were not extinguished. Maori titles were;
- a foreshore and seabed reserve, a possible option for redress, does not give Maori any proprietary rights in the area over which they have proven their territorial rights. Foreshore and seabed reserves remain "public foreshore and seabed" and are to be managed by a board to be agreed to by the Maori group concerned, the government and the relevant local authority.[13] Public access to foreshore and seabed reserves cannot be restricted;

[10] See note 8 above, para 14
[11] See note 9 above, paras 32, 33 and 35
[12] From Household Labour Force Survey results
[13] The Foreshore and Seabed Act 2004 is at

- if Maori choose to negotiate redress for the loss of their territorial customary rights, the government is under no obligation to provide redress. There will be no independent and impartial oversight of the negotiating process. Indeed, Maori will be in a very poor negotiating position;[14]
- the FSA legislatively overrode Maori access to the courts to prove their territorial and non-territorial interests in the foreshore and seabed under Te Ture Whenua Maori Act 1993 and common law aboriginal title;
- the Waitangi Tribunal found the government's foreshore and seabed policy, on which the FSA is based, to be contrary to the principles of the Treaty, domestic legislation and international human rights norms.

32. The FSA remains the most egregious and keenly felt breach of ICERD and other rights in the contemporary era, for which there is no accessible remedy as previously outlined.

33. The government has relied on the current negotiations with hapu and iwi Maori to impliedly mitigate the severity of the Acts discriminatory consequences. However, the negotiations precede the Act, are being conducted outside the confines of the Act and were entered into in circumstances where hapu and iwi Maori were confronted with no real choice but to negotiate with the Crown. In any event, the existence of negotiations does not negate the basic injustice of the legislation, denial of due process, and continued absence of guaranteed compensation.

34. On 31 October 2008, hapu of Ngati Porou, who prior to the enactment of the FSA had already commenced negotiations with the government to have their rights in the foreshore and seabed recognised, signed a Deed of Agreement with NZ. Their negotiations have resulted in the recognition of some rights of a lesser nature than ownership. As such, the FSA remains the overarching rule and only option available to Maori to pursue their rights in respect of the foreshore and seabed.

F) Treaty of Waitangi Settlements

35. The Treaty settlements process is an example of government policy and practice which impacts negatively on Maori and it is fundamentally flawed in a number of ways as has been noted, for example, in the Report of the Special Rapporteur[15]on his visit to Aotearoa NZ.

36. The Treaty settlements policy and process are determined wholly by the government, meaning that one party to the Treaty, and the party responsible for the breaches of the Treaty, is also the arbiter of the fairness of the measures to provide redress for historic injustices against Maori.

37. A number of aspects of the Treaty settlement policies are manifestly unfair:

- the government will not address the issue of Maori self-government / self-determination / tino rangatiratanga;
- the government will not address the issue of Maori interests in oil and gas;
- the government will only settle with "large natural groupings" and, as a result, often overlooks the specific claims of smaller groups;
- the government determines the entity it will negotiate with;

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http://legislation.govt.nz/act/public/2004/0093/latest/DLM319839.html?search=ts_act_foreshore+and+seabed&sr=1 , see section 41.

[14] See note 13 above, section 38.

[15] See reference at note 6

- the settlements are unjust as between iwi and hapu: some tribes receive much less in financial and cultural terms than others - for example, some will receive an additional 17c of every New Zealand dollar that the government spends over $1 billion (NZ) on Treaty settlements, others will not;
- the amount allocated to Treaty settlements is miserly, being approximately 2% of the original claims. This is particularly poor when compared to the value of what has been taken from hapu and iwi Maori;
- the requirement that all settlements include a clause stating it fully and finally extinguishes the claim.

38. Confining the Waitangi Tribunal to recommendatory powers is indicative of the 'soft law' approach to Treaty issues which permeates government policy and practice. The government has disingenuously emphasised the binding powers of the Tribunal in respect of Crown owned land - those powers are strictly circumscribed in legislation, and have only been exercised on one occasion (albeit only partially because a negotiated agreement was reached before the government was tested as to whether or not they would abide by the Tribunal's power in that instance).

39. The Waitangi Tribunal has recently criticised governmental Treaty settlements policy. For example, it stated in relation to one settlement that as a result of governmental actions in its Treaty settlement "Te Arawa is now in a state of turmoil as a result. Hapu are in contest with other hapu and the preservation of tribal relations has been adversely affected."[16]

40. The government frequently ignores the reports of the Waitangi Tribunal, which form the basis of a number of Treaty settlements. Examples include the Waitangi Tribunal's Foreshore and Seabed Report and Oil and Gas Report.

41. There is no independent and impartial tribunal with binding powers available to review Treaty settlements.

42. It is highly desirable, given the current constitutional framework, political climate, and inherent flaws within the Treaty settlement process, including the limited proportion of Tribunal recommendations adopted by the government, that the Tribunal should have broad based binding authority. Whilst there is benefit in negotiated reparation, providing it is based on shared power and authority, binding powers are a necessary antecedent to create the safeguards to which Maori are entitled under international law, including the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources; the right to access the courts, to due process, and the right to an effective remedy.

G) 'Anti-Terrorism' raids and Maori communities

43. On 15 October 2007, NZ police, Armed Offender Squad and Special Tactics Group officers began a series of "anti-terrorism" dawn raids in different parts of Aotearoa NZ[17]. While non-Maori as well as Maori were affected by the raids, Maori individuals, families and communities were treated very differently. For example, only Tuhoe communities in the Ruatoki valley were locked-down and blockaded by armed and masked police. A number of human rights violations occurred at

[16] See, for example, 'Back to drawing board on Treaty settlements', 16 June 2007, at http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10445985 and 'Crown caned again over Treaty settlement process', 19 June 2007, at http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10446541

[17] The raids have been the subject of communications to UN Special Procedures, see, for example, 'Summary of cases transmitted to Governments and replies received: New Zealand', Addendum to the Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People to the Human Rights Council. A/HRC/9/9/Add.1

that time, including the targeting of individuals with laser gun sights, the separation of children from their parents, illegal detention, the photographing of children and adults who were not under arrest nor subsequently charged with any offence, the search of homes and seizure of property belonging to people who were not under arrest nor subsequently charged with any offence; and later, comments by politicians, including the Prime Minister, who referred to the existence of "terrorist camps" and made other assertions as though they were facts rather than matters yet to be proved or disproved in court.

44. While the Police Commissioner subsequently expressed regret[18] over the hurt caused to Maori by the raids, there has been no satisfactory explanation as to why the raids were conducted in such a threatening and rights denying manner, nor why police iwi liaison officers, who certainly would have advised against such behaviour, were removed from the area prior to the raids beginning.

H) Government Responses to UN Human Rights Oversight

45. NZ has little respect for the oversight of the UN treaty monitoring bodies and Special Procedures. The government has persistently and consistently belittled international institutions that have criticised its approach to indigenous peoples' rights. This was particularly apparent when NZ was censured by CERD for discriminating against Maori when enacting the Foreshore and Seabed Act in 2004. For example, the Prime Minister stated:

> "I know that those who went off to this committee on the outer edges of the UN system are spinning it their way but I have to say there is nothing in that decision that finds that New Zealand was in breach of any international convention at all.
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> "This is a committee on the outer edges of the UN system. It is not a court. It did not follow any rigorous process as we would understand one. In fact, the process itself would not withstand scrutiny at all. And frankly, we don't think that those who went to it got what they wanted for [phon] anyway.
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> "The other thing is I don't think we should elevate this to any statement that this is the UN making a finding against New Zealand. This is a Committee pursuant to a convention that sits on the outer edge of the UN system – this is not the UN Security Council with an open and transparent process. In fact the process really had quite a lot of shortcomings."

46. The government has not made any attempt to discuss with Maori the means to address the discriminatory aspects of the Foreshore and Seabed Act 2004, as requested by CERD, it has simply ignored the CERD decision.[19]

47. NZ politicians took a similarly scathing and human-rights unfriendly approach to the comments about the government's approach to indigenous peoples' rights in the Report of the Special Rapporteur.[20]

48. Prime Minister Helen Clark said the Special Rapporteur had produced a somewhat unbalanced report: "The first draft that came to the New Zealand government was grossly inaccurate and I think some of those problems have been carried through to the second draft." In addition: "Overall, I think New Zealand would see it as a missed opportunity to get a balanced look at what happens in this country. We do have unique reconciliation processes here which tend to be simply dismissed by the Special Rapporteur."

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[18] See, for example, 'Raids 'hurt' is regretted: Broad', 30 March 2008, at http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10500960
[19] See UN document, Decision 1 (66): New Zealand, CERD/C/DEC/NZL/1
[20] See above at note 6

49. Deputy Prime Minister Michael Cullen described the final report of the UN Special Rapporteur on Indigenous People as disappointing, unbalanced and narrow. And said: "His raft of recommendations is an attempt to tell us how to manage our political system. This may be fine in countries without a proud democratic tradition, but not in New Zealand where we prefer to debate and find solutions to these issues ourselves."

50. Further, National Party (then the main opposition party, now in government) Maori Affairs spokesman Gerry Brownlee said: "The Government should show this report the respect it deserves by throwing it straight into the dustbin"[21].

51. To further illustrate this point, the government's follow up[22] to CERD's most recent Concluding Observations[23] leaves much to be desired. To outline just three examples, in response to CERD's recommendation that the State party seek ways of ensuring that provisions of the Convention are fully respected in domestic law (see the issues outlined in section 5 above), the government has decided "the present arrangements are considered to be satisfactory". In response to the recommendation that the State party consider granting the Waitangi Tribunal legally binding powers to adjudicate Treaty matters (see relevant comments in Section 8 above), the government has said that it "does not intend to give the Tribunal binding powers to adjudicate Treaty matters, as it operates essentially as a truth and reconciliation process". And in response to the invitation for NZ to consider making the optional declaration provided for in Article 14 of the Convention, the government has responded that it has no intention of doing so.

52. **Conclusion:** 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[24], it fails to meet a surprising number of the legally binding human rights obligations contained in the instruments it is a party to.

10 November 2008

[21] 'File UN report in the dustbin', Media Release, 4 April 2006, at http://www.national.org.nz/Article.aspx?articleId=6141
[22] As outlined in a table in the NZ Human Rights Commission's follow-up report, September 2008, at http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/10-Oct-2008_13-24-13_CERD_Letter_HRC_30_Sept_2008.doc
[23] See UN document, CERD/C/NZL/CO/17
[24] See for example the Ministry of Foreign Affairs and Trade campaign brochure at http://www.mfat.govt.nz/downloads/humanrights/brochure.pdf and their campaign web site at http://www.votenz4hrc.org