

New Zealand

Mid-term

Implementation

Assessment



UPR-INFO.ORG
PROMOTING AND STRENGTHENING THE UNIVERSAL PERIODIC REVIEW



Introduction

1. Purpose of the follow-up programme

The second and subsequent cycles of the review should focus on, inter alia, the implementation of the accepted recommendations and the development of the human rights situation in the State under review.

A/HRC/RES/16/21, 12 April 2011 (Annex I C § 6)

The Universal Periodic Review (UPR) process takes place every four and half years; however, some recommendations can be implemented immediately. In order to reduce this interval, we have created an update process to evaluate the human rights situation two years after the examination at the UPR.

Broadly speaking, *UPR Info* seeks to ensure the respect of commitments made in the UPR, but also, more specifically, to give stakeholders the opportunity to share their opinion on the commitments. To this end, about two years after the review, *UPR Info* invites States, NGOs, and National Institutions for Human Rights (NHRI) to share their comments on the implementation (or lack thereof) of recommendations adopted at the Human Rights Council (HRC) plenary session.

For this purpose, *UPR Info* publishes a Mid-term Implementation Assessment (MIA) including responses from each stakeholder. The MIA is meant to show how all stakeholders are disposed to follow through on, and implement their commitments. States should implement the recommendations that they have accepted, and civil society should monitor that implementation.

While the follow-up's importance has been highlighted by the HRC, no precise directives regarding the follow-up procedure have been set until now. Therefore, *UPR Info* is willing to share good practices as soon as possible, and to strengthen the collaboration pattern between States and stakeholders. Unless the UPR's follow-up is seriously considered, the UPR mechanism as a whole could be adversely affected.

The methodology used by UPR Info to collect data and to calculate index is described at the end of this document.

Geneva, 3 April 2012

Follow-up Outcomes

1. Sources and results

All data are available at the following address:

http://followup.upr-info.org/index/country/new_zealand

We invite the reader to consult that webpage since all recommendations, all stakeholders reports, as well as the unedited comments can be found at the same internet address.

19 NGOs were contacted. The Permanent Mission to the UN was contacted. The domestic NHRI was contacted as well.

10 NGOs responded to our enquiry. The State under Review did not respond to our enquiry. The domestic NHRI did not respond to our enquiry either.

IRI: 41 recommendations are not implemented, 10 recommendations are partially implemented, and 8 recommendations are fully implemented. No answer was received for 13 out of 73 recommendations.

2. Index

Hereby the issues which the MIA deals with:

rec. n°	Issue	page	IRI
1	Racial discrimination	page 6	not impl.
4	Migrants, International instruments,	page 19	not impl.
5	Indigenous peoples	page 9	not impl.
6	Women's rights	page 28	not impl.
7	International instruments, Enforced disappearances,	page 20	not impl.
8	Rights of the Child, International instruments,	page 20	fully impl.
9	Women's rights	page 29	partially impl.
10	International instruments, Indigenous peoples,	page 9	not impl.
11	Migrants, International instruments,	page 21	not impl.
12	International instruments, Indigenous peoples,	page 10	fully impl.
13	Rights of the Child, International instruments,	page 20	fully impl.



rec. n°	Issue	page	IRI
14	Minorities, Migrants,	page 11	partially impl.
15	Women's rights, Human rights education and training,	page 29	not impl.
16	Indigenous peoples	page 11	not impl.
17	Right to education, Racial discrimination,	page 6	partially impl.
18	General	page 33	partially impl.
19	Women's rights	page 29	not impl.
20	Labour, International instruments,	page 21	not impl.
21	International instruments, ESC rights - general,	page 24	not impl.
22	Justice	page 27	not impl.
23	Women's rights, Labour,	page 29	not impl.
24	Rights of the Child	page 29	not impl.
25	Rights of the Child	page 30	not impl.
27	International instruments	page 24	partially impl.
28	International instruments, Enforced disappearances,	page 24	not impl.
30	Women's rights, Rights of the Child,	page 30	not impl.
31	International instruments, Indigenous peoples,	page 10	fully impl.
32	Labour, International instruments, Indigenous peoples,	page 21	not impl.
33	Migrants, International instruments,	page 19	not impl.
34	Detention conditions	page 28	partially impl.
35	Indigenous peoples	page 12	not impl.
36	International instruments	page 25	partially impl.
38	Indigenous peoples	page 13	not impl.
40	Treaty bodies, Racial discrimination,	page 25	fully impl.
41	Treaty bodies, Special procedures, Indigenous peoples,	page 14	fully impl.
43	International instruments, Indigenous peoples,	page 10	fully impl.
44	International instruments, Indigenous peoples,	page 25	not impl.
45	Migrants, International instruments,	page 26	not impl.
46	Poverty	page 6	not impl.
47	UPR process, Civil society,	page 27	not impl.
48	Indigenous peoples, ESC rights - general, Disabilities,	page 14	not impl.
50	Rights of the Child, Disabilities,	page 30	not impl.
51	Rights of the Child	page 30	not impl.
52	Women's rights	page 31	partially impl.
53	Indigenous peoples	page 16	not impl.
54	International instruments, Indigenous peoples,	page 25	not impl.
56	International instruments, Indigenous peoples,	page 10	fully impl.
58	Racial discrimination, International instruments,	page 7	not impl.
59	Indigenous peoples	page 16	not impl.
61	National plan of action	page 33	not impl.
62	Women's rights	page 31	partially impl.
63	International instruments, ESC rights - general,	page 7	not impl.
64	Women's rights	page 32	not impl.
65	Minorities	page 16	not impl.



rec. n°	Issue	page	IRI
66	Racial discrimination	page 7	not impl.
67	Right to land, Indigenous peoples,	page 17	partially impl.
69	Minorities, Indigenous peoples, ESC rights - general,	page 17	not impl.
71	Indigenous peoples	page 18	not impl.
72	Women's rights, Rights of the Child,	page 32	not impl.
73	Trafficking	page 28	-



3. Feedbacks on recommendations

ESC Rights

Recommendation n°1: *Take further steps to eradicate all remaining expressions of racism, racial discrimination, xenophobia and related intolerance.* (Recommended by Algeria)

IRI: *not implemented*

International Presentation Association of the Sister of the Presentation & Friends of Aotearoa (joint submission) (IPASP) response:

Left to individual employers, and educational facilities to deal with.

Recommendation n°17: *Include the fight against xenophobia and racism in the education curricula.* (Recommended by Brazil)

IRI: *partially implemented*

IPASP response:

Left to individual educational facilities to deal with this.

Pacific Centre for Participatory Democracy / Te Ora Hou Aotearoa Inc. (PCPD) response:

Little done in this area other than the very good work of the Human Rights Commission with very limited resources given the size of the problem across the country.

Human Rights Foundation and Equal Justice (HRF) response:

The recommendation is ambiguous as it does not specify how New Zealand should approach the matter. The NZ Curriculum refers to "cultural diversity," "non-racist" and "non-discriminatory" as values that underpin the whole Curriculum. Accordingly, there is some effort to include the fight against racism in the curricula. However, it does not suggest that these principles be taught as a separate issue in order to positively bring it to the attention of children, nor does cultural diversity and non-discrimination deal with xenophobia specifically. In this manner, it is fair to say that New Zealand has only partially implemented the recommendation.

Recommendation n°46: *Strengthen and further improve the existing measures and strategies and undertake, where necessary, actions to correct the inequalities that still exist between the various communities.* (Recommended by Morocco)

IRI: *not implemented*

PCPD response:

Some statutory bodies are required to monitor inequalities between various groups (cultural, economic, gender, etc.) but much more could be done to address effectively the inequalities. Local government could be required to monitor inequalities at a local



level and recommend changes in central government policy, funding and/or services to address them.

New-Zealand Council of Trade Unions / Te Kauae Kaimahi (NZTCU) response:

The income gap was also widened further by tax and benefit changes which have become less redistributive in most countries since the 1990s. Income taxes on the rich have been lowered, and welfare benefits for the poor have been cut.

New Zealand has the fastest growing inequality gap of all OECD countries in the 1990s. The income gap in New Zealand has widened in the last three years. This has been exacerbated by tax changes that benefit higher income New Zealanders, high rates of unemployment and very low benefit levels. Income taxes on the rich have been lowered, and welfare benefits for the poor have been cut.

Recommendation n°58: Consider accepting the individual complaint procedure under article 14 of the International Convention on the Elimination of all Forms of Racial Discrimination. (Recommended by Republic of Korea)

IRI: not implemented

HRF response:

Art 14's procedure has not been accepted. It is unclear whether this has been duly considered - a scan of the Ministry of Trade and Foreign Affairs website suggests it has not. Again, the recommendation was vague enough for New Zealand to accept it without making a commitment to accept the Article 14 procedure.

Recommendation n°63: Consider integrating the provisions of the International Covenant on Economic, Social and Cultural Rights into domestic legislation to ensure the justiciability of these rights. (Recommended by South Africa)

IRI: not implemented

Anonymous response:

The New Zealand Government has not incorporated the International Covenant on Economic, Social and Cultural Rights into domestic legislation. There continues to be no explicit incorporation of economic, social and cultural rights in New Zealand, resulting in a lack of domestic enforceability of these rights.

Recommendation n°66: Pursue efforts to combat all forms of discrimination, in particular those based on ethnic origin. (Recommended by Switzerland)

IRI: not implemented

IPASP response:

Government has recently made a plea for all to be concerned about their discrimination against those of Asian descent

NZTCU response:

People from racial and ethnic minorities continue to experience a significant degree of discrimination and racism ranging from verbal abuse and denial of employment opportunity to physical violence. Asians experience the most discrimination.

New Zealand Work and Labour Market Institute (NZWLMI) response:

The Universal Periodic Review Progress Chart (2011) states 'New Zealand accepts the recommendations to address all forms of unlawful discrimination and socio-economic disparities suffered by vulnerable groups in New Zealand and to take action to understand the causes of inequality. Measures to promote equality for vulnerable groups include robust non-discrimination provisions in New Zealand's 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 gaps in information to better understand the causes of inequality.'

While these declarations are laudable, there is a lack of clarification of what is meant by 'vulnerable groups' and 'taking action to understand the causes of inequality'. As many statements are made in [recommendation n° 5], they will be addressed separately.

1. Measures to promote equality for vulnerable groups include robust non-discrimination provisions in New Zealand's human rights legislation

The Human Rights Act 1993 prohibits discrimination in New Zealand. The Act sets out thirteen prohibited grounds of discrimination. The age-discrimination provisions of the Act relate to people aged sixteen years or older. Moreover, the Universal Periodic Review Progress Chart (2011) specifies some 'vulnerable groups' but children are not listed. This lack of inclusion is laughable given New Zealand's second to last ranking in child health and safety of 30 OECD countries. We would argue that children are the most vulnerable, as they are adversely impacted by their parents 'choices'. While the Government has called for submissions on The Green Paper for Vulnerable Children (2011), there is a lack of qualification and incoherence around definitions of vulnerability; between poor and poverty; and also about the number of vulnerable children in New Zealand. This is not a bold, aspirational statement of policy for children, but further dialogue about New Zealand's poor performance is commendable.

2. New Zealand is committed to identifying gaps in information to better understand the causes of inequality.

A large volume of research overseas and domestically has already been done in this area, with clear research findings (see Wilkinson and Pickett, 2010, OECD, 2008, 2011, Reciniello, 2011, Demarco, 2006). Government policy choices, regulations, and institutions also have a crucial impact, influencing income distribution directly, e.g. through deregulation in product markets, changes in social transfers, wage-setting mechanisms, or workers' bargaining power (OECD, 2011).

The OECD (2011a) acknowledges widening household income inequality in a large majority of OECD countries. This occurred even when countries were going through a period of sustained economic and employment growth. New Zealand has had mixed results- low growth and income levels compared to other OECD countries. However, the latest reporting has seen inequality increase in New Zealand, revealing the average income of New Zealand's richest 10 per cent is now 10 times that of the poorest 10 per cent, growing faster than any other developed country over the past 20 year (Frykberg, 2011). In 2008, the average income of the top 10% was nearly 9



times higher than that of the bottom 10%. This is up from a ratio of 6 to 1 in the mid-1990s (OECD, 2011).

Income taxes and transfers also played a smaller role for redistributing income in New Zealand than in most other OECD countries, reducing inequality by less than a fifth—in a typical OECD country, it is a quarter (OECD, 2011b). Further, low minimum wage increases have not matched inflation, while 2009 tax cuts have disproportionately impacted on higher incomes. The current Government has reduced the highest tax rate, making the New Zealand top tax rate the lowest in the OECD; with no capital gains tax and the 15% GST charge on goods and services (Salmond, 2011). Further, this reduction has decreased revenue for social spending; which could well include measures to protect the most vulnerable. Typical of deprived countries, infectious diseases associated with child poverty and overcrowding are approaching a peak not seen in a decade. Health experts say the latest peak appears to be linked to worsening overcrowding, as extended families are unable to afford rising Auckland house prices and rents. “Now and again we see rheumatic fever, which for most developed countries is never heard of. It’s almost an embarrassment that we see it” (Peter Didsbury, in Collins, 2012b, A5).

If the causes and impact of inequality are known, it remains to be seen whether the Government’s commitment to progress in a number of these areas is rhetoric or otherwise. [...]

Indigenous & Minorities

Recommendation n^o5: *Find appropriate ways to provide adequate compensation to Maori, in particular for their loss of land.* (Recommended by Angola)

IRI: *not implemented*

IPASP response:

Claims are made through the Treaty tribunal but results of the Tribunal are not binding on the Government.

NZTCU response:

Compensation to Māori for loss of land is provided through the Treaty of Waitangi claim process. This process entitles tribal groups to make claims against the government for breaches against the Treaty of Waitangi. The process is well established but can take up a considerable amount of time with outcomes that are dependent on the government who have the ultimate decision to compensate or not to compensate.

Recommendation n^o10: *Consider ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples in independent Countries and applying international standards with respect to the rights of indigenous peoples.* (Recommended by Argentina)

IRI: *not implemented*



PCPD response:

We are aware of no consultation with iwi/hapū/Māori or the general public on whether or not the New Zealand government should ratify and implement this Convention. The government should commit to a public and Māori-specific consultation schedule on the full set of recommendations with a particular focus on those it intends to reject or not fully accept.

NZTCU response:

Discussion and inclusion of tools to stimulate the development for Māori, vary from government to government. One (govt) puts all the words and processes into place and then drives through the legislation that overturns the above words and processes while the next government includes Māori in the government which in its own way provides the catalyst to stymie discussions with Māori around issues that have long been held dear for particular tribal groups.

Recommendation n°12: *Support the United Nations Declaration on the Rights of Indigenous Peoples.* (Recommended by *Austria*)

IRI: *fully implemented*

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Recommendation n°31: *Revisit its decision not to support the United Nations Declaration on the Rights of Indigenous Peoples, with a view to protecting the rights of indigenous peoples in the country, and engage with the Maori and the wider community to promote the realization of indigenous rights.* (Recommended by *Iran*)

IRI: *fully implemented*

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Recommendation n°43: *Join the favourable momentum generated by the adoption of the United Nations Declaration on the Rights of Indigenous Peoples and give its support to this instrument* (Recommended by *Mexico*)

IRI: *fully implemented*

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Recommendation n°56: *Support and implement the United Nations Declaration on the Rights of Indigenous Peoples* (Recommended by *Pakistan*)

IRI: *fully implemented*

PCPD response:

The UNDRIP is still largely unheard of in NZ - we are aware of no government consultation with iwi/hapū/Māori on giving effect to the UNDRIP let alone the wider public - indigenous rights and initiatives to protect them are still seen by a large proportion of the population as 'special treatment' that Māori should not be entitled to.

NZTCU response:

The United Nations Declaration on the Rights of Indigenous Peoples was signed [...] with much fanfare by the Minister for Māori Affairs, Pita Sharples. Previously the decision to not sign was premised on the belief that all policies with regard to Māori needed to be aligned before signing. The signing has happened but there appears to be little evidence of actual policy changes towards that previous concern of alignment.



For example, the Declaration calls for the State to consult and cooperate in good faith with Indigenous people, through their own representative institutions, in order to obtain their free, prior and informed consent before implementing measures that affect them (Article 19) Currently the Government is intending to sell of 49% of its ownership of State Owned Enterprises. There is a strong wall of opposition among Māori to the intended plan to sell off State Owned Assets.

Anonymous response:

Endorsed the UN Declaration in April 2010.

Recommendation n^o14: *Protect the interest of migrants and minority groups, including the Asian and Pacific people, from all forms of racial stereotyping and derogatory treatment.* (Recommended by Bangladesh)

IRI: *partially implemented*

IPASP response:

All people have the right to contact the Ombudsman in relation to racial stereotyping and derogatory treatment but as this is left to the individual often those discriminated against as too scared because of their social standing and jobs to make complaints.

PCPD response:

Race-based attacks and discrimination are still very common in NZ.

Recommendation n^o16: *Continue to address all forms of political, economic and social discrimination against the Maori by meeting their various demands for constitutional and legal reforms and recognition.* (Recommended by Bangladesh)

IRI: *not implemented*

IPASP response:

This is an ongoing situation which is being challenged by those who feel the Maori demands can override those of the nation as a whole so delicate negotiation is required to ensure this happens.

PCPD response:

Recent moves to sell state assets have included draft legislation that would mean shareholders in privatised public assets would not be subject to the Treaty of Waitangi clause in the State Owned Enterprise Act - Māori are strongly opposed to this. The government has allocated mining exploration rights onshore and offshore to foreign and NZ companies with no consultation with Māori... a number of iwi were in the process of finalising Treaty settlement agreements while the government was selling off mining rights without the knowledge of iwi/hapū. New EEZ legislation does not provide Māori with any veto rights over activities in their territorial waters or activities that could affect customary food gathering, fishing grounds, etc. The government has been arrogant and dismissive of Māori protests against oil and gas companies exploring in their tribal areas and have sent in the Navy and Police to protect foreign companies from peaceful Māori protests.

NZTCU response:

Political, economic and social discrimination against Māori being addressed through constitutional and legal reforms and recognition needs to begin with the actual



recognition of the rights and entitlements of Māori within Aotearoa/New Zealand before venturing into the legal and constitutional reform but to date there is limited evidence of that recognition.

Recommendation n°35: Take further measures to correct the gaps in employment, salary, health care and education that exist between Maori and non-Maori peoples. (Recommended by Japan)

IRI: not implemented

PCPD response:

Few publicly funded initiatives and services are Māori specific.

NZTCU response:

A government focus on the gender pay gap by way of a specific Unit that operated from 2002- 2009 drew attention to the gender pay gaps between ethnic groups. The closing of the Pay and Employment Equity Unit by the current government has stopped this analysis removed any national plan to eliminate the ethnic and gender pay gap. Indeed there was no mention of it in the Incoming Briefing to the 2011 Government.

Māori and Pacific people have continuing disproportionate poor health outcomes. Cuts in health funding over the last two years and changes in primary health care funding will impact severely on disadvantaged groups.

HRF response:

Briefly, the gaps in employment, salary, health care and education between Maori and non-Maori remain unacceptably wide. The Labour Party sought to enforce a “Closing the Gaps” policy in a bid to assist socially disadvantaged ethnic groups in the late 1990s. However this policy soon disappeared due to claims that it was racist towards Pakeha (the descendants of European colonists. There has been little change in indigenous poverty rates since 2008, and Maori are consistently over-represented in negative socio-economic indicators. Over the period 2007-2010 around 43% of Domestic Purposes Benefit recipients were Maori (Maori are 15% of the population). Although the percentage of unemployed Maori decreased last year from 14% to 13.4%, the figure remains nearly double that of New Zealand's total unemployment rate. Child poverty for Maori is among the most pressing issues facing New Zealand today: a recent report revealed that of the 200,000 children living below the poverty line, nearly 60,000 were Maori. More than a quarter of Maori children live in overcrowded homes and their health status is two to three times poorer than that of any other ethnic group. A recent study by the Ministry of Education shows that only half as many year 13 Maori students achieve university entrance through the NCEA system as compared with non-Maori. Although inequality in these four core social domains has been persistent, there have been a number of initiatives put in place since the recommendations of UPR Round 1. While there has been very little in the way of new, targeted initiatives for Maori in the government's first term, some policies, such as lower income tax across the board and funding for insulation in low-income homes are likely to benefit Maori indirectly given their over-representation in the lower socio-economic demographics. Those targeted initiatives that have been introduced are widely regarded as inadequate to address the chronic state of Maori



inequality (see [\[this link\]](#) for an overview). Some recent developments suggest that Maori inequality may be a higher priority on the policy agenda for National's second term, partly as a result of its coalition with the Maori party. In particular, the establishment of a new high-powered committee to investigate poverty, to be headed by Finance Minister Bill English and Maori Party co-leader Tariana Turia was announced in late 2011. The comprehensive set of welfare reforms announced around the same time are said to seek to reorient the social security system towards getting people back into work and include specific measures for Maori beneficiaries. These reforms have, however, come under considerable criticism and it remains to be seen how they will affect Maori inequality in practice.

Recommendation n°38: *Continue addressing effectively the socio-economic inequalities affecting the Maori.* (Recommended by Jordan)

IRI: *not implemented*

IPASP response:

No real progress made with the changing policies to the public housing situation moved to market rentals. All households are free to apply for the upgrading of their insulation and this applies to all including Maori. This is dependent on whether the house is owned or rented.

PCPD response:

Some statutory bodies are required to monitor inequalities between Māori and non-Māori but much more could be done to address effectively the inequalities. Local government could be required to monitor inequalities at a local level and recommend changes in central government policy, funding and/or services to address them.

NZTCU response:

On almost all economic and social indicators, Māori and Pacific fare worse than European and Pakeha New Zealanders

- Just over half of the 200,000 New Zealanders living below the poverty line are Māori and Pasifika.
- Unemployment rates for Māori and Pacific people are well above the national average (6.6%) and especially Māori youth (24.8%) and Pasifika youth (27.4%). Maori unemployment is 13.7% and Pasifika (13.1%).
- Maori and Pacific women's are over represented in low waged work, both on or near the minimum wage.

The Human Right Commission called in 2010 that there is priority action to reduce child poverty through a coordinated and integrated approach, with specific attention to Māori, Pacific and disabled children.

A significant and proven contributor to inequality and poverty is the low rates of benefit levels.



The claim that the recommendations from the welfare working group will address long term dependency and reduce poverty have no evidence. NGOs and trade unions believe the focus on individuals being responsible for changing their situation without sufficient attention to labour market conditions and the impact of low benefits levels is a punitive and blaming approach and may result in forcing beneficiaries into low paid low quality work which will have a detrimental impact on children of solo parents with Māori again heavily disadvantaged.

The income gap was also widened further by tax and benefit changes which have become less redistributive in most countries since the 1990s. Income taxes on the rich have been lowered, and welfare benefits for the poor have been cut.

New Zealand has the fastest growing inequality gap of all OECD countries in the 1990s. The income gap in New Zealand has widened in the last three years. This has been exacerbated by tax changes that benefit higher income New Zealanders, high rates of unemployment and very low benefit levels. Income taxes on the rich have been lowered, and welfare benefits for the poor have been cut.

HRF response:

Refer to comments in recommendation [35].

Recommendation n°41: *Consistent with the observations of the Committee on the Elimination of Racial Discrimination and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, continue the new dialogue between the State and the Maori regarding the Foreshore and Seabed Act of 2004, in order to find a way of mitigating its discriminatory effects through a mechanism involving prior informed consent of those affected.* (Recommended by Mexico)

IRI: *fully implemented*

IPASP response:

This was done but the situation seems now more unsatisfactory to Maori and New Zealanders alike

PCPD response:

The government established a new legal fiction about the foreshore and seabed being held in the public but effectively the government still assumes full control over what happens to the foreshore and seabed.

Anonymous response:

The Government repealed the Foreshore and Seabed Act 2004, replacing it with the current Marine and Coastal Areas (Takutai Moana) Act 2010. However, this latter Act continues to discriminate against Māori in regards to customary property rights and the right to culture.

Recommendation n°48: *Further strengthen its actions to ensure that the economic and social rights of vulnerable persons are protected, especially Maori, people with Pacific background and people with disabilities, and ensure that special attention is given to these persons with a view to including them fully in society.* (Recommended by Netherlands)

IRI: *not implemented*

IPASP response:

Gone backwards and now those with disabilities are having to fight to get their rights recognised as in the education sector the policy is "integration into normal schools is still best for the disabled when in some cases specialist education is required. The strain this policy puts on other students is also telling let alone what it does for the classroom teacher as promised assistance is not readily available without a lot of red tape.

Mental Health Foundation of New Zealand (MHF) response:

The use of compulsion, seclusion and restraint in state mental health services in New Zealand is a form of lawful discrimination.

In 2011 The Mental Health Foundation commissioned a paper entitled "Legal Coercion in mental health: Issues to inform Advocacy" by Mary O'Hagan, a leading New Zealand mental health consumer advocate. In it she states:

"It has been claimed that legal coercion contravenes a number of human rights, such as freedom from arbitrary detention, and from torture or cruel, inhumane or degrading treatment, as well as the right to liberty of movement and freedom of thought (Minkowitz, 2006). Compulsory interventions are also considered to contravene the 2006 UN Convention on the Rights of Persons with Disabilities. (Bartlett, 2009; World Network of Users and Survivors of Psychiatry, 2007)."

The use of seclusion in New Zealand needs to be addressed as a serious concern. The Director of Mental Health Report 2010 by the Ministry of Health states that "seclusion should be an uncommon event." However it also states, concerning inpatients of adult mental health services (excluding youth and forensic services) in 2010, that "Of the 6348 patients, 1065 (17 percent) were secluded at some time." That is to say more than 1 in 6 people were put in seclusion during their time in inpatient services. This is not an "uncommon event" and, as such, represents a treatment failure of mental health services.

This view is consistent with the United Nations Torture Rapporteur who called for a complete ban against use of solitary confinement for people with disabilities, saying "there is no justification to hold people with mental problems in solitary confinement for it only exacerbates their problems instead of protecting them." Source United Nations Webcast <http://www.unmultimedia.org/tv/webcast/2011/10/press-conference-with-mr-malcolm-evans-mr-claudio-grossman-and-mr-juan-mendez.html>

The Mental Health Foundation submits that the Mental Health Commission should have its powers extended to include oversight and operational aspects in the implementation of the Mental Health (Compulsory Treatment and Assessment) Act. An effective Mental Health Commission, working with the Health and Disability Commission, can work to counter all such breaches of rights as are diminished when service users receive compulsory treatment, including seclusion.

The Like Minds, Like Mine programme, which aims to challenge stigma and discrimination experienced by people with a mental illness is a MoH programme and



has been for some 13 years. The Mental Health Foundation contributes to the successful implementation and delivery of this programme.

PCPD response:

Some statutory bodies are required to monitor inequalities between various groups (cultural, economic, gender, etc.) but much more could be done to address effectively the inequalities. Local government could be required to monitor inequalities at a local level and recommend changes in central government policy, funding and/or services to address them.

Recommendation n°53: *Continue the public discussion over the status of the Treaty of Waitangi, with a view to its possible entrenchment as a constitutional norm.* (Recommended by Norway)

IRI: *not implemented*

IPASP response:

Introduction of scaremongering policies that call for cutting the "Treaty clause" out of certain policies especially in relation to the Sale of Government Owned assets is causing strife and negativity between the Government, the Tangata Whenua (Maori people) and indeed many New Zealanders.

PCPD response:

A Constitutional Working Group has been established but the role of the Treaty in any constitutional arrangements is uncertain.

NZTCU response:

The question of the place of the Treaty of Waitangi in New Zealand's constitutional arrangements remains unresolved.

Under the 2008 Supply and Confidence agreement there was a group established to consider a review of New Zealand's constitutional arrangements including the role of the Treaty of Waitangi. This work has not progressed as yet into a public engagements and consultation process.

Recommendation n°59: *Pursue efforts to improve Maori participation in all areas of social life.* (Recommended by Russian Federation)

IRI: *not implemented*

NZTCU response:

Māori are negative and disproportionately disadvantaged by economic policies that have left lower income people less well off and advantaged higher income New Zealanders with lower taxes leading to increased inequality.

Recommendation n°65: *Continue efforts to ensure that people belonging to minority groups are not discriminated against in the criminal justice system.* (Recommended by Sweden)

IRI: *not implemented*

IPASP response:

Up to the courts and individual judges



NZTCU response:

Māori are disproportionately represented in the criminal justice system. Maori make up 14.5% of the total population but 51% and 59% of male and female prisoners respectively (Prison Census 1999) and there have been no changes of any merit in these figures in recent years.

Recommendation n°67: *Pursue efforts to settle comprehensively land claims of the indigenous population.* (Recommended by Switzerland)

IRI: *partially implemented*

NZTCU response:

Compensation to Māori for loss of land is provided through the Treaty of Waitangi claim process. This process entitles tribal groups to make claims against the government for breaches against the Treaty of Waitangi. The process is well established but can take up a considerable amount of time with outcomes that are dependent on the government who have the ultimate decision to compensate or not to compensate.

HRF response:

As at September 2011, the National Government has signed 17 deeds of settlement since coming into power in 2008, with about 60 claims still outstanding. The government campaigned in 2008 on a promise to have all historic Treaty land claims settled by 2014, which was repeated in comments on the UPR recommendations. However, the target had been opposed by indigenous groups and their supporters who did not believe such claims could be fairly settled within the time frame. Recently this deadline has been pushed out to 2016, which is, at least in part, a recognition that claimants should not have to rush the settlement process. Given the large number of claims that have not yet been resolved, even the new goal is completely unrealistic. While the Government repealed the Foreshore and Seabed Act of 2004, which was widely considered discriminatory against Maori, its replacement, the Marine and Coastal Area (Takutai Moana) Act 2011 has been no less controversial.

Recommendation n°69: *Continue to take targeted action to eliminate the socio-economic disparities that persist among its population, including those affecting Maori, Pacific, Asian and other groups.* (Recommended by Turkey)

IRI: *not implemented*

NZTCU response:

On almost all economic and social indicators, Māori and Pacific fare worse than European and Pakeha New Zealanders

- Just over half of the 200,000 New Zealanders living below the poverty line are Māori and Pasifika.
- Unemployment rates for Māori and Pacific people are well above the national average (6.6%) and especially Māori youth (24.8%)and Pasifika youth (27.4%). Maori unemployment is 13.7% and Pasifika (13.1%).
- Maori and Pacific women's are over represented in low waged work, both on or near the minimum wage.



The Human Right Commission called in 2010 that there be priority action to reduce child poverty through a coordinated and integrated approach, with specific attention to Māori, Pacific and disabled children.

A significant and proven contributor to inequality and poverty is the low rates of benefit levels.

The claim that the recommendations from the welfare working group will address long term dependency and reduce poverty have no evidence. NGOs and trade unions believe the focus on individuals being responsible for changing their situation without sufficient attention to labour market conditions and the impact of low benefits levels is a punitive and blaming approach and may result in forcing beneficiaries into low paid low quality work which will have a detrimental impact on children of solo parents with Māori again heavily disadvantaged.

HRF response:

Refer to comments in recommendation 31.

Recommendation n°71: *Consider further action to fully understand the causes of inequality faced by indigenous people and take steps to minimize the effects. (Recommended by United Kingdom)*

IRI: not implemented

NZTCU response:

The shrinking of the state sector and state sector budget which is a deliberate policy of the current Government may impact directly on research capacity to measure and monitor inequality.

HRF response:

The newly established committee on poverty by the National party in agreement with the Maori party is a promising development, because it signals recognition by the Government of a need to devote special attention to the complex and manifold causes of indigenous inequality. The committee is said to oversee the work such as determining where money is going for social service contracts with the ministries of justice, or health, education or welfare in the regions across New Zealand. Very recently, PM John Key announced the committee would be considering the issue of the high rise in infectious disease especially in Maori and Pacific people some of which are the highest in the West and seven times the rate of the rest of the population. The committee is expected to issue its first report mid-2012 with six monthly updates to follow. Thus far, the government has been accused of depriving school children in Te Aupouri Maori Trust Board of free lunches as it was not part of the Board's contract with the Ministry. Nonetheless, many organisations have shown support for the committee.

International Instruments

Recommendation n°4: *Strengthen the Government's strategy on new migrants by considering the possibility of ratifying ICRMW.* (Recommended by Algeria)

IRI: *not implemented*

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Recommendation n°33: *Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families ICRMW.* (Recommended by Iran)

IRI: *not implemented*

NZWLMI response:

Currently New Zealand is not considering ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, claiming there are 'various laws to adequately protect all workers in New Zealand, including migrant workers, on an equal basis'. We believed this statement overstates the power of current legislation and monitoring capacity of the Immigration NZ and Department of Labour Inspectorates, numbering approximately 40 Compliance Officers and 150 Labour Inspectors respectively (Department of Labour, 2012).

The lack of inspectorate reach has been evident in concerns from organisations like Horticulture NZ that some operators are using illegal migrant workers, therefore undermining the profitability of other legitimate operators in this sector. While difficulties in researching migrant labour have been well-documented (see Lamare et al, 2010), concerns about the working conditions of some migrants have been highlighted. Typical of most western economies, migrants can be found working in precarious and marginalised work. Further, migrants constitute a substantial part of the informal labour market, and can be found working illegally in many sectors of the economy, but especially the primary sector (agriculture/ horticulture etc.) and service sector. Many migrant workers are predominately employed on casual, part-time or seasonal basis (see Anderson and Naidu, 2010; Anderson, Lamare, Hannif, 2011; Anderson & Naidu, 2012 (forthcoming)). The sectors congregated in typically have little or no trade union presence (Anderson and Naidu, 2010.)

Migrants are afraid to report poor treatment, especially if working in breach of visa conditions. A recent prosecution has highlighted these issues, where Fijian workers had paid to obtain work visas through an immigration consulting company. Enrolled on 12-week farm training programmes, believing they would be eligible to enter full-time employment on dairy farms (Leaman, 2011). However, the immigration visas were false and the jobs did not exist, leaving the workers in a position of being overstayers with no means of financial support.

This month, Asian students working at a central Auckland liquor store accused their employer of slave labour. Some of the group claim they have been paid as little as \$2 an hour (with a legal minimum wage in New Zealand of \$13) and they say they were kept in work by threats. The group came to New Zealand to study but were forced to work more than 20 hours a week, in breach of their student visa conditions. They



said as well as being underpaid, they were threatened physically, refused holiday pay, and threatened with deportation (One News, 2012).

Far from isolated incidents, from our preliminary research we believe these cases are merely the 'tip of the iceberg' and cases that have come to the attention of authorities. Concerns about these types of work practice in New Zealand have been highlighted by the authors of this submission to the Department of Labour and The International Labour Organisation (see Anderson, Lamare & Hannif, 2011 attached). From our investigation we believe at that this time New Zealand does not meet the conditions for ratification, 'considering that workers who are non-documented or in an irregular situation are frequently employed under less favourable conditions of work than other workers and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition' (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Preamble, 1990). Such precarious conditions for migrants relate to Article 25 of the Convention, and The ILO Decent Work Agenda.

Greater observance of and reporting on the nature of migrant work, its implications for domestic workers, as well as associated concerns; is needed. It would be useful if the Department of Labour were to specify the extent of their current monitoring, and how the findings will be communicated to interested parties.

Anonymous response:

The New Zealand Government has not ratified the ICRMW.

Recommendation n°7: *Consider signing and ratifying the International Convention for the Protection of All Persons from Enforced Disappearance. and consider accepting the competence of the Committee on Enforced Disappearances. (Recommended by Argentina)*

IRI: *not implemented*

HRF response:

NZ is not a State Party, even though it "supported the adoption" of this Convention.

Anonymous response:

The New Zealand Government has not ratified this Convention.

Recommendation n°8: *Consider the possibility of signing and ratifying the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. (Recommended by Argentina)*

IRI: *fully implemented*

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Recommendation n°13: *Accelerate the ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. (Recommended by Azerbaijan)*

IRI: *fully implemented*

HRF response:

New Zealand signed the Optional Protocol in 2000. Since then, the Evidence Act 2006 came into force on 1 August 2007. Amendments have also been made to the



Films, Videos and Publications Classification Act 1993 and to the Crimes Act 1961. An amendment to the Adoption Act 1955 is the final legislative requirement necessary in order for New Zealand to ratify the Optional Protocol. This amendment is included in the Child and Family Protection Bill, which was introduced in Parliament on 20 August 2009. However, there have been on-going delays in reviewing the Act and the Bill is currently stalled.

This sequence of events enables New Zealand to say it has considered the possibility of signing and ratifying/accelerated its ratification of the Optional Protocol, although it has not completed ratification yet and it is not clear that the necessary legislation will be passed. The recommendation is imprecise.

Anonymous response:

Ratified in September 2011.

Recommendation n°11: *Consider the possibility of signing and ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families ICRMW. (Recommended by Argentina)*

IRI: *not implemented*

PCPD response:

We are aware of no consultation with iwi/hapū/Māori or the general public on whether or not the New Zealand government should ratify and implement this Convention. The government should commit to a public and Māori-specific consultation schedule on the full set of recommendations with a particular focus on those it intends to reject or not fully accept.

NZWLMI response:

See response to recommendation n° 4.

Anonymous response:

The New Zealand Government has not ratified the ICRMW.

Recommendation n°20: *Ratify International Labour Organization ILO fundamental conventions. (Recommended by Brazil)*

IRI: *not implemented*

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Recommendation n°32: *Ratify International Labour Organization ILO fundamental conventions and in particular the Indigenous and Tribal Peoples Convention No. 169. (Recommended by Iran)*

IRI: *not implemented*

PCPD response:

We are aware of no consultation with iwi/hapū/Māori or the general public on whether or not the New Zealand government should ratify and implement these conventions. The government should commit to a public and Māori-specific consultation schedule on the full set of recommendations with a particular focus on those it intends to reject or not fully accept.

NZTCU response:



The NZCTU does not accept the NZ Government response to non ratification of the two outstanding ILO core conventions. Steps should be taken now, including changes to legislation, for us to comply be able to ratify ILO Conventions 87 Freedom of Association and Protection of the Right to Organise Convention, 1948 and ILO Convention 138 Minimum Age Convention. These are fundamental Conventions and New Zealand is lagging seriously in its current response to pursuing ratification of these core Conventions. While New Zealand has a practice of not ratifying Conventions unless we are in compliance with them serious Government efforts should be made to bring us into compliance with these two core conventions and towards speedy ratification.

NZWLMI response:

While it is acknowledged that the New Zealand government has ratified a number of UN Conventions pertaining to the welfare of children, it is not considering recommendations to ratify the remaining two fundamental ILO conventions.

ILO Convention 138

Currently New Zealand has a reservation on ILO Convention 138: Minimum Age Convention (1973), relating to the UN's Convention on the Rights of Children (UNROC) Article 32(2) Right to work and to just and favourable conditions of work, minimum age of access to employment:

'States Parties shall...

- a) Provide for a minimum age or minimum wages for admission to employment;
 - b) Provide for appropriate regulation of the hours and condition of employment;
 - c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article'
- (United Nations, 1999).

UNCROC strongly criticised New Zealand's lack of a minimum age for work in 2000, as without statutory protections such as minimum wages and working conditions, young workers risk marginalisation (Human Rights Commission, 2000: 1). Since then the government has made some commitment to clarifying minimum age requirements under UNROC, and addressing the steps that could be taken to removing the existing reservation. In 2003 the United Nations recommended to New Zealand that it expedite the on-going process of reviewing and strengthening legislations protecting all under 18 year olds who are employed (Bradford, 2007: 2). While it is stated that '... our existing policy and legislative framework already provides effective age thresholds for entry to work in general, and for safe work', (Government 3rd & 4th periodic report, United Nations Convention on the Rights of the Child, draft: 13) this statement overstates the protection these laws give to child workers; particularly with reference to those under the age of 16. This segment of the labour market is extremely vulnerable to exploitation for two reasons: their rights are not upheld with supporting legislation; and they are an invisible segment that is largely ignored in statistic reporting and analysis.

The assumption is that working children are 'adequately' protected in their working lives and by current legislation, but there is little factual data about the extent of



children and young people's work, their hours, wages and conditions. A distinction appears to be made by policymakers and the general public alike between types of labour overseas and types of work. This 'idealised' (McKechnie, 1999) perception of children's work does not acknowledge the reality of what is actually occurring. Research indicates that there is some evidence that child labour does exist in New Zealand, although information is not routinely collected about this sector of the labour market (Anderson, 2010, Roth, 2008). For example, in a survey of nearly 5000 children in 2003, Caritas reported that some children were being forced to work to support their families, often for very low wages and at times in dangerous and/or illegal working conditions. There was also a lack of contracts and union coverage of children's work.

[...]

ILO Convention 87

New Zealand has ratified only one of the ILO's two fundamental Conventions on trade union rights. The Government stated in August 2006 that no further decisions had been made concerning Convention No. 87, but was continuing to monitor both national and international developments with a view to future ratification (although it considers that current legislation principally complies with the Convention's contents). While ILO 98 has been ratified, the principal barrier to ILO 87 ratification has been the Employment Relations Act 2000 (like its predecessors) allows a union to "be suspended by an administrative authority", which would leave it unable to legally represent its members (s. 17) (Rudman, 2009). While the section has not been used, it gives the government the authority to do so, which is incommensurate with ILO 87.

The election of a National Government in 2008 has indicated a move away from tripartism and union inclusion by amending the rules on union access so that access is subject to the employer's consent (but where consent 'cannot be unreasonably withheld'). Changes to union officials' access rights were not strongly sought by peak employer groups, and were strongly opposed by peak union groups. Indeed, a Department of Labour Review (2009) found 'there does not appear to be widespread evidence of union representatives exercising their current rights to enter workplaces in an inappropriate way, resulting in disruption for business operations or adversely impacting on the employment relationship between employer and union members'. The Department of Labour in its policy advice to the Minister of Labour, recommended the retention of the previous rights, as they were not causing problems, and the widespread practice of unions providing notification to employers prior to visiting a site was apparently working (Department of Labour, 2009).

The Minister of Labour described the impact of the changes as "marginal" and "symbolic" (Office of the Minister of Labour n.d.). Although perhaps an inane change, it signifies a move towards a unitarist ideology of management prerogative. Further, the changes to union access may be used to deny, delay or restrict union officials' access to worksites. With union membership standing at 379,649 (Department of Labour, 2011), membership represents 17.4% of the total employed force and 20.9% of wage/salary earners for that period (March 2010 Household Labour Force Survey in Department of Labour, 2011). Such low density, especially amongst lower-paid



workers, means access changes may have a negative impact on the ability of workers in non-unionised sites to have access to union officials, and to join unions (CTU, in Department of Labour, 2009).

In December, Helen Kelly, Council of Trade Unions President reported that union officials were being denied access to the workers at a livestock processing facility. The union sent a request to the employer, the employer is required to make a decision within a day, but instead wrote back asking for more information. "The law is clear on the reasons unions can access workplaces and these are not required in an application. The fact the employer is even required to give permission is now being used to deny access." (Kelly, in Newswire, 2011). Use of the law in this manner puts us at risk of being in breach of both ILO 98 and ILO 87 in terms of freedom of association and the right to collectively organise. We would argue New Zealand has moved further away from potential ratification since the previous UPR, signalled in the legislative change.

Recommendation n°21: Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. (Recommended by Brazil)

IRI: not implemented

PCPD response:

[...]

Anonymous response:

The New Zealand Government has not ratified this Optional Protocol.

Recommendation n°27: Ensure that the Bill of Rights Act appropriately reflects all of New Zealand's international human rights obligations and that all subsequent legal provisions, including immigration laws, are in accordance with it and cannot limit its scope (Recommended by Czech Republic)

IRI: partially implemented

NZTCU response:

In New Zealand while all new legislation is examined to see if it is consistent with the rights and freedoms affirmed by the Bill of Rights Act and if there are any inconsistencies, then the government is required to provide a justification for the limits placed on these rights with the Attorney-General reporting any inconsistencies with the Bill of Rights Act to Parliament when the legislation is introduced. But these provisions do not stop the legislation being passed which was the case in recent legislation [...].

Recommendation n°28: Sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance. (Recommended by France)

IRI: not implemented

HRF response:

NZ is not a State Party, even though it "supported the adoption" of this Convention.

Anonymous response:

The New Zealand Government has not ratified this Convention.



Recommendation n°36: *Further incorporate, as appropriate, its international human rights obligations into domestic law. (Recommended by Jordan)*

IRI: *partially implemented*

HRF response:

The Ministry of Justice is presently working on reports assessing the Government's participation in the Convention against all Forms of Racial Discrimination and responses to the Committee on Economic, Social and Cultural Rights. The government is continually advised about application of the New Zealand Bill of Rights Act (NZBORA) 1990 in modern law, one of the purposes of the Act being to reaffirm New Zealand's commitment to the ICCPR. However, often ignores the advice when advised under section 7 that proposed legislation is incompatible with the New Zealand Bill of Rights Act. In any event the NZBORA contains mostly civil and political rights and ignores economic, social and cultural rights.

Bills such as Amendment Bill 346-1 (2011) to the Human Rights Act 1993 have been presented to Parliament. This Bill has the stated intention of allowing the Human Rights Commission to more effectively and actively enforce New Zealand's international human rights obligations.

Recommendation n°40: *Consider accepting the recommendation of the Committee on the Elimination of Racial Discrimination to study ways and means of assessing the extent to which complaints for racially motivated crimes are addressed in an appropriate manner within the criminal justice system. (Recommended by Malaysia)*

IRI: *fully implemented*

HRF response:

Implemented: In 2010, the Review of Crime and Criminal Justice Statistics Report 2009 was completed and included specific consideration of gathering information regarding crimes of prejudice (which include racially motivated crime). The report concluded that, given the problems and expense associated with collection of this information, the worth of their collection in New Zealand would need to be assessed and validated before this could be further considered.

Recommendation n°44: *Ratify the Indigenous and Tribal Peoples Convention No. 169. (Recommended by Mexico)*

IRI: *not implemented*

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Recommendation n°54: *Consider ratifying and implementing the Indigenous and Tribal Peoples Convention No. 169. (Recommended by Norway)*

IRI: *not implemented*

PCPD response:

There has been no consultation with iwi/hapū/Māori or the general public on whether or not the New Zealand government should ratify and implement this Convention. The government should commit to a public and Māori-specific consultation schedule on the full set of recommendations with a particular focus on those it intends to reject or not fully accept.

Recommendation n^o45: *Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families ICRMW.* (Recommended by Mexico)

IRI: *not implemented*

PCPD response:

[...]

NZWLMI response:

Currently New Zealand is not considering ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, claiming there are ‘various laws to adequately protect all workers in New Zealand, including migrant workers, on an equal basis’. We believed this statement overstates the power of current legislation and monitoring capacity of the Immigration NZ and Department of Labour Inspectorates, numbering approximately 40 Compliance Officers and 150 Labour Inspectors respectively (Department of Labour, 2012).

The lack of inspectorate reach has been evident in concerns from organisations like Horticulture NZ that some operators are using illegal migrant workers, therefore undermining the profitability of other legitimate operators in this sector. While difficulties in researching migrant labour have been well-documented (see Lamare et al, 2010), concerns about the working conditions of some migrants have been highlighted. Typical of most western economies, migrants can be found working in precarious and marginalised work. Further, migrants constitute a substantial part of the informal labour market, and can be found working illegally in many sectors of the economy, but especially the primary sector (agriculture/ horticulture etc.) and service sector. Many migrant workers are predominately employed on casual, part-time or seasonal basis (see Anderson and Naidu, 2010; Anderson, Lamare, Hannif, 2011; Anderson & Naidu, 2012 (forthcoming)). The sectors congregated in typically have little or no trade union presence (Anderson and Naidu, 2010.)

Migrants are afraid to report poor treatment, especially if working in breach of visa conditions. A recent prosecution has highlighted these issues, where Fijian workers had paid to obtain work visas through an immigration consulting company. Enrolled on 12-week farm training programmers, believing they would be eligible to enter full-time employment on dairy farms (Leaman, 2011). However, the immigration visas were false and the jobs did not exist, leaving the workers in a position of being overstayers with no means of financial support.

This month, Asian students working at a central Auckland liquor store accused their employer of slave labour. Some of the group claim they have been paid as little as \$2 an hour (with a legal minimum wage in New Zealand of \$13) and they say they were kept in work by threats. The group came to New Zealand to study but were forced to work more than 20 hours a week, in breach of their student visa conditions. They said as well as being underpaid, they were threatened physically, refused holiday pay, and threatened with deportation (One News, 2012).

Far from isolated incidents, from our preliminary research we believe these cases are merely the ‘tip of the iceberg’ and cases that have come to the attention of authorities. Concerns about these types of work practice in New Zealand have been



highlighted by the authors of this submission to the Department of Labour and The International Labour Organisation (see Anderson, Lamare & Hannif, 2011 attached). From our investigation we believe at that this time New Zealand does not meet the conditions for ratification, 'considering that workers who are non-documented or in an irregular situation are frequently employed under less favourable conditions of work than other workers and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition' (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Preamble, 1990). Such precarious conditions for migrants relate to Article 25 of the Convention, and The ILO Decent Work Agenda.

Greater observance of and reporting on the nature of migrant work, its implications for domestic workers, as well as associated concerns; is needed. It would be useful if the Department of Labour were to specify the extent of their current monitoring, and how the findings will be communicated to interested parties.

Anonymous response:

The New Zealand Government has not ratified the ICRMW.

Recommendation n°47: *Ensure regular consultation with civil society in the follow-up to the UPR recommendations. (Recommended by Netherlands)*

IRI: *not implemented*

NZTCU response:

Though the Government has done a progress report on the UPR Recommendations and this is welcome and is available on the web site of the Ministry of Justice there is not a process of regular engagement and consultation with civil society groups about the follow-up to the recommendations.

Justice

Recommendation n°22: *Commit itself to combating institutional bias that can result in the overrepresentation of specific groups in the criminal justice system. (Recommended by Canada)*

IRI: *not implemented*

IPASP response:

Gone backwards with the introduction of "three Strikes" legislation

PCPD response:

Still almost no provision of high quality treatment services by the cultural groups over-represented in the criminal justice system and very little resource for preventative programmes focused on at-risk young children and their parents.

NZTCU response:

The National Government has pursued with legislation to privatise prison management. There is no evidence that private prisons will improve the outcomes for



Māori who are heavily and disproportionately over represented in the prison population. The legislation does nothing to address the specific and human rights issues of Māori in the criminal justice system.

Recommendation n°34: On the issue of privatization of prison management, keep in mind the need to ensure the humane treatment of prisoners. (Recommended by Japan)

IRI: *partially implemented*

IPASP response:

Gone backwards with the introduction of "Double bunking" and container cells as overcrowding exists. No guarantee that privatisation will overcome these problems.

HRF response:

NZ's efforts to implement this recommendation are reflected in the Corrections Act 2005. The Act contains an explicit reference (in section 5) to compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

The Corrections (Contract Management of Prisons) Amendment Act 2009 was enacted to facilitate the privatization of prison in NZ. It includes requirements that contractors comply with relevant international obligations and standards and report regularly to the Chief Executive of the Department of Corrections on a range of matters including staff training, prison programmes, prisoner complaints, disciplinary actions, and incidents involving violence or self-inflicted injuries. However, recent incidents have called into question how effective these protections are working.

Recommendation n°73: Adopt a more comprehensive definition of human trafficking. (Recommended by United States)

IRI: -

PCPD response:

The government should commit to a public consultation schedule on the full set of recommendations with a particular focus on those it intends to reject or not fully accept.

Women & Children

Recommendation n°6: Continue to adopt policies in order to achieve full gender parity. (Recommended by Angola)

IRI: *not implemented*

NZEI Te Riu Roa (NTRR) response:

The closing of the Pay and employment equity unit has meant that there is no central organisation to evaluate or moderate any measures undertaken in this area. In the education sector, education Support workers in early childhood centres remain marginalised and precariously unemployed despite the completion of a pay investigation signed off by the Ministry of Education and NZEI that found they were



being underpaid by between 3-6 dollars per hour. The Ministry of education admits that many of these workers should be permanent, but to date nothing has done despite union calls for action on these issues. In schools, women continue to be under-represented in senior management and principalships and government continues to disregard calls to education employing boards about EEO issues.

Recommendation n°9: Implement active policies to speed up and increase the representation of women, in particular in local governments, the judiciary and the health sector. (Recommended by Argentina)

IRI: *partially implemented*

NTRR response:

There is a campaign to urge women to apply for seats on Boards of Directors - although with such a limited number of these available it is difficult to see how such a campaign will make much difference without accompanying legislation.

Recommendation n°15: Take effective legal, institutional and awareness-building measures to combat domestic violence, racially-instigated crimes and trafficking of women for sexual exploitation. (Recommended by Bangladesh)

IRI: *not implemented*

PCPD response:

Funding has recently been cut for family violence prevention campaigns and few services have security of funding from government to plan, implement and evaluate services to address these issues.

Recommendation n°19: Reinforce the rights of women within the labour market, regardless of age or ethnicity. (Recommended by Brazil)

IRI: *not implemented*

NTRR response:

Very little has been done in this area. Government resists enactment of laws that would monitor women's rights in the labour market

Recommendation n°23: Establish targets for improving the representation of women in senior management in the public service and set measurable targets for realizing gender pay equality. (Recommended by Canada)

IRI: *not implemented*

NTRR response:

Nothing has been done in this area - in an environment where many public service employees are losing jobs it is deplorable that little gender data is being collected

Recommendation n°24: Take further measures to ensure more effective protection of children against abuse or neglect. (Recommended by Czech Republic)

IRI: *not implemented*

IPASP response:

Gone backwards with the introduction of "Working for Families" legislation. Government has spent a lot of time on reports - "Green Paper" and now acknowledges there needs to be more action. 1:5 children living in poverty. [...]



PCPD response:

The government had the opportunity to depoliticise the issue by establishing a cross-party parliamentary group focused on child abuse prevention but instead issued a 'Green Paper' with a limited scope and set of questions for public input that is unlikely to provide the opportunities for significant change that could be achieved otherwise.

NTRR response:

There is currently a green paper discussion document available for comment. NZEI is concerned that money will be taken from other effective child health and well-being programmes to fund targeted programmes against child abuse and neglect. All children must be protected. NZEI has long advocated for an Action Plan for all New Zealand Children

Recommendation n°25: *Raise the age of criminal responsibility so that it complies with relevant international standards.* (Recommended by Czech Republic)

IRI: *not implemented*

Anonymous response:

Section 21 of the Crimes Act 1961 has not been amended. The age of criminal responsibility continues to be 10 years.

Recommendation n°30: *Promote the very foundation of family and its associated values with a view to preventing domestic violence.* (Recommended by Iran)

IRI: *not implemented*

NTRR response:

There is little obvious work being done in this area - the income gap in NZ means poverty is impacting across society - this puts extreme stress on families and one of the outcomes is an increase in domestic violence and family break-ups

Recommendation n°50: *Commit more resources to the provision of services for children with disabilities.* (Recommended by Nigeria)

IRI: *not implemented*

IPASP response:

Resources are limited by the cost and it even depends which area of the country you live in as these are controlled by various agencies and if there is a high number of people with disabilities in the area then a grading system decides who gets what instead of the resources being assigned to the children regardless of where they live.

NTRR response:

It is disappointing to see that there has been a failure to commit funds for provision of special education for children with disabilities. Government caps on funding and hiring have meant that some services to disabled children - particularly deaf children are being decreased - although the government is saying front-line staff must work harder - in some cases there is such a depletion of services that it is difficult to see how any provision can be made.

Recommendation n°51: *Effectively coordinate its efforts to prevent child abuse and provide the needed assistance in that area.* (Recommended by Nigeria)

IRI: *not implemented*

IPASP response:

We now have the 3rd highest rate of child abuse. Social workers are overworked. Government is trying to cut costs.

PCPD response:

The government had the opportunity to depoliticize the issue by establishing a cross-party parliamentary group focused on child abuse prevention but instead issued a 'Green Paper' with a limited scope and set of questions for public input that is unlikely to provide the opportunities for significant change that could be achieved otherwise.

NTRR response:

There appears to be little done to date - what is needed is an overall plan to enable government departments to work together across a range of related issues - in particular the development of legislated government responsibilities to build children's needs into policy considerations and subsequent programmes and services; demonstrate leadership by making children central to decision making for all ministers. This would include ensuring that all decisions must pass the "is it good for children?" test and developing a baseline universal system of support to ensure meeting the needs of all children.

Recommendation n°52: Start discussions on introducing gender quotas on the boards of public limited companies. (Recommended by Norway)

IRI: partially implemented

NTRR response:

No real work apart from advertisements to encourage women to apply for positions on boards.

Recommendation n°62: Consider amending or repealing its legislation to close the gaps in the protection of women against discrimination. (Recommended by South Africa)

IRI: partially implemented

HRF response:

New Zealand has made significant efforts in the past to eliminate discrimination against women. However according to the Aotearoa New Zealand Non-Governmental Organisations Report the government's efforts towards eliminating discrimination is regressing. It needs to review legislation on abortion as it is still dealt with under the Crimes Act. The Abortion Supervisory Committee noted that the Act is demeaning to women by requiring a medical procedure to be considered under the Crimes Act. Another issue is the amendment to the Crimes Act which repealed the defence of "provocation." Perhaps this change may widen the gap in the protection of women as it has been said to be the only defence available for "Battered Woman Syndrome." Women are poorly represented on private sector boards and little is being done to change this.

NTRR response:

No work is being done in this area



Recommendation n°64: *Increase efforts to combat all forms of violence against women.* (Recommended by Sweden)

IRI: *not implemented*

IPASP response:

Very little progress made as currently domestic violence rates are among the highest.

PCPD response:

Funding has recently been cut for family violence prevention campaigns and few services have security of funding from government to plan, implement and evaluate services to address these issues.

HRF response:

Violence against women is still viewed as a major social problem in New Zealand, and remains one of the major causes of premature death in women. The Ministry of Women's Affairs is responsible for helping New Zealand meet its obligations under CEDAW to reduce the incidence of violence against women. The work of the Ministry to combat violence against women includes research scanning for incidences of violence, support provided for victims/survivors, analysis of conviction rates and review of literature surrounding best practice. The Ministry is also responsible for advertising targeted at victims of family violence, but the Ministry is notoriously underfunded.

NTRR response:

Many women's refuges have been closed due to decreases in government support and funding.

Anonymous response:

No new law has been proposed or come into force on the subject of violence against women, even in the wider context of domestic/family violence.

Recommendation n°72: *Look to identify a more accurate measure of the extent of domestic violence, thereby providing a tool to better measure the success of domestic violence prevention and conviction agencies and programmes.* (Recommended by United Kingdom)

IRI: *not implemented*

IPASP response:

This is an ongoing situation the burden of which is being placed on all in the community through current TV advertising yet our domestic violence rates are considered among the highest of OECD statistics.

HRF response:

Not implemented: The Ministry of Social Development has considered the weaknesses in present definitions of domestic violence, but no alternative or more comprehensive definition has been suggested.

The 2009 Crime and Safety Survey made no attempt to define 'domestic violence' despite using the term frequently.

NTRR response:

Continued reliance on reports to police means that much domestic violence does not get measured, More work needs to be done with NGOs working with the victims of domestic violence - including children being brought up in stressful situations where violence and abuse is the norm.

Other

Recommendation n°18: *Accomplish progressively the human rights goals set forth in Human Rights Council resolution 9-12. (Recommended by Brazil)*

IRI: *partially implemented*

HRF response:

NZ may be progressively achieving the goals and may have largely ratified all core HR treaties; have an A-status grade NHRI; there may be evidence of school participation in human rights education (although the key legislation Education Act 1989 does not explicitly require incorporation of human rights education into the curriculum); and there may be efforts to eliminate violence especially against women and children. However, New Zealand clearly has neither intention to ratify the Migrant Workers Convention nor some optional protocols.

Recommendation n°61: *Consider adopting its National Plan of Action for Human Rights. (Recommended by South Africa)*

IRI: *not implemented*

HRF response:

In 2005, the Human Rights Commission published the first New Zealand Action Plan for Human Rights 2005 - 2010. The 2008 progress report by the Human Rights Commission showed that there was significant progress in many areas. While a revised Plan of Action it was published last year, it was developed and published by the Human Rights Commission, and thus not a national plan at all. The government has neither adopted it, included it in national planning, nor committed funding to implement it.



Methodology

A. First contact

Although the methodology has to consider the specificities of each country, we applied the same procedure for data collection about all States:

1. We contacted the Permanent Mission to the UN either in Geneva (when it does exist) or New York;
2. We contacted all NGOs which took part in the process. Whenever NGOs were part of coalitions, each NGO was individually contacted;
3. The National Institution for Human Rights was contacted whenever one existed.

We posted our requests to the States and NHRI, and sent emails to NGOs.

The purpose of the UPR is to discuss issues and share concrete suggestions to improve human rights on the ground. Therefore, stakeholders whose objective is not to improve the human rights situation were not contacted, and those stakeholders' submissions were not taken into account.

However, since the UPR is meant to be a process which aims at sharing best practices among States and stakeholders, we take into account positive feedbacks from the latter.

B. Processing the recommendations

The persons we contact are encouraged to use an Excel sheet we provide which includes all recommendations received by the State reviewed.

Each submission is processed, whether the stakeholder has or has not used the Excel sheet. In the latter case, the submission is split up among recommendations we think it belongs to. Since such a task is more prone to misinterpretation, we strongly encourage stakeholders to use the Excel sheet.

If the stakeholder does not clearly mention neither that the recommendation was “fully implemented” nor that it was “not implemented”, UPR Info usually considers the recommendation as “partially implemented”, unless the implementation level is obvious.

UPR Info retains the right to edit comments that are considered not to directly address the recommendation in question, when comments are too lengthy or when comments are defamatory or inappropriate. While we do not mention the



recommendations which were not addressed, they can be accessed unedited on the follow-up webpage.

C. Implementation Recommendation Index (IRI)

UPR Info developed an index showing the implementation level achieved by the State for the recommendations received at the UPR.

The **Implementation Recommendation Index (IRI)** is an individual recommendation index. Its purpose is to show an average of stakeholders' responses.

The *IRI* is meant to take into account stakeholders disputing the implementation of a recommendation. Whenever a stakeholder claims nothing has been implemented at all, the index score is 0. At the opposite, whenever a stakeholder claims a recommendation has been fully implemented, the *IRI* score is 1.

An average is calculated to fully reflect the many sources of information. If the State under Review claims that the recommendation has been fully implemented, and a stakeholder says it has been partially implemented, the score is 0.75.

Then the score is transformed into an implementation level, according to the table below:

Percentage:	Implementation level:
0 – 0.32	Not implemented
0.33 – 0.65	Partially implemented
0.66 – 1	Fully implemented

Example: On one side, a stakeholder comments on a recommendation requesting the establishment of a National Human Rights Institute (NHRI). On the other side, the State under review claims having partially set up the NHRI. As a result of this, the recommendation will be given an *IRI* score of 0.25, and thus the recommendation is considered as “not implemented”.

Disclaimer

The comments made by the authors (stakeholders) are theirs alone, and do not necessarily reflect the views, and opinions at UPR Info. Every attempt has been made to ensure that information provided on this page is accurate and not abusive. UPR Info cannot be held responsible for information provided in this document.

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