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## Key Issues for NZ UPR 2018 Review

### 1. Issue: New Zealand's criminal justice system exacerbates the systemic plight of Māori.

#### Recommendations:

1. Legislation implementing a requirement for all Maori at all stages of the criminal justice system to have access to culturally appropriate rehabilitation, including at all three pre-arrest, pre-charge and post-charge warning stages.
2. Legislation diverting Maori convicted of non-serious charges (with maximum penalties of less than 10 years imprisonment) to a Tikanga Maori-based rehabilitation system.
3. Introduce into the Sentencing Act 2002 & Corrections Act 2004 a mandatory process of Maori cultural input at sentencing, and at every stage after sentencing.
4. Stipulate mandatory Maori (and other) cultural understanding to a requisite minimum level for all judicial and legal officers in the criminal justice system.
5. Appoint an interim "emergency" human rights commissioner to investigate why previous UPR recommendations have not been implemented to any effective degree and identify the most critical areas of human rights gaps presently across Police, Orange Tamariki and Corrections.

#### Comment:

The plight of Maori in the criminal justice system — and their inability to do anything meaningful about it without clear and specific legislation — remains largely unabated. This is confirmed virtually every day across hundreds of cases where judges, primarily in the District Court, have been failed by archaic legislation and often find themselves having to work around it in order to provide any substantive progressive treatment of Maori. Lawyers are failed in being devoid of virtually no legislative tools or guidance to rely on. Individual practitioner or judge awareness of criminal justice issues and the resource to expend — and creativity required — to provide exceptional options to courts, is a combination of factors not often present on any given day in the courts.

### 2. Issue: Maori (and other ethnic group) access to community advocacy:

#### Recommendations:

1. Introduce scheme for trained community advocates to be accessible to Maori and ethnic groups in order to engage with UN Civil Society objectives.
2. Facilitate Maori (and other communities similarly threatened by breach of NZ Bill of Rights Act 1990 human rights including relating to search and seizure, surveillance, harassment) access to scheme independent specialist advocates, and state-trauma related rehabilitation and counselling.
3. Legislation facilitating the reconnection of young urbanised Maori to their tribe and their land and participation in indigenous trade and commerce

Comment: There is systemic inability for Maori and other vulnerable groups such as Pasifika and ethnic groups such as Muslims, to access systemic mechanisms that both prevent, raise awareness of, and heal, state-trauma — including undue or unwanted harassment by either individuals or institutions of the state. It will be impossible for the UPR to know to be provided an accurate state of human rights amongst such groups and such issues in New Zealand, until there is a much wider access to community advocates. Lawyers are out of reach of most people, and are often untrained<sup>1</sup> in the critical cultural and other issues affecting many whānau.

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<sup>1</sup> A rare professional training on Tikanga Maori will be offered later this year thanks to the creativity of a young team of Maori professionals.

## Appendix 1

### Previous Relevant Recommendations:

- (1) ICESCR-4-43 — Close the gaps in health outcomes of Māori and Pasifika by reinstating Maori health plans, investment, and involving them in decision-making.
- (2) CERD-2017-15 — Address the root causes leading to disproportionate incarceration rates of Māori and increase the representation of Māori, Pasifika, and other minority groups as decision makers in the criminal justice system
- (3) CERD-2017-08 — Recognise the fundamental right to self-determination of Māori
- (4) CCPR-16-19 — Address high unemployment rates for Maori, Pasifika, migrants, and those with disabilities through comprehensive employment and vocational training strategies. Report on this in the next ICCPR report
- (5) CRPD-2017-29 — Enable Maori and Pacific people with disabilities, and especially those who are deaf and deaf-blind, to access information.
- (6) CRC-2017-92 — Address the over-representation of Maori and Pasifika children and youth in the juvenile justice system, including improving the police's cultural capability and investigating allegations of racial biases
- (7) CRC-2017-76 — End the over-representation of children with disabilities, Maori and Pasifika children in disciplinary processes
- (8) CRC-2017-46 — Improve cultural capability of the care and protection system and improve engagement with Maori.
- (9) CRC-2017-45 — In reforming Child, Youth and Family; ensure the best interests of the child are paramount the child is heard in matters affecting them ensure a common understanding of a child-centred approach, and monitor the implementation and impact of the reforms on children, including Maori children and children with disabilities.
- (10) CRC-2017-40 — Develop a comprehensive strategy to combat abuse and neglect of children, particular Maori, Pasifika, and children with disabilities.
- (11) CRC-2017-32 — Ensure the collective dimension of Maori cultural identity and the importance of their whanau is accounted for when developing legislation
- (12) CRC-2017-31 — Ensure Maori children adopted by non-Maori parents have access to information about their cultural identity
- (13) CRC-2017-30 — Promote and foster Maori language, culture and history in education, and increase enrolment in Maori language classes.
- (14) CC-2017-27 — Protect children from non-accidental injuries and prevent, identify, and address the causes of youth suicide, particularly for Maori.
- (15) ICESCR-4-07 — Ensure meaningful participation of Māori in all decision-making processes affecting their rights, including trade strategy and climate change
- (16) CERD-2017-25 — Reduce the number of Māori and Pasifika children in State care
- (17) CRC-2017-23 — Address disparities in education, health services, and the standard of living for Maori and Pasifika
- (18) 37 — Continue its efforts in advancing its Constitutional Review process including constitutional issues affecting the Māori people
- (19) 38 — Continue to address all forms of political, economic and social discrimination against the Māori and Pacific population by meeting their various demands for constitutional and legal reforms and recognition
- (20) 64 — Promote employment, the right to health and judicial fairness for Māori and the Pacific Islanders and raise the level of education for their children
- (21) 65 — Continue to prioritize policies aimed at further improving the socioeconomic condition of the Māori and the Pacific peoples
- (22) 66 — Reduce the remaining socioeconomic differences for Māori and Pacific Islanders, and increase efforts in the fight against child poverty
- (23) 67 — Combat child poverty, in particular that which affects Māori children, those who live in the Pacific islands and children with disabilities

- (24) 77 Enhance its efforts in fighting discrimination and institutional biases against Māori and Pacific people
- (25) 78 — Redouble its efforts to improve the socioeconomic situation of the Māori by combating structural discrimination, in particular by increasing the level of education of Māori children
- (26) 80 — Continue to address inequalities affecting human rights in the areas of health, education, employment and income that disproportionately affect Māori and other minority groups
- (27) 81 — Step up efforts, in consultation with Māori and Pasifika communities, to address and prevent discrimination against members of the Māori and Pasifika communities in the criminal justice system and, in particular, the high rate of incarceration
- (28) 82 — Continue its search for creative and integrated solutions to the root causes that lead to disproportionate incarceration rates of the Māori population
- (29) 83 — Set targets for increasing Māori participation in policing, the judiciary and the penal system
- (30) 84 — Continue its efforts to address the situation of half the prison population in the country being Māori through, among other things, its Drivers of Crime initiative and Youth Crime Action Plan recently launched
- (31) 143 — Intensify efforts to increase the levels of education for Maori and Pacific families while protecting and promoting their cultural heritage

## Appendix 2 — About JustCommunity

JustCommunity combines its experience of many years of legal practice in particular in South Auckland courts and tribunals and before the NZ Parole Board, with community advocacy rooted amongst communities affected by these areas. We work primarily in the courts and parole system of New Zealand but also work with reform and rehabilitation organisations, as well as community groups and *whānau*.

JustCommunity is generally assisted from law students, including from the Centre for Human Rights Law and Policy at the University of Auckland.

The criminal law practice of JustCommunity has benefited from hundreds of cases undertaken by lawyers at the Auckland Defence Chambers, as well as colleagues of the Criminal Bar of New Zealand, across all courts of New Zealand, as well as tribunals and the NZ Parole Board.

JustCommunity also facilitates meetings between international human rights lawyers and local Maori lawyers and human rights advocates, and also facilitates local human rights based community education.

JustCommunity Founder and Director facilitated the 2016 Parihaka Conference, the first of its kind in central Tamaki Makaurau (Auckland). JustCommunity relies, ultimately, on the sense of humanity and right to access justice, within its team and community.