



Peace Movement Aotearoa

PO Box 9314, Wellington 6141, Aotearoa New Zealand. Tel + 64 4 382 8129,
fax + 64 4 382 8173, email pma@xtra.co.nz web <http://www.converge.org.nz/pma>

NGO Report to the Committee on the Elimination of Racial Discrimination

With regard to the New Zealand government's Consolidated Periodic Report under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination¹

Introduction

1. Peace Movement Aotearoa is the national networking peace organisation in Aotearoa New Zealand. We are a Pakeha (non-indigenous) organisation, and our membership and networks mainly comprise Pakeha organisations and individuals.

2. As the realisation of human rights is integral to the creation and maintenance of peaceful societies, promoting respect for them is a key aspect of our work. In the context of Aotearoa New Zealand, our main focus in this regard is on support for indigenous peoples' rights - in part as a matter of basic justice, as the rights of indigenous peoples are particularly vulnerable where they are outnumbered by a majority and often ill-informed non-indigenous population as in Aotearoa New Zealand, and because this is a crucial area where the performance of successive governments has been, and continues to be, particularly flawed.

3. There has been a persistent pattern of government actions, policies and practices which discriminate against Maori, historically and in the present day. Underlying these has been the denial of the inherent and inalienable right of self-determination - of the self-determination that was exercised by Maori prior to the arrival of non-Maori; which was proclaimed internationally in the 1835 Declaration of Independence; the continuance of which was guaranteed in the 1840 Treaty of Waitangi (the Treaty); and, in more recent years, was confirmed as a right for all peoples in the international human rights covenants.

4. The historical and present day discrimination against, and denial of the rights and freedoms of, Maori stem from the failure of successive New Zealand (NZ) governments, including the current one, to honour that guarantee in the Treaty. This can therefore be viewed as a source of fundamental discrimination from which other discriminations against Maori arise, and many of the concerns raised in our Report relate to the government's approach to the Treaty.

5. During the time covered by the Consolidated Periodic Report (the Periodic Report), and since, the government has engaged in a concerted effort to diminish respect for the status of

¹ CERD/C/NZL/17, 18 July 2006

the Treaty, and this has created a climate where further erosion of the human rights and fundamental freedoms of Maori is more likely to occur.

6. Our Report covers issues that are currently, or have been in the past, a specific focus of our work. We wish to emphasize that the comments which follow are from our perspective as a Pakeha organisation; we do not, nor would we, purport to be speaking for Maori in any sense.

7. We appreciate this opportunity to contribute to the assessment of the Periodic Report, and thank you for your attention to our comments.

Overview

8. During the time covered by the Periodic Report, there have been a considerable number of developments which are of deep concern with regard to the government's compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention), and in particular with the Committee on the Elimination of Racial Discrimination (CERD) General Recommendation No. XXIII: Indigenous Peoples. There has been an ongoing pattern of denial of the human rights of Maori, along with attempts to diminish the status of the Treaty and thus of Maori collectively and individually.

9. In this Report we cover some of those developments, referenced to the relevant paragraphs in the Periodic Report. It should be noted we have included some comment on developments since the time covered by the Periodic Report because they are directly related to points referred to (or not, in some cases) in the Periodic Report, and so that the Committee has up to date information on matters of concern.

10. There are ten sections below, with comment on:

A. The foreshore and seabed legislation and the government's response to the CERD decision on the legislation² (Periodic Report, paragraph 64);

B. The visit of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples³ (not referred to in the Periodic Report);

C. Sustainable Water Programme of Action (not referred to in the Periodic Report);

D. Legislation and policy: **i.** Maori Purposes Bill / Treaty of Waitangi Amendment Act (Periodic Report, paragraph 34); **ii.** Review of targeted policies and programmes (Periodic Report, paragraphs 54 and 55); and removal of references to the Treaty in the **iii.** Principles of the Treaty of Waitangi Deletion Bill (not referred to in the Periodic Report), **iv.** education Curriculum (not referred to in the Periodic Report), and **v.** health and disability sector (related to paragraphs 80 and 140 of the Periodic Report);

E. "Responses to Maori offending" (Periodic Report, paragraphs 157 to 166);

² CERD/C/DEC/NZL/1. Decision 1 (66): New Zealand, 27/04/2005. New Zealand Foreshore and Seabed Act 2004

³ E/CN.4/2006/78/Add.3. Mission to New Zealand, the Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, Rodolfo Stavenhagen, 13 March 2006

- F. The Treaty of Waitangi Information Programme (Periodic Report, paragraph 27);
- G. The government's position on the Declaration on the Rights of Indigenous Peoples (Periodic Report, paragraph 16);
- H. Consultation with Maori on international agreements (not referred to in the Periodic Report);
- I. Constitutional arrangements (not referred to in the Periodic Report); and
- J. Impact of NZ companies and government investments on indigenous communities in other parts of the world (not referred to in the Periodic Report).

A. The foreshore and seabed legislation and the government's response to the CERD decision on the legislation (Periodic Report, 64)

11. During the time covered by the Periodic Report, the foreshore and seabed legislation has been a particular concern because it is a contemporary issue that illustrates how readily the human rights and fundamental freedoms of Maori have been, and are, set aside in Aotearoa New Zealand. Rather than detailing our opinion of the legislation and the issues around it in the body of this Report, attached as Document 1 is our submission⁴ to the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples when he visited here in November 2005, as the submission mainly focussed on the legislation.

12. That submission includes in the first section comment on, and examples of: the human rights and fundamental freedoms denied to Maori by the enactment of the foreshore and seabed legislation; the lack of consideration by the government of the non-discriminatory alternatives which were available; how the government's response to the Court of Appeal ruling on the foreshore and seabed created a climate that encouraged racial disharmony and diminished respect for Maori and for their rights and freedoms; the creation of an impression that there was united Pakeha support for the legislation which even if accurate (which it was not, as we illustrate) would not have justified the government's denial of Maori rights and freedoms, and discrimination against them; and the lack of an effective remedy for human rights violations, including the decision by the Office of Human Rights Proceedings not to provide legal representation for a complaint about the Foreshore and Seabed Act.

13. The submission also includes a reference to the government's unfortunate reaction to the CERD decision on the Foreshore and Seabed Act. As the Aotearoa Indigenous Rights Trust and others have provided you with detailed information on this, we will not cover that further here except to say that rather than promoting respect for Maori and their human rights, for the Convention and its monitoring body, the government's response did the exact opposite.

14. With regard to paragraph 64 of the Periodic Report 'Foreshore and Seabed Act 2004', our feedback to the Ministry of Foreign Affairs on the draft Periodic Report pointed out:

⁴ Document 1, attached: Peace Movement Aotearoa (November 2005) Submission to the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples

"This section provides an extremely restricted view of the Foreshore and Seabed Act and makes no reference to the ongoing and substantial level of opposition to the legislation among Maori. While the number of "groups" that have applied to the Maori Land Court or entered into direct negotiations with the government is specified, the number of hapu and iwi that have not "engaged" should be included to provide balance.

This section does not substantively address any of the concerns stated in the CERD decision on the Foreshore and Seabed Act: the apparent haste with which the legislation was enacted, the insufficient consideration of alternatives, the discriminatory aspect of the legislation, the extinguishment of the possibility of establishing Maori customary titles over the foreshore and seabed, and the failure to provide a guaranteed right of redress. Similarly, the recommendation that the government resume dialogue with Maori in order to seek ways of mitigating its discriminatory effects is not addressed.

With regard to CERD's recommendation that "all actors in New Zealand will refrain from exploiting racial tensions for their own political advantage", the draft Report should include an explanation of the government's failure to do this. For example, the Prime Minister's public comments with regard to the CERD decision, and her comments during the election last September that the Maori Party would be the "last cab off the rank" in her consideration of possible coalition partners - both of which diminished respect for Maori and for their human rights, were not conducive to racial harmony, and were clearly made for political advantage."⁵

15. With regard to the first point above, the number of "groups" that have not applied to the Maori Land Court or entered into direct negotiations remains unspecified in the Periodic Report. The government appears to recognise 97 hapu and iwi (as listed on the back of the 2006 Census individual form⁶) - many, but not all, have been affected by the legislation, so the 9 "groups" referred to in the Periodic Report (at paragraph 64: 3, 4 and 9) seems to indicate a less than enthusiastic response from Maori.

16. Furthermore, having had their foreshore and seabed areas confiscated by the legislation, it is hardly surprising that some hapu and iwi are attempting to obtain some form of legal recognition of their rights, albeit in a substantially reduced form because that is all that is now available to them. Whether or not such recognition will result in any practical level of authority and control over their foreshore and seabed areas remains to be seen; but given the dismal record of NZ governments in this regard, it would seem unlikely.

17. There is another section of the Periodic Report we wish to draw your attention to in connection with the foreshore and seabed, as the passage of that legislation provides an illustration of its unfortunate effects - that is, the section on Waitangi Tribunal (the Tribunal) hearings of contemporary matters (paragraphs 37 and 38), in particular the deeply disturbing, although accurate, statement that the Tribunal's recommendations have not always been followed because: "they frequently relate to government policy decisions in

⁵ Peace Movement Aotearoa (February 2006) Feedback on the draft 15th, 16th and 17th Consolidated Periodic Report under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination

⁶ New Zealand Census of Population and Dwellings (March 2006) Sample Form at <http://www.stats.govt.nz/NR/rdonlyres/DBBC5122-27FD-4ECD-B72A-8CEAED40C5E0/0/SampleBilingualIF.pdf>

the course of which the Government has itself made an assessment of the relationship between the Treaty of Waitangi and the particular policy".

18. The government's "assessment of the relationship between the Treaty and [any] particular policy" is clearly determined by political expediency, rather than by a commitment to respecting the human rights of Maori and acting in a non-discriminatory manner towards them. The Tribunal, although established by government and confined by its legislation, is a body with considerable expertise in Treaty matters and we note that in 'Mission to New Zealand' the Special Rapporteur recommended: "The Waitangi Tribunal should be granted legally binding and enforceable powers to adjudicate Treaty matters with the force of law."⁷

B. The visit of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples (not referred to in the Periodic Report)

19. There is no reference in the Periodic Report to the visit of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples in November 2005, or to his subsequent report 'Mission to New Zealand'⁸, although he commented on many matters of direct relevance to the Convention and General Recommendation XXIII.

20. The government chose to respond to his recommendations in a similar way as they did to the CERD decision on the foreshore and seabed legislation, in this instance by publicly deriding the Special Rapporteur and the Commission on Human Rights, and stating they would ignore the recommendations. Below is a sample of excerpts from media reports to illustrate this:

"Deputy Prime Minister Michael Cullen has described the final report of the UN Special Rapporteur for indigenous issues as disappointing, unbalanced and narrow. ... "New Zealand is one of only a handful of countries with a significant indigenous population that has put in place sophisticated mechanisms, mandated by law, to address historical and contemporary grievances. We must have got it right as UN human rights treaty bodies regard our efforts as exemplary.""⁹

"A highly critical United Nations report has sparked outrage in Government ranks after it issued sweeping criticisms about the plight of Maori and recommended overturning the Foreshore and Seabed Act. The Government is thumbing its nose at the report, saying it has no plan to act on its recommendations and accusing its author of gross inaccuracies. But sensitivity over its contents was clear yesterday, when it emerged that ministers had had the report for several weeks and had chosen to make no public statements about its availability. Asked why yesterday, Deputy Prime Minister Michael Cullen responded: "Why should we? It's not the Government's report, it's the UN's report." The Government moved to discredit the report yesterday as the work of "just one person" and Dr Cullen said it "probably underlines the fact that the committee it comes from is being wrapped up and

⁷ E/CN.4/2006/78/Add.3

⁸ Ibid

⁹ Cullen, Michael (4 April 2006) 'Response to UN Special Rapporteur report', at <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=25366>

reformed". National Party deputy leader Gerry Brownlee said the report should be tossed in the bin."¹⁰

"Prime Minister, Helen Clark, dismissed the report as unbalanced. Deputy Prime Minister, and the architect of the Foreshore & Seabed Act, Michael Cullen, said the Special Rapporteur went well beyond his brief. The government will make what Dr Cullen calls a brief and carefully worded formal response to the UN; but will not act on its recommendations."¹¹

"The Government has slammed a special United Nations Human Rights Commission report on the situation of Maori in New Zealand as unbalanced and narrow and effectively accused it of interference. Deputy Prime Minister Michael Cullen said the report by Professor Rodolfo Stavenhagen "was an attempt to tell us how to manage our political system". "That may be fine in countries without a proud democratic tradition but not in New Zealand, where we prefer to debate and find solutions to these issues ourselves." The highly critical report comes as an embarrassment to a Government that has so wholeheartedly embraced the United Nations. ... Dr Cullen said the report was full of errors of fact and interpretation and "probably underlines the fact that the committee it comes from is being wrapped up and reformed".¹²

C. Sustainable Water Programme of Action (not referred to in the Periodic Report)

21. There is no mention in the Periodic Report of the government's Sustainable Water Programme of Action¹³ (the Programme) which began in 2003, even though it has been developed within the time frame covered by the Periodic Report, and the consultation meetings with Maori were held in February and March 2005.

22. The Programme relates to fresh water, and while its sustainable aspects are admirable in intent, the way the government is going about implementing it is not. There are two main concerns with the Programme: its confiscatory aspects, and an increase in market mechanisms to manage water supply and use.

23. With regard to the confiscatory aspects, as with the foreshore and seabed, the government is intent on taking from Maori that which is rightfully theirs, fresh water in this instance, in the interests of "all New Zealanders" - an assimilationist phrase that seems to appear with increasing frequency in the government's public statements and policy documents, and one which often mysteriously seems to exclude Maori.

24. The government's own report¹⁴ which summarises the feedback from the consultation meetings with Maori says:

¹⁰ Watkins, Tracy (5 April 2006) 'Labour defiant over UN rebuke', The Dominion Post

¹¹ Radio New Zealand (5 April 2006) 'UN Special Report celebrated by Maori - dismissed by government'

¹² Young, Audrey (5 April 2006) 'UN foreshore report 'unbalanced'', New Zealand Herald, at http://www.nzherald.co.nz/section/story.cfm?c_id=1&ObjectID=10376141

¹³ The main index page with information about the Programme is at <http://www.mfe.govt.nz/issues/water/program-action/index.html>

¹⁴ Wai Ora: Report of the Sustainable Water Programme of Action Consultation Hui (July 2005), at <http://www.mfe.govt.nz/publications/water/wpoa-hui-report-jul05/html/index.html>

"The absence of any discussion of high-level Treaty issues (including issues around ownership of water) from the Sustainable Water Programme of Action discussion document *Freshwater for a sustainable future* was criticised at many hui. There was also particularly strong criticism from many of the hui that the discussion document makes little or no reference to Maori viewpoints, issues, and values. The absence of such references was alienating to many. Concerns were also raised that proposed actions to enhance Maori participation was only listed 11 out of 13 actions, when it should be at or near the top of the list, to reflect the Treaty relationship. The lack of prominence given to the issues for Maori has led to some participants in the hui being unwilling to fully engage." and

"Many participants called for the Treaty to be a factor in determining the appropriate level of Maori involvement in freshwater management, and wanted consideration of the Treaty relationship to be a priority within the Sustainable Water Programme of Action. Many speakers were of the view that Treaty-based relationship and ownership issues must be addressed before any major changes to water management can be considered, with some stating that this was especially so where changes which might result in auctioning or tendering of water rights, or privatisation of the resource, were being considered."¹⁵

25. Yet the government appears to be going ahead with the Programme as though these issues were never raised; and in an apparent denial of the rights of Maori with respect to water, their associated water awareness campaign has the logo 'New Zealand: 4 million careful owners'.¹⁶

26. A briefing paper 'Fresh water: Issues for Maori'¹⁷ is attached for your information as it provides details about the interests and rights of Maori in relation to water, the human rights implications of the Programme, and also some comment on the increase in market mechanisms to manage water supply and use.

27. Since that briefing paper was published, a new website, HydroTrader¹⁸, was launched by a private company to facilitate trading in water permits - "Buying, selling or leasing water permits is now not only possible, but made easy for you with HydroTrader"¹⁹.

28. Curiously, given that the government has created the conditions which have allowed this to occur, the Minister for the Environment David Benson-Pope was reported as being: "not impressed with a new auction website launched this week, describing it as a "de facto water market" which the Government had no intention of establishing."²⁰ However, a spokesperson for the Canterbury regional council: "said the new website had the potential to improve transparency surrounding water-use consents and increase the efficiency of water use"²¹. Additionally: "Meridian Energy Ltd, the biggest water-user on the Waitaki River, has been calling for tradeable and transferable water rights for more than a year."²²

¹⁵ 'Key Issues Emerging from Consultation', in Wai Ora, above, at <http://www.mfe.govt.nz/publications/water/wpoa-hui-report-jul05/html/page5.html>

¹⁶ The campaign web site is at <http://www.4million.org.nz/water/>

¹⁷ Document 2, attached: Bargh, M. (September 2006) Fresh water: issues for Maori

¹⁸ "HydroTrader is a New Zealand company that has been set up to make the trading of water permits easy, anywhere in the country" at <https://www.hydrotrader.co.nz/auction/>

¹⁹ https://www.hydrotrader.co.nz/auction/learn_more.html

²⁰ Bruce, Donald (30 March 2007) 'NZ water for trade on new website', Otago Daily Times, at <http://www.odt.co.nz/article.php?refid=2007,03,30,1,00100,bc92fb3aabe33495809fcc637dc1c290§=0>

²¹ Ibid

²² Ibid

D. Legislation and policy

i. Maori Purposes Bill / Treaty of Waitangi Amendment Act (Periodic Report, 34)

29. In paragraph 34 of the Periodic Report, the government refers to its intention to set a cut-off date for the lodging and settlement of Treaty claims as follows:

"There is general agreement that the final resolution of all significant historical claims will benefit Maori, the Crown and the community generally. Opinions differ on a reasonable time frame. The Government has stated its intention to set a cut-off date of the end of 2008 for the lodging of historical claims, with the objective of having claims settled by 2020. This is considered fair and realistic, recognizing that time must be allowed for genuine negotiations and due process on both sides. "

30. This paragraph in itself provides a concise illustration of the fundamental problems with the government's approach to Maori and to the Treaty settlements process. The concept of "final resolution" conveniently ignores the injustices inherent in the process, as well as the ongoing contemporary breaches of the Treaty which produce new injustices. The "intention" is that of the government, not one reached by mutual agreement with Maori, making the reference to "genuine negotiations" even more ironic. As to this being "considered fair and realistic", perhaps the government chooses to see it as such, but we certainly do not.

31. In keeping with their stated intention, on 13 June 2006 the government introduced the Maori Purposes Bill, omnibus legislation to amend four statutes including the Treaty of Waitangi Act 1975. The amendments to the latter included a closing date of 1 September 2008 for new historical Treaty claims to be submitted to the Tribunal and defined a "historical Treaty claim" as encompassing claims relating to events occurring before 21 September 1992.

32. There was no consultation with hapu and iwi before the introduction of the Bill, let alone anything resembling an opportunity to give their informed consent. Similarly, there was no discussion with them about whether or not a deadline is necessary, what a reasonable time period for that might be, and what resources would be provided to assist in meeting any agreed deadline.

33. Instead, Maori were reduced to making submissions to the Select Committee along with everyone else who wished to do so, and overwhelmingly stated (as did Pakeha submitters) their opposition to the unilateral imposition by the government both of a cut-off date, and of an arbitrary date defining what was a historical claim. The submissions were ignored, and the Bill passed its third reading in parliament on 7 December 2006 and received Royal Assent five days later.

ii. Review of targeted policies and programmes (Periodic Report, 54 and 55)

34. The Periodic Report refers to the 2004/2005 review of targeted policies and programmes (paragraphs 54 and 55), often referred to as "race-based funding" by politicians and the mainstream media, but does not refer to the government's earlier 'Closing the Gaps' policy.

35. 'Closing the Gaps' was part of the 2000 Budget, and comprised: "spending on social policy to reduce the gaps between Maori, Pacific Islanders and Pakeha in income and health. But within a year the 'Closing the Gaps' term had gone, as targeted spending became a political liability."²³ 'Closing the Gaps' was renamed 'Reducing Inequalities' and it came to an end in 2004²⁴.

36. The 2004/2005 review was similarly the result of a perceived political liability, largely a response to the Orewa speech by the National Party leader, Don Brash, as pointed out in the Report of Tai Tokerau Iwi Collective before you.

37. It is clearly evident that Maori have been seriously disadvantaged by Pakeha health, education, housing, social welfare, justice, and political systems that do not reflect their cultural values and practices; and which they do not control. When the government has provided funding for Maori initiatives or for the provision of culturally appropriate delivery of education and health services, the basis of that funding is fragile and it can be withdrawn at any time - as illustrated in the withdrawal of funds intended to increase Maori access to health and education following the review of targeted policies and programmes.

38. In 'Mission to New Zealand', the Special Rapporteur commented on the review thus:

"The Government has reviewed programmes and policies targeted by ethnicity and produced guidelines to ensure future targeting is clearly identified with need, not race. As a result, some programmes have been retargeted based on socio-economic need rather than ethnicity. The Special Rapporteur considers that such a "quantitative" approach might lead to neglecting the specific contextual factors that have impacted the persistent inequalities suffered by Maori and make the aim of "reducing inequalities" more difficult to attain, and he suggests that special measures to rapidly improve outcomes "by Maori for Maori" may still be called for."²⁵

39. Certainly special measures could be one approach, but it is our view that the prevention of discrimination against Maori, so that they can fully enjoy their rights and freedoms, requires much more than that - especially as the government's view of special measures is very narrow. While 'by Maori for Maori' programmes are clearly the best way forward, if control over their funding remains in the hands of the government, they will always be vulnerable to political expediency.

iii. Principles of the Treaty of Waitangi Deletion Bill (not referred to in the Periodic Report)

40. The Periodic Report, paragraph 4, refers to the current government comprising a Labour-Progressive Coalition with confidence and supply agreements with New Zealand First and United Future. It does not, however, refer to one of the provisions of the agreement with New Zealand First, which was to support the introduction, first reading and Select Committee stage of legislation designed to remove all references to the principles of the Treaty from existing legislation.

²³ 'Cullen's budgets: A timeline', NZ Herald, 15 May 2006 at <http://www.nzherald.co.nz/search/story.cfm?storyid=0008849D-070C-1467-92F483027AF1010F>

²⁴ Berry, Ruth (17 February 2004) 'Government tightens screws on aid for Maori', Ruth Berry, NZ Herald, at <http://www.nzherald.co.nz/search/story.cfm?storyid=E490761E-39E0-11DA-8E1B-A5B353C55561>

²⁵ E/CN.4/2006/78/Add.3

41. This took the form of the Principles of the Treaty of Waitangi Deletion Bill which was introduced to parliament on 29 June 2006, had its first reading on 27 July, and considered by a Select Committee for the remainder of 2006.

42. The explanatory note to the Bill includes the following: "The Bill seeks to correct an anomaly which has harmed race relations in New Zealand since 1986 when the vague term "the principles of the Treaty of Waitangi" was included in legislation", and deteriorates from there²⁶. The fact that the Treaty is about constitutional and political power, not race, appears to have eluded the author of that note and the supporters of the Bill.

43. As with the Maori Purposes Bill referred to above, there was no consultation with hapu and iwi before the introduction of the Bill.

44. While the concept of the Crown defined 'principles' of the Treaty is somewhat analogous to a concept of 'principles' of human rights (that is to say, a weak substitute for the real thing), and they are an inadequate representation of the relationship between tino rangatiratanga and kawanatanga in the Treaty, the Bill was nevertheless opposed by Maori and Pakeha submitters to the Select Committee. If it is enacted, it will essentially remove all references to the Treaty in legislation, however insufficient they may be in their wording and in the way they are applied.

45. Government politicians have stated they will not support the Bill when it is reported back to parliament, which raises the issue of how the initial agreement to support such inherently discriminatory and threatening legislation could possibly be justified.

46. Furthermore, it seems the government does not need to enact such legislation, as the removal of references to the Treaty in policy and practice is already underway.

iv. Removal of references to the Treaty in the education Curriculum (not referred to in the Periodic Report)

47. One example of this was the release of 'The New Zealand Curriculum: Draft for consultation 2006'²⁷ - the draft signals the direction the Ministry of Education intends schools to be taking in their teaching and learning programmes, and sets out the government's expectations of what school students should be able to achieve by the time they leave school.

48. The main document had no reference at all to the Treaty; the sole reference was in the Social Sciences Achievement Outcomes document: "the Treaty of Waitangi is responded to differently by people in different times and places".²⁸

49. This was a stark contrast to the existing Curriculum which includes:

"The New Zealand Curriculum recognises the significance of the Treaty of

²⁶ For more detail of what the Bill contains, and comment about it, see Peace Movement Aotearoa (October 2006) Submissions on the Principles of the Treaty of Waitangi Deletion Bill, at <http://www.converge.org.nz/pma/delbil06.htm>

²⁷ Ministry of Education (July 2006) The New Zealand Curriculum: Draft for consultation 2006, at <http://www.tki.org.nz/r/nzcurriculum/pdfs/curriculum-framework-draft.pdf>

²⁸ <http://www.tki.org.nz/r/nzcurriculum/pdfs/table-social-sciences.pdf>

Waitangi. The school curriculum will recognise and value the unique position of Maori in New Zealand society. All students will have the opportunity to acquire some knowledge of Maori language and culture. Students will also have the opportunity to learn through te reo and nga tikanga Maori. The school curriculum will acknowledge the importance to all New Zealanders of both Maori and Pakeha traditions, histories, and values."²⁹

50. The difference between the draft and existing Curriculum has also been seen as part of the government's response to Don Brash's Orewa speech.³⁰

51. When asked in parliament about the removal of the Treaty from the draft, the Minister of Education, Steve Maharey, denied it had been removed, and said "it will be embodied in a Maori version of the curriculum next year"³¹, as though the Treaty is somehow only of interest to Maori, and therefore not something to be included in mainstream schools. On the contrary, it is absolutely crucial that accurate information about the Treaty is taught at all levels of the education system to ensure a high level of public knowledge and understanding now and in the future.

52. The analysis of responses³² to the draft Curriculum, from Maori and Pakeha organisations and individuals³³, revealed that the absence of the Treaty of Waitangi and issues relating to te reo Maori, biculturalism and Maori concepts and content attracted the most comment in the long submissions received, and that these were also the issues most highlighted in the responses to the draft Curriculum questionnaire.

53. On 13 March 2007, the Chief Executive and Secretary for Education, Karen Sewell, told the Maori Affairs Select Committee that the Ministry of Education was wrong to remove the Treaty references in the draft Curriculum³⁴ and they would be included in the final version.

54. As with their support for the Principles of the Treaty of Waitangi Deletion Bill referred to above, the government's approach to this caused entirely unnecessary distress and anxiety which could easily have been avoided.

v. Removal of references to the Treaty in the health and disability sector (related to paragraphs 80 and 140 of the Periodic Report)

55. The Periodic Report states that the NZ Disability Strategy "acknowledges the Treaty of Waitangi and the necessity to consult Maori when developing and implementing disability strategies" (paragraph 80); and describes the first principle of the NZ Health Strategy

²⁹ Ministry of Education, 'The Principles', in New Zealand Curriculum, at http://www.tki.org.nz/r/governance/nzcf/principles_e.php

³⁰ See, for example, Radio Waatea (14 March 2007) 'Brash fear blamed for timid curriculum', at <http://waatea.blogspot.com/2007/03/settlement-over-spoils-of-war.html> and Radio Waatea (15 March 2007) 'Treaty curriculum victory celebrated', at <http://waatea.blogspot.com/2007/03/treaty-curriculum-victory-celebrated.html>

³¹ http://www.hansard.parliament.govt.nz/Documents/20060912.htm#_Toc145844531

³² Patara, L. (February 2007) Report to Ministry of Education on Draft New Zealand Curriculum 2006, at <http://www.tki.org.nz/r/nzcurriculum/docs/feedback/patara.pdf>

³³ See, for example, the outline of our concerns about the draft Curriculum and the monocultural assumptions in it, Peace Movement Aotearoa (November 2006) Submissions: Education Curriculum and the Treaty of Waitangi', at <http://www.converge.org.nz/pma/sub1106.htm>

³⁴ See, for example, Draft curriculum update, at http://www.nzaee.org.nz/events_news.htm

(2000) - which is required under the NZ Public Health and Disability Act 2000 and which sets out the Government's current platform for action on health - as: "Acknowledging the special relationship between Maori and the Crown under the Treaty of Waitangi (paragraph 140).

56. Yet the health and disability sector provides another example of the removal of references to the Treaty, in the form of a letter from the Acting Deputy Director-General, Maori Health, Ministry of Health (attached as Document 3) sent to all District Health Board (DHB) Chief Executives, DHB Chairs and General Managers Maori which begins:

"The Ministry of Health has been given clear directions on the use of Treaty of Waitangi Statements in the health and disability sector and will no longer make direct references to the Treaty of Waitangi or its principles in new policy, actions plans or contracts. Instead the "way forward" for Treaty of Waitangi statements will focus on improving Maori health outcomes and reducing health inequalities for Maori."³⁵

57. This policy appears to be part of a concerted effort by the government to reframe Maori as a "special needs" group, and a denial of their particular position as tangata whenua and as parties to the Treaty. We are currently trying to ascertain which other public sectors have received similar instructions.

E. "Responses to Maori offending" (Periodic Report, 166)

58. The criminal justice system is not a particular focus of our work, although we have been involved in some specific matters in this area, one of which is referred to below.

59. As a general point however, we find the wording of the relevant paragraphs of the Periodic Report very disturbing. Our concerns about this were outlined in our feedback to the Ministry of Foreign Affairs on the draft Periodic Report as follows:

"We find the wording and content of these sections to be not only misleading, but also offensive and racist. The problems with these sections are so extensive that it is difficult to suggest how they might be improved without a fundamental re-think and re-write.

As but one example, there is no reference in these sections to the historical and ongoing processes of colonisation, to the imposition of an alien legal system, or of the structural racism inherent in the criminal justice system. To suggest as in Section 154 that the "reasons for the over-representation of Maori as offenders" date from the mid 1950s and 1960s is patently absurd.

Furthermore, to persistently refer to Maori being over-represented as "offenders" only serves to emphasise the monocultural bias of the criminal justice system and indeed of this draft Report."³⁶

³⁵ Document 3, attached: Letter from Teresa Wall, Acting Deputy Director-General, Maori Health, Ministry of Health, 15 December 2006

³⁶ See 5

60. We do not consider the final version of the Periodic Report to be much improved in this regard. The references to Maori being over-represented as "offenders" remain but there is no attempt at providing a plausible explanation of what is meant by that phrase - comparatively higher numbers of Maori may be arrested, prosecuted, convicted, and imprisoned, but that is not necessarily the same thing as Maori "being over-represented as "offenders".

61. The statement in paragraph 158 that "There is no current evidence that shows ethnicity is a contributing factor for offending by Maori" is quite incredible with its insinuation that perhaps there might be in the future. We are unable to find polite words to express what we think of the list of "risk factors associated with anti-social and criminal behaviour" which Maori are "particularly exposed to" in that paragraph, except to say that it appears to overlook any government responsibility for the existence of sub-standard social and economic conditions in this country.

62. With regard to the statement in paragraph 161 that: "It is considered essential to protect and safeguard Maori culture within new prison facilities being built in New Zealand" - while we recognise that this has value in terms of Maori who are imprisoned, we are of the opinion that a focus on protecting and safeguarding Maori culture in the community (as well as implementing the recommendations made over many years for Maori-based judicial structures³⁷) would ensure there was little need to do this in prisons in the future.

63. As mentioned above, we do from time to time work on specific criminal justice matters, including one that has been ongoing during almost the entire time covered by the Periodic Report (although it is not referred to therein) - that is the case of Steven Wallace³⁸, a young Maori man who was shot and killed by a police officer, in Waitara on 30 April 2000, after smashing windows with a baseball bat.

64. To date, more than seven years later, neither the Inquest Report nor the Police Complaints Authority Report on Steven's death have been released, and many questions about the shooting remain unanswered - in particular, why the three officers at the scene did not use a less lethal approach to Steven, including waiting for a canine unit which was already on its way, as he was obviously not carrying a firearm himself.

F. The Treaty of Waitangi Information Programme (Periodic Report, 27)

65. While this is perhaps a comparatively minor matter, it follows on from the point in Section D above about the removal of the Treaty from the draft Curriculum and our concern about the impact that will have on knowledge and understanding of the Treaty in the future.

³⁷ See, for example, Jackson, M. (1988) *The Maori and the Criminal Justice System: A New Perspective* - He Whaipanga Hou, Part Two, Policy and Research Division, Department of Justice - the summary of which includes, among other things: "The key cultural and philosophical issue in the need for a parallel Maori system [of criminal justice] was the need for Maori people to be able to assert their own rangatiratanga and their own control over the consequences of wrongdoing by their young. That need is part of the indigenous rights of a tangata whenua to make their own decisions in a way that is relevant to them. It is a rejection of the monoculturalism which has tried to turn Maori into non-Maori, and which always assumed that Pakeha models were suitable and appropriate to them. Indeed, if the idea of tangata whenua status, and the guarantee of rangatiratanga in the Treaty is to have meaning, it follows that Maori-based judicial structures are a natural development of the rights implicit in those concepts. The need for research and development to establish such a structure is long term; the need for commitment to its validity is immediate."

³⁸ Information on this case is available at <http://www.converge.org.nz/pma/steven.htm>

We note that the wording in the Periodic Report (paragraph 27) about the programme set up to "enhance public knowledge" of the Treaty remains unchanged from that in the draft Periodic Report, and include here our feedback to the Ministry of Foreign Affairs about the bias in material produced by the Treaty Information Unit:

"While there is certainly a need to enhance public knowledge of the Treaty of Waitangi, there is a matching need for the information to be accurate and unbiased which is not always the case with the material published by the State Services Commission's Treaty Information Unit. For example, their timeline makes reference to the Treaty as having transferred sovereignty to the Crown, despite attempts by Pakeha Treaty educators to have this changed to make it clear that Maori did not cede sovereignty. We therefore suggest that this section makes it clear that the information provided reflects the government's perspective, for example the final sentence of section 2, point three should read: "The overall purpose of the Programme is to increase public knowledge of the Treaty **from the government's perspective** through greater coordination of existing information initiatives and the development of new initiatives and resources." "³⁹

G. The government's position on the Declaration on the Rights of Indigenous Peoples (Periodic Report, 16)

66. The government's deeply regrettable position on the Declaration on the Rights of Indigenous Peoples, and their attempts to persuade other governments to support their viewpoint, has been of considerable concern to our members and networks; and a number have lobbied government MPs in an attempt to change it. We have monitored the Declaration's progress closely, and published background articles and action alerts⁴⁰ on it.

67. Rather than go here into the detail of our views on the government's position, in brief, it is that they are stuck in denial mode when it comes to indigenous peoples' rights, both here and overseas; and that the extent to which they are obsessed with limiting the right of self-determination and emphasising territorial integrity is directly related to the extent to which they are engaged in denying the full expression of indigenous peoples' rights - any government with a good and respectful relationship with indigenous peoples within their national boundaries has nothing to fear with regard to the right of self-determination or the Declaration.

68. Our comment to the Ministry of Foreign Affairs and Trade on the draft Periodic Report pointed out:

"The draft Report does not include any reference as to how the government's position on the Draft Declaration on the Rights of Indigenous Peoples, or on any other international agreement which affects Maori, was formulated; nor how Maori were involved in this process. We suggest that an additional section be added to provide this information."⁴¹

³⁹ See 5

⁴⁰ See, for example, Peace Movement Aotearoa (June 2006) Act today for indigenous peoples' rights, at <http://www.converge.org.nz/pma/in270606.htm> and Peace Movement Aotearoa (March 2006) Act now for indigenous peoples' rights, at <http://www.converge.org.nz/pma/in080306.htm>

⁴¹ See 5

69. We note this information has not been included in the final version, presumably because the government has not involved Maori in the process in any meaningful way as has been detailed in the Report from the Aotearoa Indigenous Rights Trust before you.

H. Consultation with Maori on international agreements (not referred to in the Periodic Report)

70. Similarly, the government has not involved Maori in any meaningful way in reaching its position on or negotiating other international agreements. A recent example of this is the Trans-Pacific Strategic Economic Partnership (Trans-Pacific), negotiated and signed during the time covered by the Periodic Report. Negotiations involving Chile, Singapore and the NZ government began in 2002, with Brunei joining in 2005; it was signed in July and August 2005; and entered into force in May (NZ and Singapore), July (Brunei) and November 2006 (Chile)⁴².

71. Research on Maori and neoliberal trade agreements, published earlier this month, has this to say about the involvement of Maori in the negotiation of the Trans-Pacific:

"The Trans-Pacific deal is similar to a series of other neoliberal trade agreements, not simply in terms of the policies and principles that underpin it, but also in terms of the process by which it was negotiated, with little public input and marginalisation of critical voices. Consultation of any kind with Maori was negligible, let alone at a level that would recognise Maori tino rangatiratanga or Maori as a party to Te Tiriti o Waitangi.

In terms of consultation with Maori outside government, the Federation of Maori Authorities (FOMA) was the only Maori organisation to be consulted. It is listed as having made a submission; however, it is not specified if FOMA provided a written submission. FOMA is a Maori business network that aims to promote Maori economic development by supporting Maori authorities with a focus on 'land related development and the primary industries'. There is no record of what perspective FOMA provided in their consultation or submission. The Ministry of Foreign Affairs and Trade (MFAT) National Interest Analysis simply notes that they were consulted and made a submission. It is unclear at what level this consultation took place; did it simply involve a conversation, or were FOMA member groups contacted? Given that FOMA is a business network, it could reasonably be expected that it may not necessarily have been in complete opposition to the agreement. Either way, it is not sufficient for one particular perspective only to be accepted as supposedly representing all Maori."⁴³

I. Constitutional arrangements (not referred to in the Periodic Report)

72. The common thread that runs through the sections above is the government's lack of involvement of Maori, particularly of hapu and iwi, in decisions about matters that affect them; and the consequent lack of protection for their human rights and fundamental

⁴² Ministry of Foreign Affairs and Trade web page at <http://www.mfat.govt.nz/Trade-and-Economic-Relations/Trade-Agreements/Trans-Pacific/index.php>

⁴³ Bargh, M. (2007) 'A small issue of sovereignty' in *Resistance: An Indigenous Response to Neoliberalism*, Bargh, M (ed), Wellington: Huia Publishers.

freedoms, a situation in which ongoing discrimination against them occurs. While the Periodic Report refers to the new constitutional arrangements for Tokelau, there is no reference to a similar need for new constitutional arrangements here in Aotearoa New Zealand. Yet it is obvious that while the current constitutional arrangements continue, Maori will not be in a position to fully enjoy their rights and freedoms.

73. In April 2000, a 'Building the Constitution Conference' was held in Wellington; it was promoted as an opportunity to bring together "opinion leaders" from around the country to conduct a national debate on constitutional matters. In her opening address to the conference, the Prime Minister, Helen Clark, said:

"There is of course a lot of sense in the old saying that "if it ain't broke don't fix it". It seems to me that there is nothing particularly broken about the way our arrangements work at present but they are quaint. It is that quaintness which will eventually spark more debate, if not now then sometime in the future. Generational and demographic change makes that inevitable."⁴⁴

74. A concise summary of the dismissive viewpoint of a government unwilling to share privilege and power, and not a viewpoint we share - there is a fundamental problem with the current arrangements. It is similarly not a viewpoint shared by other Pakeha organisations and individuals, as, for example, submissions⁴⁵ to the 2005 Constitutional Arrangements Committee (CAC) illustrated. The Report from the CAC noted: "The issue that attracted the most comment from submitters was the relationship of the Treaty of Waitangi to the constitutional arrangements of modern New Zealand"⁴⁶, and "the demand for constitutional change to give effect to the Treaty of Waitangi has been persistent and from a variety of sources"⁴⁷.

75. The Prime Minister's viewpoint is similarly clearly not a view shared by Maori, neither historically nor in the present day; there are many accounts which detail this, as one example, the Tribunal Report on Taranaki summarised the situation thus:

"Through war, protest, and petition, the single thread that most illuminates the historical fabric of Maori and Pakeha contact has been the Maori determination to maintain Maori autonomy and the Government's desire to destroy it. The irony is that the need for mutual recognition had been seen at the very foundation of the State, when the Treaty of Waitangi was signed. At no point of which we are aware, however, have Taranaki Maori retreated from their historical position on autonomous rights. Despite the vicissitudes of war and the damage caused by expropriation and tenure reform, their stand on autonomy has not changed. Nor can it, for it is that which all peoples in their native territories naturally possess. If the

⁴⁴ Quoted in Wickliffe, C., and Dickson, M. (October 2001) 'Toi Te Kupu, Toi Te Mana, Toi Te Whenua: Maori Development in a Global Society - Options for Constitutional Change', at http://www.cpsu.org.uk/downloads/Matiu_Di.pdf

⁴⁵ For examples of some of the Pakeha submissions to the CAC, see Treaty Relationships Group (NZ Society of Friends, Quakers), Women's International League for Peace and Freedom, David MacClement, Dr David Williams and Peter Goldsbury, which can be accessed from <http://www.converge.org.nz/pma/cons.htm#subs>

⁴⁶ Inquiry to review New Zealand's existing constitutional arrangements: Report of the Constitutional Arrangements Committee (August 2005), 44, at http://www.parliament.nz/NR/rdonlyres/575B1B52-5414-495A-9BAF-C9054195AF02/15160/DBSCH_SCR_3229_2302.pdf

⁴⁷ Ibid, 12

drive for autonomy is no longer there, then Maori have either ceased to exist as a people or ceased to be free. "⁴⁸

76. In the introduction to this Report, we referred to the historical and present day discrimination against, and denial of the human rights and fundamental freedoms of, Maori as stemming from the denial of successive governments to recognise and respect the inherent and inalienable right of self-determination of Maori. It seems obvious that the only way to ensure their full enjoyment of those rights and freedoms is through a process of constitutional change, so that the constitutional arrangements of Aotearoa New Zealand reflect the constitutional arrangements laid out in the Treaty. Maori have expressed their willingness to negotiate such arrangements on numerous occasions over many years, but successive governments have ignored this.

77. As we concluded in our submission to Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples:

"All that is required to begin the process of negotiation for constitutional change is the imagination to see the potential beyond the current constitutional arrangements, the ability to move beyond a monocultural understanding of the world, good will, and preparedness to recognise Maori power and control of resources. The realisation of this positive vision for our future would enhance the full and effective enjoyment of human rights and fundamental freedoms for everyone in Aotearoa New Zealand. Whether the government can rise to this challenge remains to be seen; we respectfully urge the Special Rapporteur to do all he can to encourage them to do so."⁴⁹

J. Impact of NZ companies and government investments on indigenous communities in other parts of the world (not referred to in the Periodic Report)

78. This final section covers some of the issues around the government's impact on indigenous communities in other parts of the world. Politically, their ongoing opposition to the Declaration on the Rights of Indigenous Peoples has an obvious impact on indigenous peoples elsewhere, as does their habit of negotiating free trade agreements without the involvement of indigenous peoples who are included by default in such deals.

79. There are two other areas of concern in this regard, the impact of NZ companies and of government investments. With regard to the first, so far as we are aware, the government makes no attempt to assess the impact of NZ companies on indigenous communities overseas, nor are their activities regulated.

80. Two companies in particular are a cause for concern in this regard, Fonterra and Rubicon.

81. Fonterra is NZ's largest company and the fifth-largest dairy company in the world. In the late 1980s the NZ Dairy Board (from which Fonterra was later formed) bought into Soprole, now Chile's largest dairy company, in which Fonterra owns a 57% controlling

⁴⁸ Waitangi Tribunal (1996) 'The Taranaki Report: Kaupapa Tuatahi', WAI 143, Chapter 1, at <http://www.waitangitribunal.govt.nz/reports/viewchapter.asp?reportID=3FECC540-D049-4DE6-A7F0-C26BCCDAB345&chapter=4>

⁴⁹ Document 1, attached

interest⁵⁰. The impact of Fonterra's agribusiness dairy production and marketing on indigenous farmers in Chile has not, so far as we are aware, yet been documented, but it is unlikely to have been positive. As a paper considering the implications of what became the Trans-Pacific (referred to above), points out:

"In Chile, the Mapuche population makes up a considerable proportion of the small-scale sector involved in dairy in the South. The impacts of an agreement on this group thus need to be considered (Alfredo Apey, pers.comm. December 4, 2002). There are numerous Mapuche groups opposed to free trade agreements which intend to exploit the natural resources of the south of Chile and debate surrounding this issue has become increasingly confrontational." and "Being able to source global exports from a cheap labour base in Latin America is highly attractive for the NZ dairy giant."⁵¹

82. The situation of the Mapuche, and the activities of national and multinational companies operating in their territories, has been a matter of concern for Treaty monitoring bodies including CERD⁵², and the Committee on Economic, Social and Cultural Rights⁵³ which has commented on the application of 'anti-terrorism' laws to the Mapuche in the context of tensions over their ancestral lands; and for NGOs⁵⁴.

83. Rubicon is a "NZ-headquartered company" which is involved with energy and forestry. It was formed out of the separation of the Fletcher Challenge Group in 2001⁵⁵ - a Group that includes Fletcher Challenge Forests, extensively involved in pine plantations on Mapuche lands in the 1980s and 1990s.

84. Of particular concern currently is Rubicon's partnership (with International Paper and MeadWestvaco) in ArborGen, "the world's leading forestry biotechnology joint venture"⁵⁶, also known as the world's largest genetically modified tree company. They are involved, among other things, in eucalyptus trials in Brazil for the pulp and paper industry⁵⁷: "According to Rubicon CEO Luke Moriarty, Brazil is ArborGen's "most important geography". ArborGen is working on "improved pulping" (i.e. low-lignin) Eucalyptus in Brazil they believe will be highly profitable since they are cheaper to turn into paper. (Moriarty, L. 2005)".⁵⁸

⁵⁰ Fonterra Annual Report 2005-06, which can be accessed from <http://www.fonterra.com/wps/wcm/connect/fonterra.com/fonterra.com/Our+Business/Fonterra+at+a+Glance/Financial+and+Statutory+Information/Financial+Reports>

⁵¹ Murray, W and Challies, E (2002) New Zealand and Chile: Partnership for the Pacific Century? Institute of Geography, Victoria University of Wellington, at http://www.devnet.org.nz/conf2002/papers/Challies_Ed.pdf

⁵² See, for example, CERD/C/304/Add.81 Concluding Observations of the Committee on the Elimination of Racial Discrimination: Chile 12/04/2001

⁵³ E/C.12/1/Add. 105 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Chile, 26/11/2004

⁵⁴ See, for example, Human Rights Watch (2004) Undue Process: Terrorism Trials, Military Courts and the Mapuche in Southern Chile, at <http://hrw.org/reports/2004/chile1004/1.htm>

⁵⁵ <http://www.rubicon-nz.com/main.cfm?menu=left&ItemId=223&name=Home>

⁵⁶ As above

⁵⁷ Rubicon's activities in Brazil are outlined in 'Rubicon 2006 Review' (25 August 2006), at <http://www.scoop.co.nz/stories/BU0608/S00439.htm>

⁵⁸ Carman, N., Langelle, O., Perry, A., Petermann, A., Smith, D., JD, and Tokar, B (2006) Ecological and Social Impacts of Fast Growing Timber Plantations and Genetically Engineered Trees, at <http://www.foresthethics.org/downloads/GETreereport.pdf>

85. Eucalyptus and other industrial tree plantations have had a devastating impact on indigenous peoples in Brazil (and elsewhere) in terms of loss of land, human rights abuses, social and economic stress, loss of biological diversity, environmental degradation, pollution and drying up of waterways, contamination from excessive use of herbicides and chemical fertilizers, and so on. Companies involved in eucalyptus pulping in Brazil include Aracruz Cellulose, the world's largest producer of bleached eucalyptus pulp, with three pulp mills producing a total of two million tons of pulp a year⁵⁹. Aracruz's eucalyptus plantations are on Tupinikim and Guarani lands, lands which those indigenous communities are attempting to reclaim.⁶⁰

86. With regard to the impact of government investments on indigenous communities in other parts of the world, one example is the operation of the NZ Superannuation Fund (the Fund). It is an investment fund that was established under the NZ Superannuation and Retirement Income Act 2001 to accumulate and invest government contributions to partially provide for the future cost of superannuation⁶¹.

87. The Fund began investing in 2003, during the time covered by the Periodic Report, and its extensive equity portfolio (the only full list available is for June 2006, and it is 52 pages in length⁶²) includes many overseas corporations that have well-documented records in human rights and other abuses of indigenous peoples. To provide just three examples:

- Exxon Mobil Corp: number 1 in the list of the Fund's top 10 International Equities in 2007, investment of \$67,878,083⁶³. Issues with its operations include destruction of land and livelihoods in Chad⁶⁴, and complicity in human rights violations at its liquid natural gas plant in Aceh⁶⁵.

- BP Plc: listed in the Fund's top 10 International Equities in 2004 (investment then of \$18,690,823⁶⁶, of \$21,055,660 by June 2006⁶⁷). Issues with its operations include it being implicated in human rights abuses related to the alleged impact of security arrangements on local communities in Colombia⁶⁸, and environmental and human rights concerns around its new Tangguh liquefied natural gas project in Bintuni Bay, West Papua⁶⁹.

- BHP Billiton: BHP Billiton Ltd (Australia), investment of \$9,705,391 by June 2006, and BHP Billiton Plc (Britain), investment of \$3,841,675 by June 2006. Issues with its mining operations include it being implicated in human rights abuses, forced relocation, and environmental degradation around Cerrejon Zona Norte, and the associated 150km railway from the mine to the coast, in Colombia⁷⁰, and environmental degradation on Navajo land⁷¹.

⁵⁹ Lang, C. (2004) 'Brazil: plantations, profits and GM trees' at http://chrislang.blogspot.com/2004_11_30_chrislang_archive.html

⁶⁰ Carman, N. et al above

⁶¹ <http://www.nzsuperfund.co.nz>

⁶² <http://www.nzsuperfund.co.nz/files/Equities%2030%20June%2006%20by%20Country.pdf>

⁶³ <http://www.nzsuperfund.co.nz/files/Performance%20Update%20-%20March%202007.pdf>

⁶⁴ <http://www.corpwatch.org/article.php?id=14430>

⁶⁵ See, for example, <http://www.corpwatch.org/article.php?id=11442>

⁶⁶ <http://www.nzsuperfund.co.nz/news.asp?pageID=2145831983&RefID=2141730922>

⁶⁷ <http://www.nzsuperfund.co.nz/files/Equities%2030%20June%2006%20by%20Country.pdf> - all June 2006 figures that follow are from this document

⁶⁸ See, for example, <http://www.iblf.org/docs/geography/extractives.pdf>

⁶⁹ See, for example, <http://dte.gn.apc.org/52BP.htm> and <http://www.minesandcommunities.org/Action/press524.htm>

⁷⁰ See, for example, <http://www.minesandcommunities.org/Company/bhp04.htm>

⁷¹ See, for example, <http://www.corpwatch.org/article.php?id=14435>

88. The Fund also invests in a number of companies engaged in activities that have been a cause for concern⁷² in Western Shoshone territory. These include Lockheed Martin, investment of \$15,806,421 by June 2006, which is involved in the US government nuclear weapons testing programme at the Nevada test site⁷³ (and its dominant position as a military contracting, weapons producing and weapons exporting corporation ensures it is in part responsible for gross human rights violations wherever armed forces using its products or services are engaged in military activity against indigenous peoples); and Barrick Gold, investment of \$2,167,276 by June 2006, which is involved in destructive mining operations on Western Shoshone land⁷⁴, and indigenous land elsewhere⁷⁵.

We thank you again for the opportunity to contribute to the assessment of the Periodic Report and your attention to our comments.

Attached documents

Document 1 - Submission to Rodolfo Stavenhagen, Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, Peace Movement Aotearoa, 23 November 2005;

Document 2 - Fresh water: issues for Maori, Dr Maria Bargh, September 2006;

Document 3 - Letter from Teresa Wall, Acting Deputy Director-General, Maori Health, Ministry of Health, 15 December 2006 [copy].

⁷² See, for example, CERD/CUSA/DEC/1 Early Warning and Urgent Action Procedure Decision 1 (68): United States of America, 11 April 2006

⁷³ See, for example, <http://www.lockheedmartin.com/wms/findPage.do?dsp=fec&ci=13809&rsbci=0&fti=0&ti=0&sc=400>

⁷⁴ See, for example, http://www.oxfamamerica.org/newsandpublications/news_updates/western-shoshone-push-for-answers-at-annual-meeting-of-barrick-gold/print.html

⁷⁵ Including Papua New Guinea, see, for example, <http://corpwatch.org/article.php?id=14381>