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UNIVERSAL PERIODIC REVIEW

Report of the Working Group on the Universal Periodic Review *

New Zealand

Addendum

**Views on conclusions and/or recommendations, voluntary commitments
and replies presented by the State under review**

* The present document was not edited before being sent to the United Nations translation services.

**RESPONSE OF THE GOVERNMENT OF NEW ZEALAND TO
RECOMMENDATIONS IN THE REPORT OF 11 MAY 2009
OF THE WORKING GROUP ON THE UNIVERSAL
PERIODIC REVIEW (A/HRC/12/8)**

1. New Zealand welcomes the recommendations made during its Universal Periodic Review on 7 May 2009.** New Zealand has given the recommendations careful consideration, and its responses are as follows:

International instruments

Recommendations 1 and 2

2. New Zealand **does not accept** these recommendations. At present, New Zealand is not considering ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. New Zealand has various laws to adequately protect all workers in New Zealand, including migrant workers, on an equal basis.

Recommendation 3

3. New Zealand **accepts** the recommendation to consider ratifying the Optional Protocol to UNCROC relating to the sale of children, child prostitution and child pornography. New Zealand has made a number of legislative amendments to enable ratification, and work is underway to progress the remaining amendments.

Recommendation 4

4. New Zealand **does not accept** the recommendation to ratify the Optional Protocol to ICESCR. While New Zealand is not considering ratification at this stage, this treaty may be reviewed later.

Recommendations 5, 6 and 7

5. New Zealand is party to six of the eight fundamental ILO conventions. New Zealand **does not accept** the recommendations to consider ratifying the remaining two fundamental ILO conventions or ILO Convention No. 169. New Zealand will not ratify conventions or apply international standards that are inconsistent with New Zealand's unique legal, constitutional and Treaty of Waitangi arrangements including ILO Convention No. 169.

Recommendations 8, 9 and 10

6. New Zealand has indicated that the Government would like to **move to support** the Declaration on the Rights of Indigenous Peoples, provided that New Zealand can protect the unique and advanced domestic framework that has been developed for the resolution of issues

** For the recommendations, which are not included due to word limitations, please refer to the report of the UPR Working Group (A/HRC/12/8) of 11 May 2009 (www.ohchr.org/EN/HRBodies/UPR/PAGES/NZSession5.aspx).

related to indigenous rights. That framework has been developed in the context of New Zealand's legal arrangements and democratic processes.

Recommendation 11

7. New Zealand **accepts** the recommendation on the International Convention for the Protection of All Persons from Enforced Disappearance. New Zealand is examining the implications of the Convention and what, if any, changes to domestic law and practice would be required to enable New Zealand to become a party to the treaty.

Recommendation 12

8. New Zealand **accepts** this recommendation and will consider accepting the article 14 complaint procedure under CERD.

Recommendation 13

9. New Zealand did not attend the Durban Review Conference in April 2009 and is not in a position to adopt or endorse the final outcome document. As a strong supporter of CERD, New Zealand remains firmly committed to combating all forms of racism, racial discrimination, xenophobia, and related intolerance.

Recommendation 14

10. New Zealand **accepts** the recommendation to accomplish progressively the goals of HRC resolution 9/12 and is already implementing or making good progress in accomplishing all of these goals.

Constitutional and legislative framework

Recommendation 15

11. New Zealand **accepts** this recommendation. New Zealand gives effect to international human rights obligations by general and specific legislation and by government policies and practices. New Zealand will continue to review whether further legislation, policies or practices are required.

Recommendation 16

12. New Zealand **agrees** that all international human rights obligations should be appropriately implemented in domestic legislation, policies and practices. However, New Zealand does not accept that all obligations should be incorporated into the Bill of Rights Act 1990, which is concerned only with primary civil and political rights.

13. New Zealand also does not accept the recommendations that legislation must be in accordance with the Bill of Rights Act and cannot limit the Act's scope. Consistent with New Zealand's present constitutional structure, the Bill of Rights Act and other human rights instruments do not directly limit Parliament's legislative powers.

14. The Bill of Rights Act requires that all legislation is reviewed for compliance with national and international human rights standards. Any inconsistency with the Bill of Rights Act is reported to the New Zealand Parliament. Further, once enacted, legislation is required, so far as possible, to be interpreted consistently with affirmed rights.

Recommendation 17

15. New Zealand **agrees** with the premise that economic, social and cultural rights should be appropriately implemented in domestic law but only accepts in part that these rights are to be implemented by justiciable legislative incorporation. New Zealand implements economic, social and cultural rights through subject-specific legislation, providing, for example, publicly funded education, health care and social assistance, and also through government policies and practices.

Recommendation 18

16. Understanding that the recommendation is made in the context of the specification in New Zealand legislation of enumerated, rather than open-ended, grounds of prohibited discrimination, New Zealand **does not agree** that its domestic laws are not fully compliant with ICCPR. The enumerated grounds address all principal discrimination concerns and are reviewed periodically to ensure that they protect vulnerable groups in New Zealand.

Recommendations 19 and 20

17. New Zealand **agrees to consider** the recommendations to take further measures to ensure full and consistent protection of human rights in domestic law and policies; and to take action to provide constitutional protection to both national and international human rights acts and standards.

Recommendation 21

18. New Zealand **agrees** with the underlying premise of this recommendation to continue the public discussion on the status of the Treaty of Waitangi. New Zealand will encourage that discussion though it does not assume that the current mechanisms in place are inadequate or that entrenchment of the Treaty is the only possible outcome of the public discussion.

Human rights policy measures

Recommendation 22

19. New Zealand **accepts** this recommendation in part. New Zealand supported the development of the New Zealand Action Plan for Human Rights, and recognises that the understanding and effective promotion of human rights is a constantly evolving process. Given the Plan's wide range of issues and the scale of factors that need to be considered, the New Zealand Government considers that the most suitable approach is for government departments to consider the appropriateness of implementing the Plan's priorities for action as part of normal business.

Cooperation with human rights mechanisms

Recommendations 23 and 24

20. New Zealand **accepts** these recommendations, and has always acted consistently with the recommendations of the international treaty monitoring bodies and the special procedures on indigenous peoples.

Equality and non-discrimination

Recommendations 25, 26, 27, 28, 30, 31 and 32

21. 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.

Recommendation 29

22. New Zealand **agrees** with the recommendation to address all forms of political, economic and social discrimination against Māori, and will continue to strive to achieve it. For example, as part of the Confidence and Supply Agreement between the National Party and the Maori Party, both parties agree to establish a group, by no later than early 2010, to consider constitutional issues.

Recommendations 33 and 34

23. New Zealand **accepts in part** the recommendations to continue efforts to prevent discrimination in the criminal justice system and to commit itself to combating overrepresentation of specific groups. The New Zealand Government does not agree that the disproportionate representation of certain ethnic groups in the criminal justice system, such as Māori, is due to institutional bias. Other factors are responsible for this outcome. The Government recently began work to examine and address the drivers of crime, which will include analysis of the social and economic factors that contribute to criminal behaviour and methods to address the overrepresentation of certain groups in the criminal justice system.

Recommendation 35

24. New Zealand **accepts** this recommendation. New Zealand is committed to taking further steps to eradicate all remaining expressions of racism, racial discrimination, xenophobia and related intolerance but notes that these efforts be balanced against other fundamental rights such as freedom of expression.

Recommendation 36

25. New Zealand **accepts** this recommendation. The New Zealand Curriculum makes explicit reference to cultural diversity and inclusion as two of the eight principles that should underpin all school decision-making and the fight against xenophobia and racism falls within these principles.

Recommendation 37

26. New Zealand **accepts** the recommendation to protect the interest of migrants and minority groups, including the Asian and Pacific people, from all forms of racial stereotyping and derogatory treatment.

Recommendations 38 and 39

27. New Zealand **accepts** these recommendations but will not be able to make progress in this area in the medium term due to higher priority work.

Recommendation 40

28. New Zealand **accepts** the recommendation to consider amending or repealing its legislation to close the gaps in the protection of women against discrimination. The New Zealand Government is not aware of any legislation that has that effect.

Recommendations 41, 42, 43, 44 and 45

29. New Zealand **agrees** with the goal of reinforcing the rights of women in society, in particular in the labour market and in Government and other leadership roles. New Zealand does not consider that legislative gender quotas or targets are the best mechanism to achieve these goals. There are a number of Government programmes focussed on achieving greater participation and gender parity.

Recommendation 46

30. New Zealand **accepts** the recommendation to commit more resources to the provision of services for children with disabilities. A number of programmes are currently in place in New Zealand to support and improve the lives of children with disabilities, particularly in the education and health sectors.

Right to life, liberty and security of the person

Recommendation 47

31. New Zealand **accepts** this recommendation. The Corrections Act 2004 requires that all prisoners' sentences are administered in a safe, secure, humane and effective manner. Proposed amendments to the Act allowing for the privatisation of prisons will uphold these requirements.

Recommendation 48

32. New Zealand agrees that, consistently with international standards, children and young people subject to criminal charges should be treated in accordance with their age and capacity. New Zealand legislation and court procedure makes extensive special provision for such children and young people. However, New Zealand **does not accept** that it is also necessary to increase the age of criminal responsibility, in addition to these measures.

Recommendation 49

33. New Zealand **is working towards** acceptance of this recommendation. Substantial improvements have been made to prisons to ensure that juvenile offenders are held separately from other prisoners. For instance, New Zealand has separate units for the small number of young male offenders (1.25% of all prisoners) under the age of 18 who are sentenced to imprisonment for serious crimes. There is no separate unit for female prisoners under the age of 18 because there have been fewer than five at any time, and special management procedures are followed for such prisoners. New Zealand recognises that further work is required regarding other custodial facilities.

Recommendations 50 and 51

34. Government is to make the community safer for children. This includes protecting children against abuse and neglect. The Government has proactively sought to address violence against children, introducing multiple initiatives targeted to child violence prevention and increasing dedicated funding annually to implement the initiatives.

Recommendations 52, 53, 54 and 55

35. New Zealand **accepts** these recommendations and is continuing to take an active approach to address domestic violence and violence against women. The New Zealand Government has recently launched a Campaign for Action on Family Violence, which aims to stimulate change in the way people think and act about domestic violence. Domestic violence laws have also been reviewed to strengthen police powers and responses to family violence incidents. As part of this review, Parliament is currently considering legislation proposing a number of substantive and procedural changes to the protection order regime. In particular, senior Police employees would be able to make 'on-the-spot protection orders' to address the immediate safety of victims.

Recommendation 56

36. New Zealand **accepts** the recommendation to record and document cases of trafficking in women and children as well as exploitation of migrant women and girls in prostitution, and share the information with other countries in the region where appropriate.

Recommendation 57

37. New Zealand **does not accept** the recommendation to adopt a more comprehensive definition of human trafficking. New Zealand applies the definition of trafficking in the Protocol

to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime.

Indigenous peoples

Recommendation 58

38. New Zealand **accepts** the recommendation to continue the new dialogue between the State and Maori regarding the Foreshore and Seabed Act 2004, but notes that the nature of any new mechanism, including whether it involves prior informed consent, has not yet been decided.

39. In March 2009, the New Zealand Government announced the establishment of an expert and independent Ministerial panel to investigate whether the Foreshore and Seabed Act 2004 effectively recognises and provides for customary and public interests in the coastal marine area. This review will provide opportunities for Māori and other people and groups with interests in the foreshore and seabed to provide their views and proposals.

40. The Ministerial panel will provide a written report to the Attorney General by the end of June 2009 for the Government's consideration. The Government will then consider that advice to decide if legislative change is required.

Bearing in mind the ongoing review process, it is not appropriate for the Government to preempt the future recommendations of the Ministerial panel by agreeing to the nature of any future mechanism.

Recommendation 59

41. New Zealand **accepts** the recommendation to pursue efforts to settle comprehensively land claims of the indigenous population. The New Zealand Government's policy is to reach comprehensive settlements of all historical claims under the Treaty of Waitangi by 2014. The Government is committing significant resources to the settlement process and good progress continues to be made in settling claims.

Recommendation 60

42. New Zealand **agrees** with the underlying principle of this recommendation and aims to provide fair and durable redress to Māori for the settlement of their historical claims under the Treaty of Waitangi.

43. The New Zealand Government is committed to settling all historical claims under the Treaty of Waitangi by 2014. While the settlements framework does not apply a strict compensation or damages and losses approach, redress is provided in relation to historical breaches of the Treaty of Waitangi, including those that resulted in the loss of land. Redress takes the form of both cash and the transfer of land.

Recommendation 61

44. New Zealand **accepts** the recommendation to pursue efforts to improve Māori participation in all areas of social life.

Human rights and counter-terrorism

Recommendation 62

45. New Zealand enacted several amendments to the Terrorism Suppression Act (TSA) in 2007. At present, there are no further amendments planned.

46. New Zealand **agrees** that judicial oversight is necessary and important for terrorism-related cases. The TSA allows courts to consider classified information without disclosure to defendants but does provide for a summary of the classified information to be provided to defendants if certain conditions are satisfied. In addition, the TSA preserves the right to judicial review of all decisions relating to the making of a designation under the Act.

Recommendation 63

47. New Zealand **agrees** with the underlying premise of this recommendation that procedural guarantees in anti-terrorist legislation are vital and must be applied in accordance with international human rights obligations. New Zealand notes that current legislative provisions meet these requirements.

UPR follow-up

Recommendation 64

48. New Zealand **accepts** the recommendation to have regular consultation with civil society in the follow-up to the UPR recommendations.
