

A. BACKGROUND AND FRAMEWORK

I. Scope of international obligations

International Instruments

1. **Priority Recommendations from the Human Rights Foundation Coalition:**
 - **Ratify the CRMWF, CED, CAC and ILO Convention 87.**
 - **Ratify the OP-ICESCR, OP-CRC, OP-CRPD**
 - **Make the optional declaration in Article 14 ICERD**

II. Constitutional and legislative framework

Economic, social and cultural rights and civil and political rights omitted from the NZBORA

2. **Priority Recommendations from the Human Rights Foundation Coalition:**
 - **Incorporate all rights enshrined in international human rights instruments to which New Zealand is a party into domestic law to ensure these rights are enforceable in New Zealand courts**
 - **Establish the NZBORA as over-riding ordinary statutes**
 - **Procedurally entrench the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993**

Right to a remedy

3. **Priority Recommendation from the Human Rights Foundation Coalition:**
 - **That the NZBORA be amended to provide an explicit right to a remedy for breach of the NZBORA, including by the judiciary.**

The Status of the Treaty of Waitangi 1840

4. **Priority Recommendation from the Human Rights Foundation Coalition:**
 - **Appropriate constitutional or legislative recognition be given to the Treaty of Waitangi/Te Tiriti o Waitangi**

III. Institutional and human rights infrastructure and policy measures

Appointment of Human Rights Commissioners

5. **Priority Recommendations from the Human Rights Foundation Coalition:**
 - **Establish a Human Rights Commissioner appointment process that provides for the involvement of Parliament, possibly as one responsibility of Parliamentary Select Committee on Human Rights**

Establishment of a Parliamentary Human Rights Select Committee and other legislation and policy oversight mechanisms

6. **Priority Recommendations from the Human Rights Foundation Coalition:**
 - **Establish a Parliamentary Select Committee for Human Rights**
 - **In cooperation with civil society, establish mechanisms, including a Government National Human Rights Action Plan, to independently monitor, against robust human rights indicators, the government's implementation of ratified human rights treaties and UPR recommendations**
 - **Develop, in consultation with civil society, agreed human rights indicators and an effective monitoring system**
 - **Develop and implement a human rights education strategy as envisaged by the World Programme for Human Rights Education (2005-), and as recommended in 2003 and 2011 by the Committee on the Rights of the Child, to ensure that young people and those responsible for supporting them, know their human rights, and that development of policy and legislation is informed by a human rights approach and decision making is consistent with New Zealand's human rights obligations**

TPPA Human Rights Impact Assessment

7. **On 5 May 2011 Professor Jane Kelsey, with the assistance of the Human Rights Group of the Equal Justice Project at the School of Law at the University of Auckland requested the NZ Human Rights Commission to conduct a scoping study on TPPA's potential human rights impact, highlighting the right to health, livelihood, impact on indigenous peoples and democratic decision-making.**

8. Subsequently, the 2011 report of the UN Special Rapporteur on the right to food to the 19th session of the Human Rights Council set out *Guiding principles on human rights impact assessments of trade and investment agreements*. The first principle said 'All states should prepare human rights impact assessments prior to the conclusion of trade and investment agreements.'
9. The NZ Human Rights Commission responded to Professor Kelsey's request by stating it did not have the resources to undertake a scoping study of the TPPA. 'However it does have an ongoing interest in whether, how and to what extent human rights are taken into account by New Zealand in negotiations for free trade agreements... Therefore the Commission has agreed to maintain a watching brief over TPPA...'¹ However, there is no evidence of any active oversight or examination.
10. **Recommendation:**
 - **Prior to the conclusion of the TPPA negotiations prepare, or request and fund the Human Rights Commission to do so, a human rights impact assessment in accordance with the *Guiding principles on human rights impact assessments of trade and investment agreements* prepared by the Special Rapporteur on the Right to Food.**

C. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Right to social security and to an adequate standard of living

Child Poverty

11. A legal challenge by Child Poverty Action Group (CPAG) has been taken on behalf of 227'000 children who are denied a child-related payment due to their parents' work status.
12. CPAG has claimed that the exclusion of families from a child-related payment called the In Work Tax Credit where caregivers are on income tested benefits, constitutes unjustified discrimination under New Zealand Bill of Rights Act 1990 and so breaches Part 1A Human Rights Act 1993 (HRA). It has challenged successive New Zealand governments over this discriminatory payment.
13. The IWTC is a payment of \$60 or more per week to the caregiver of financially dependent children. It became payable in 2006 as part of the Working for Families package of welfare and tax reforms. The reason for the exclusion of beneficiary parents is said to be because the payment is a work incentive and necessary to maintain a gap between those on benefits and those in paid work and to encourage those in low paid work to stay there and not return to a benefit.
14. While the High Court found that the IWTC does discriminate against some beneficiary families, it did not consider it unlawful because of the legitimate objective to incentivise beneficiaries into work.
15. CPAG does not take issue with the Government's objective of incentivising work by making sure work pays more than benefits. It does take issue with the means the Government has used to achieve this objective.
16. The High Court also decided that CPAG's complaint that the government was not doing enough to alleviate child poverty could be justified statistically, and that the complaint was strengthened by the Government's action in 2005 extending the IWTC upwards to the better off families. At that time there was further funding available that could have enabled a redesign of the Working for Families package to achieve the objective of alleviating child poverty. The judgment also said that for a so-called developed country, New Zealand has a poor record on child poverty – a social ill with significant adverse social and economic consequences
17. CPAG in appealing the High Court decision has argued that the legislative measure is inconsistent with the right to be free from employment status discrimination, guaranteed in the New Zealand Bill of Rights Act 1990. Even when due deference is given to the executive and legislative branch of the Government for its capacity and competence to determine legislation in the area of social and economic policy, this discrimination is still not able to be demonstrably justified, in a free and democratic society.
18. **Recommendations:**
 - **Affirm the principle of equality of treatment of all low income children in the tax benefit system and extend the In Work tax Credit to all low income families.**
 - **Immediately implement certain recommendations in the Experts Advisory Group's report on Solutions to Child Poverty²: enact child poverty legislation to ensure the proper and regular measurement of child poverty, the periodic setting of government targets to reduce child poverty, the setting of child poverty-related indicators and targets for selected indicators and the annual reporting to Parliament of progress towards the achievement of the designated targets.**
 - **All new policy and legislation should be audited to ensure the impact on children will be positive.**

¹ NZ Human Rights Commission to Professor Jane Kelsey, 10 August 2011

² Office of the Children's Commissioner Solutions to Child Poverty in New Zealand: evidence for action (December 2012) available at <http://www.occ.org.nz>

Administration of justice, including impunity, and the rule of law

Youth Justice

19. In 2010, Youth Justice legislation was amended³, to allow prosecution of children aged 12 and 13 years old in Youth Court. This lowering of the age of prosecution took place in the context of New Zealand's refusal to raise the age of criminal responsibility from age 10 to an internationally acceptable age, despite UPR 2009 recommendation (48). New Zealand also breaches UNCROC by recognising young people up to age 17 only within its youth justice system, when UNCROC defines children as those up to the age of 18 years.
20. **Recommendations:**
 - **Raise the age of criminal responsibility to 12**
 - **Redefine "young person" for the purposes of the youth justice system as anyone below the age of 18**
 - **Commit to resourcing best practice initiatives, including Rangatahi Courts and intensive monitoring programmes for high risk young offenders.**

Police powers

21. **Priority Recommendation from the Human Rights Foundation Coalition:**
 - **Encourage the Police to strengthen the mandate of the Police Community Tactical Options Reference Group and embed the consultations with this group in policy development in relation to use of force**

Operation 8 - excessive use of police power against the Maori community and political activists

22. **Priority Recommendations from the Human Rights Foundation Coalition:**
 - **Ensure that the NZ Police accept and implement all the recommendations⁴ of the Independent Police Conduct Authority report on "Operation Eight".**
 - **Compensate adequately all those subjected to illegal conduct on the part of the Police during "Operation Eight".**

Right to social security and to an adequate standard of living

Children in state care

23. Children and young people in who are in the care of the state and who are transitioning out of state care need particular help and support to ensure that their basic human rights are delivered. At any one time, there will be around 5,500 children and young people in the care of Child Youth and Family.⁵ Of these children, around 1,000 will be in residential or group homes and 1,500 in non-kinship foster homes. These children and young people's rights to safe and secure homes are put at risk by frequent changes in placements. Their rights to education and equality of opportunities are limited. Almost all will be discharged from the care of the state prior to their 17th birthday, when they are still defined as children under UNCROC. These young people need special assistance and support to ensure their right to an adequate standard of living.
24. **Recommendation:**
 - **Update its care and protection legislation to comply with its obligations under UNCROC and commit to a significant allocation of resources for support services for children and young people in care and transitioning from care**

Right to Housing

25. **Priority Recommendations from the Human Rights Foundation Coalition:**
 - **Adopt an official definition of homelessness and guarantee NZ citizens and permanent residents a right of access to decent affordable housing**
 - **Develop a national housing plan which ensures that the national housing infrastructure is always adequate to meet the housing needs of all New Zealanders, including the most vulnerable groups**

³ The principal legislation, the Children, Young Persons, and Their Families Act 1989 was amended by the Children, Young Persons, and their Families (Youth Court Jurisdiction and Orders) Amendment Act 2010.

⁴ at paragraph 395

⁵ Statistics obtained from <http://www.msd.govt.nz>

- **Adopt a human rights approach to the Canterbury earthquake recovery ensuring appropriate consideration of availability, affordability and adequacy of housing including for temporary housing**

Right to Housing- Greater Christchurch

26. Realisation of the right to housing is the priority issue currently affecting the daily lives of residents in greater Christchurch.
27. For homeowners, various Government acquisition and zoning decisions have had major implications for individual property rights. For tenants, the shortage of housing since the earthquakes has made housing increasingly unaffordable. A further issue is the large number of rental homes which are cold, damp, unsafe and unhealthy.
28. Homelessness has considerably increased in greater Christchurch since the earthquakes.
29. **Recommendations:**
 - **Amend the New Zealand Bill of Rights Act 1990 to provide protection for the right to housing**
 - **Explore strengthening domestic protection for the right to property. New Zealand should amend the Residential Tenancies Act so that it is premised on a rights-based approach to housing**
 - **Ensure that all housing is habitable and meets tenants' needs**
 - **Provide more access to temporary housing in greater Christchurch to meet urgent short-term need**

Rights of migrants, refugees and asylum seekers

Migrants and refugees in Christchurch

30. There are a number of migrant workers arriving in Christchurch for the Rebuild. However, there is no national strategy for migrant workers. There is also no coordinated programme to support newly arrived migrant workers.
31. **Recommendations:**
 - **Develop a national strategy for migrant workers**
 - **Establish a coordinated framework for welcoming migrants to Christchurch**

Accessing disability support services by refugee-background communities

32. Disability services can be profoundly difficult to navigate, particularly for people from refugee backgrounds who may have a complex array of health, disability, and resettlement needs. Recent research on people from refugee backgrounds living with disabilities⁶ found:
 - A lack of interagency coordination and service provision across refugee, health, and disability agencies
 - The reliance on family in the absence of disability service provision
 - The issue of protracted isolation and limited independence of research participants
33. **Recommendation:**
 - **Include refugee-background communities as a target population in health policies, and strategic and operational plans relating to the provision of disability services by government funded District Health Boards and healthcare providers**

National Refugee Resettlement Strategy (NRRS)

34. The implementation of the Strategy will provide insight into the extent to which quota refugees are participating in NZ society. However, the NRRS and the delivery of support services does not apply to asylum seekers or Refugee Family Support Category (RFSC) arrivals. Under the 1951 Refugee Convention, asylum seekers should be accorded the same treatment as accorded to aliens, and Article 25 of the UDHR 1948, states that everyone has the right to an adequate standard of living. Without access to the support services available to quota refugees, it is likely that such rights are not being realised by asylum seekers and RFSC arrivals.
35. **Recommendation:**
 - **Expand the NRRS to include Convention refugees and RFSC arrivals**

Access to tertiary education for refugee background students

⁶ ChangeMakers Refugee Forum (2012) *If we have to go on our own, so be it'. The challenges faced accessing disability support services by Wellington's refugee-background communities*. Retrieved 14/06/13 from: http://www.crf.org.nz/research_programme

36. There is a growing body of research that suggests students from refugee-backgrounds are not accessing or completing tertiary study. New Zealand has ratified a number of international conventions regarding the right to education including the Refugee Convention 1951 that specifies that we must accord treatment to refugees 'as favourable as possible ... as regards access to studies ... the remission of fees and charges and the award of scholarship' (Article 22). The issue of refugee-background students not accessing or completing tertiary study could be addressed by including these students as an equity group.

37. Recommendation:

- **Recognise refugee-background students as an equity group in tertiary education policy**

Immigration (Mass Arrivals) Amendment Act

38. Priority Recommendation from the Human Rights Foundation Coalition:

- **Repeal the Immigration (Mass Arrivals) Amendment Act**

Equality and non discrimination

Domestic Violence

39. Priority Recommendations from the Human Rights Foundation Coalition:

- **Develop, in collaboration with domestic and sexual violence service providers and users, an evidence based Action Plan to end gender-based violence against women and children**

Child Rights Impact Assessments

40. In a democratic process that does not yet provide voting rights to those under age 18, it is essential that children and young people's rights are placed in the mainstream for policy makers and legislators. One way measurably to improve children's lives through mainstreaming their rights is to require that green and white papers and all draft legislation carry Child Rights Impact Assessments.

41. Recommendation:

- **Commit to requiring all draft policies and legislation to carry Child Rights Impact Assessments (CRIAs)**

Rebuild opportunities in Canterbury

42. The size and scale of the Rebuild provide a number of opportunities to do things well. A human-rights approach should be taken to the Rebuild. For example, Christchurch could become a very accessible city.

43. The Rebuild also offers an opportunity to realise the right to work, especially for groups which have had past difficulty accessing employment.

44. Recommendations:

- **Ensure that all opportunities to improve the built environment are taken during the Rebuild**
- **Ensure that Rebuild employment initiatives are inclusive of all groups including women, people with disabilities, youth, Maori, Pacific Islanders, migrants and refugees**

SOGII workers

45. SOGII workers, especially trans workers, face higher levels of employment discrimination. Stronger legal provisions are needed to protect their rights to decent work and freedom from discrimination.

46. Recommendations:

- **Explicitly include gender identity as a ground of unlawful discrimination in the Human Rights Act 1993**
- **Repeal amendments to the Employment Relations Act in 2010 which removed the right to personal grievance procedures within the first 90 days of employment**

Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life

Right to participate in public and political life

47. Democracy has been seriously undermined in Christchurch since the earthquakes. The Canterbury Earthquake Recovery Act 2011 has transferred significant powers, formerly exercised by local government, to central government. This centralised “command and control” approach has undermined local participation in earthquake recovery.

48. **Recommendation:**

- **Involve elected local representatives in decision-making for greater Christchurch and transfer governance of earthquake recovery to local elected bodies as soon as possible**

Protest at Sea

49. **Priority Recommendation from the Human Rights Foundation Coalition:**

- **Repeal the Crown Minerals (Permitting and Crown Land) Act that restricts the right of New Zealanders to protest at sea**

Prisoners' right to vote

50. **Priority Recommendation from the Human Rights Foundation Coalition:**

- **Amend the law to ensure that restrictions on prisoners' right to vote are reasonable and proportionate, consistent with New Zealand's international human rights obligations.**

Right to Participate in Public Affairs

51. The secrecy surrounding the TPPA⁷ is of particular concern in New Zealand where constitutional arrangements make the negotiation, signing and ratification of international treaties an executive act. The Cabinet Manual states in para 7.112 that ‘In New Zealand, the power to take treaty action rests with the Executive.’ New Zealand citizens and the New Zealand Parliament will not gain access to the text until it has been signed, which signals an intention by the state to be bound by the content. Parliamentary participation is ex post, largely cosmetic and ineffectual.

52. **Recommendation:**

- **Open TPPA's negotiations to members of Parliament and citizens to participate in an effective and meaningful way in decisions that have enforceable long-term consequences.**

Right to Health

TPPA and intellectual property on pharmaceuticals

53. The leaked TPPA draft chapters on intellectual property contain provisions that extend intellectual property provisions on patented goods such as pharmaceuticals. When this passes into law it will hinder the effectiveness of NZ's state-run Pharmac bulk-buying medicines system, which operates a subsidy scheme based on reference pricing that includes parallel imported and generic drugs. In addition, the leaked chapter on transparency and procedural fairness in health-care technologies is designed to increase the ability of PhRMA to influence and undermine the Pharmac process.⁸

54. This is in contravention of Article 25 of UDHR, which firmly establishes the right to health, and Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which guarantees the right of everyone to the enjoyment of the highest attainable standard of health. New Zealand has not ratified the Optional Protocol that makes claims actionable.

55. **Recommendation:**

- **Guarantee the Pharmac process while negotiating the TPPA chapters on intellectual property**

Christchurch recovery

56. International research shows that mental health issues following a natural disaster peak three years after the event.

57. **Recommendation:**

- **New Zealand should continue to devote the necessary resources to respond to ongoing mental health issues in greater Christchurch.**

Mental Health of people of diverse sexual orientations and gender identities

⁷ The TPPA is a trade, investment and economic integration agreement currently being negotiated between twelve countries – Australia, Brunei-Darussalam, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States of America and Vietnam. Japan will join the negotiation as a full partner on 23 July 2013. The parties aim to conclude the TPPA in late 2013.

⁸ <http://www.citizenstrade.org/ctc/blog/2011/10/22/leaked-trans-pacific-fta-texts-reveal-u-s-undermining-access-to-medicine/>, <http://www.citizenstrade.org/ctc/wp-content/uploads/2012/06/tppinvestment.pdf>

58. People of diverse sexual orientations and gender identities face greater barriers to effective mental health services in New Zealand, due to exclusion, stigma, and ignorance. Physical health services usually operate separate male and female services, which do not adequately meet the needs of trans and intersex people. There continue to be major gaps in the availability, accessibility, acceptability and quality of medical services required by trans people seeking to transition.

59. **Recommendations:**

- **Develop practice standards and require health providers to demonstrate steps taken to improve access to, and the standard of, health services' delivery for our communities**
- **Undertake research into the health and well-being need of those groups within SOGII communities who face significant health disparities (particularly Māori, and Pacific people, and disabled and older people)**

Intersex

60. NZ infants born with an intersex condition are still operated on to make their bodies more typically 'male' or 'female'. Genital-normalising treatment, including surgery poses severe risks for sexual and reproductive health, is not always consistent with the person's gender identity, and is often performed without consent.

61. **Recommendations:**

- **Statutorily prohibit surgical procedures, aimed solely at correcting genital ambiguity, on children who are not competent to consent for themselves**
- **Facilitate dialogue between intersex people, relevant government agencies and health professionals in order to best inform policy and medical practice regarding intersex conditions**
- **Provide funding to enable optional reversal or alteration of previous surgical gender assignment procedures because of an intersex condition.**

Trans and Gender Diverse Health Rights and Depathologisation

62. Usually a trans person must be "diagnosed" with a clinical disorder called 'Gender Dysphoria' or 'Gender Identity Disorder' to access healthcare or medical support to transition, and then pay for the diagnosis themselves. A diagnosis that defines gender diversity itself as a medical problem is at odds with current international guidelines and practice and has negative impacts on trans and gender diverse people's health and wellbeing

63. **Recommendations:**

- **Require District Health Boards to ensure trans people's access to gender reassignment services available in NZ**
- **Provides sufficient funding to enable timely access to gender reassignment surgeries not provided through the NZ public health system**
- **Ensures medical professionals are trained in using an informed consent approach with trans people instead of one that pathologises gender diversity**

Right to education

Christchurch

64. In 2012, the Government proposed closing and merging a number of Christchurch schools partly as a result of population movements following the earthquakes. As schools provide a community focal point, this proposal has caused deep distress and concern. The Christchurch City Council has described it as a "social disaster." For many, the timing of this initiative is beyond comprehension.

65. **Recommendation:**

- **New Zealand should put the best interests of the child at the centre of its education renewal programme in greater Christchurch.**

Right to privacy, marriage and family life

66. Priority Recommendations from the Human Rights Foundation Coalition:

- **Implement a comprehensive, high-level, independent inquiry into the role, functions, powers, internal compliance procedures and effectiveness of external oversight mechanisms of all NZ intelligence agencies; in particular the GCSB and NZSIS**
- **Ensure that the GCSB is not authorised to spy on New Zealand citizens and permanent residents**

Legal Recognition of Relationships and of Gender Identity

67. The Marriage (Definition of Marriage) Amendment Act 2013 improved legal recognition of partner relationships for sexual minorities. Intersex and trans people continue to face significant barriers to obtaining consistent official documentation that reflects their gender identity. Amendments to birth certificates of trans people require a Family Court process and evidence of medical gender reassignment treatment.

68. Recommendations:

- **Ensure trans and intersex people are not required to undertake medical procedures, some of which involve sterilisation, in order to gain recognition before the law**
- **Enable sex details on official documentation to be recorded as male, female or indeterminate / intersex based on self-identification**

Rights of Persons with disabilities

New Zealand Public Health and Disability Amendment Act (No 2)

69. Priority Recommendations from the Human Rights Foundation Coalition:

- **Repeal the Public Health and Disability Amendment Act (No 2)**

Right to work and to just and favourable conditions of work

Paid Parental Leave

70. Priority Recommendations from the Human Rights Foundation Coalition:

- **Increase paid parental leave to eligible parents in accordance with the Paid Parental Leave Bill 2012**

Employment Relations (Film Production Work) Amendment Act 2010

71. The Employment Relations (Film Production Work) Amendment Act 2010 effectively changed the status of all film workers to independent contractors. This law, passed under urgency without public submissions, denies film workers the rights to collective bargaining and freedom of association recognised by the ILO Committee on Freedom of Association, Human Rights Committee and Committee on Economic, Social and Cultural Rights.

72. Employment law changes proposed in 2013 reduce collective bargaining protections and undermine workers' rights. These changes have been proposed despite advice that the ability for employers to opt out of multi-employer bargaining breaches our obligations under ILO Convention No. 98 on the right to organise and collective bargaining.

73. Recommendation:

- **Repeal the Employment Relations (Film Production Work) Act 2010**
- **Do not enact the parts of the Employment Relations Amendment Bill 2013 relating to collective bargaining**

Minimum age for children in employment

74. The lack of a minimum age for children in employment puts New Zealand in breach of the obligations under the UNCROC. New Zealand is also unable to ratify a core international labour standard: ILO Convention No. 138, Minimum Age, 1973

75. Recommendation:

- Enact a minimum age of employment for children, thereby allowing ratification of ILO Convention No. 138, Minimum Age Convention, 1973 and the removal of New Zealand's reservation against UNCROC Article 32.

Right to development and environmental issues

Right to a healthy environment

76. **Priority Recommendation from the Human Rights Foundation Coalition:**
- Legally recognise the right to a healthy environment, for example in the NZBORA

Climate change

77. **Priority Recommendations from the Human Rights Foundation Coalition:**
- Adopt a rights-based approach to climate change policy at home and abroad, including by reducing greenhouse gas emissions to safe levels that are consistent with the full enjoyment of human rights and setting a binding emissions reduction target
 - Return New Zealand's emissions trading scheme to its previous "cap and trade" model
 - Re-enter the Second Commitment Period of the Kyoto Protocol
 - Eliminate fossil fuel subsidies within New Zealand
 - Explore sustainable alternatives to oil and dirty fuel extraction

Right to Water

78. **Priority Recommendations from the Human Rights Foundation Coalition:**
- Adopt the UN General Assembly statement on the human right to water
 - Legally recognise the right to water as a human right and take action to protect it

Indigenous Peoples' Rights and the Treaty of Waitangi

79. The joint UPR submission on Indigenous Peoples' Rights and the Treaty of Waitangi (Aotearoa Indigenous Rights Trust and Peace Movement Aotearoa, et al) raises a number of concerns about New Zealand's international obligations to hapu and iwi Maori (the indigenous peoples of Aotearoa New Zealand) with regard to the internationally recognised 1835 Declaration of Independence, the Treaty of Waitangi⁹ (the Treaty) and the international human rights instruments, including - but not limited to - the two International Covenants, and the UN Declaration on the Rights of Indigenous Peoples.
80. Of particular concern is the lack of protection from violations of the Treaty and human rights arising from Acts of Parliament, and government policy and practice, due to New Zealand's constitutional, legislative and legal framework. While this lack of protection applies to everyone, it is a particular concern for hapu and iwi as minorities within a majoritarian political system.
81. **Recommendation: that New Zealand begins a process of negotiation with hapu and iwi on Treaty-based constitutional arrangements to ensure the full protection of the collective and individual rights of Maori.**
82. Other concerns include NZ's failure:
- to recognise the right of self-determination in relation to hapu and iwi, which is not only problematic in itself, but is also the underlying foundation from which other human rights violations arise¹⁰. **Recommendation: that New Zealand establishes mechanisms to ensure that all legislation, policy and practices are consistent with the right of self-determination and the other rights of indigenous peoples articulated in international human rights instruments.**
 - to respect the right of free, prior and informed consent in relation to the rights and interests of hapu and iwi. **Recommendation: that New Zealand takes immediate action to ensure that the inalienable rights of Maori to their lands,**

⁹ Signed by representatives of the British Crown and of more than 500 hapu and iwi in 1840; the Treaty guaranteed the continuance of tino rangatiratanga (sovereignty or independence), which is somewhat analogous to the right of self-determination of all peoples as articulated in the shared Article 1 of the International Covenant on Civil and Political Rights and the International

¹⁰ As has been well documented by the Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, Human Rights Committee and others, as well as the UN Special Rapporteur on the Rights of Indigenous Peoples.

territories, waters and marine areas and other resources, as well as the respect of the free, prior and informed consent of Maori on any decisions affecting their use are incorporated in legislation, policy and practice.

- **to ensure the right to freedom from racial discrimination** in relation to the collective and individual rights of Maori. **Recommendation:** *that New Zealand repeals the Marine and Coastal Area (Takutai Moana) Act and enters into proper negotiation with hapu and iwi about how their rights and interests in foreshore and seabed areas can best be protected; and*
- **to provide fair and adequate redress** for Treaty breaches. **Recommendation:** *that New Zealand ensures that Treaty settlements comply, and can be legally compelled to comply, with the Treaty of Waitangi and its other international human rights obligations; enables historical claims to be lodged at any time; takes the time to fairly settle all claims; and enforces the recommendations of the Waitangi Tribunal.*