



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Consideration of reports submitted by States parties under article 40 of the Covenant

#### New Zealand\*

##### Addendum

#### Information received from New Zealand on the implementation of the concluding observations of the Human Rights Committee (CCPR/C/NZL/CO/5)

[10 February 2012]

## I. Introduction

1. On 7 April 2010, the Human Rights Committee adopted its concluding observations in respect of New Zealand's fifth periodic report under the International Covenant on Civil and Political Rights (CCPR/C/NZL/CO/5). The Committee requested further information, within one year, on three recommendations related to:

- (a) Over-representation of Māori in prison (paragraph 12);
- (b) Terrorism suppression and the police action known as 'Operation Eight' (paragraph 14); and
- (c) The review of the Foreshore and Seabed Act 2004 (paragraph 19).

2. On 11 April 2011, the New Zealand Government sent its reply to the Committee outlining developments over the previous 12 months (CCPR/C/NZL/CO/5/Add.1) (the previous response). On 3 January 2012, the Committee requested further information in respect of certain aspects of the three recommendations. This paper responds to that request from the Committee.

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

## II. Human Rights Training for Department of Corrections Staff

3. The Committee has asked for more information on the mandatory human rights training for the staff of the Department of Corrections. The Department delivers human rights training for all custodial staff during their initial training course. This training includes an examination of the history and content of human rights principles and New Zealand human rights legislation. The training is participatory. It encourages trainee staff to think about how human rights principles will apply to their work with prisoners and the importance of the practical application of those principles as part of developing their professionalism.

4. The Department has also integrated a human rights focus into refresher training which is regularly delivered to all prison staff. This ranges from specific human rights sessions in training on subjects such as dealing with conflict and the use of coercion, to cultural awareness training including 'Responsiveness to Māori' and 'Cultural Diversity in Prisons'.

5. All custodial staff are assessed to ensure that they can demonstrate an understanding of, and compliance with, the Human Rights Act 1993. They are assessed on their knowledge of the requirements of the Act and their ability to consistently put these requirements into practice in their workplace.

6. The New Zealand Government will provide an update about human rights training for all law enforcement officials and the judiciary in its next periodic report.

### A. Marine and Coastal Area (Takutai Moana) Act 2011

7. In the previous response, the Government provided an outline of the Marine and Coastal Area (Takutai Moana) Act (see paragraphs 52–66). That outline focussed upon the extensive process followed in the adoption of the Act and upon the Act's general scheme for recognition of customary interests. The Government understands that the Committee's further request arises from its recommendation at paragraph 19 on its Concluding Observations that "... special attention should be paid to the cultural and religious significance of access to the foreshore and seabed for ... Māori."

8. In this broadest sense, the Act acknowledges the cultural and spiritual importance of access to the coastal marine environment for Māori by recognising and protecting customary interests in the marine and coastal area.

9. The manner of recognition and protection is also driven by cultural interests: the Act takes account of the intrinsic, inherited rights of iwi (tribe), hapū (sub-tribe), and whānau (family), derived in accordance with tikanga (customary uses and practices) and their mana-based<sup>1</sup> relationship with the marine and coastal area. The Act respects the integrity of tikanga as the traditional Māori system of authority and management over the marine and coastal area by positioning tikanga as an integral component of providing for and recognising customary interests.

10. In addition, the Act makes detailed provision for the cultural and spiritual significance of access to the marine and coastal area for Māori. First, in order to give legal expression to these rights, the Act:<sup>2</sup>

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<sup>1</sup> Mana – authority.

<sup>2</sup> Section 4 (purpose section).

- (a) Recognises the mana tuku iho<sup>3</sup> exercised in the marine and coastal area by iwi, hapū and whānau as tangata whenua (indigenous people, people of the land)
- (b) Provides for the exercise of customary interests in the common marine and coastal area, and
- (c) Acknowledges the Treaty of Waitangi (te Tiriti o Waitangi).

11. Part 3 of the Act provides for the recognition of the following three types of customary rights:

(a) Recognition of mana tuku iho: iwi, hapū and whānau who exercise kaitiakitanga (guardianship) over a specific part of the coastal marine area have the right to participate in conservation processes that affect them (e.g. the establishment of marine reserves and conservation areas, and the management of stranded whales).<sup>4</sup>

(b) Customary marine title (a new form of customary title):<sup>5</sup>

(i) The Act provides for the recognition and exercise of customary marine title through a range of rights. These rights contain elements of private title, subject to public access, navigation and recreational rights. Customary marine title recognises the relationship that has existed, and will continue to exist, between iwi, hapū and whānau and the common marine and coastal area. The Act requires the area to have been held in accordance with tikanga, through the demonstration of Māori customary uses and practices, as part of the test for the recognition of customary marine title.

(ii) The Act also provides for the recognition of wāhi tapu (sacred sites) in customary marine title areas.<sup>6</sup> Customary marine titleholders can prohibit or restrict access to a wāhi tapu or a wāhi tapu area. This gives effect to the principle of kaitiakitanga (guardianship) and respects the spiritual connection that Māori have with the marine and coastal area.

(c) Protected customary rights (longstanding activities, uses and practices that do not require land ownership): Protected customary rights can be recognised in relation to cultural or other customary activities, uses and practices – for example, customary activities such as the collection of hangi<sup>7</sup> stones or launching waka (canoe).<sup>8</sup> Māori can gain recognition and protection of customary rights that have been exercised since 1840 and continue to be exercised in a particular part of the common marine and coastal area in accordance with tikanga.

12. The rights provided in the Act are part of an overall legislative framework which regulates the marine and coastal area and expressly recognises the cultural and spiritual connection between Māori and the coastal marine environment as a matter of national importance.

<sup>3</sup> Mana tuku iho is defined in section 9 of the Act as inherited right or authority derived in accordance with tikanga.

<sup>4</sup> Sections 47-50 ([participation in conservation processes in common marine and coastal area](#)).

<sup>5</sup> Sections 58-59 (determination of whether customary marine title exists); sections 60-62 (rights under customary marine title).

<sup>6</sup> Sections 78-81 (wāhi tapu protection right).

<sup>7</sup> Hangi – traditional method of cooking food using heated stones buried in a pit oven.

<sup>8</sup> Sections 51-55 ([protected customary rights](#)).

## **B. Terrorism Suppression and Operation Eight**

13. The background to the Operation Eight Police investigation undertaken in October 2007 is set out in paragraphs 32 to 38 of the Government response to the list of issues submitted on 24 December 2009 (CCPR/C/NZL/Q/5/Add.1). In the previous response, the Government noted that the trial of firearms and related charges had been affected by a considerable number of pre-trial applications and appeals by both prosecution and defence counsel. That response also referred to the Independent Police Conduct Authority investigation into Police actions and the review of relevant legislation by the New Zealand Law Commission.

## **C. Outcome of Court Proceedings Related to Operation Eight**

14. At the time of the previous response, 18 people were awaiting trial on firearms and related charges. The trial was scheduled to commence on 30 May 2011.

15. The trial date for these offences was, however, deferred following an appeal to the New Zealand Supreme Court of a defence application to exclude certain evidence as unlawfully or unreasonably obtained. Although that appeal was heard on an expedited basis on 3-4 May 2011, the Supreme Court determined that it was not possible to decide the appeal in time for the scheduled trial.<sup>9</sup>

16. The application to exclude evidence, which had been declined in the lower courts,<sup>10</sup> was ultimately upheld by the Supreme Court on 2 September 2011. Following that decision, the charges were withdrawn in respect of all but four cases. The High Court has since declined further applications by defence counsel to dismiss the remaining charges by reason of delay, finding that, in the circumstances of the delay, it was not undue.

17. The Government recognises the public importance of resolving the outstanding criminal prosecutions as quickly as possible, subject to fair trial considerations and the right of those accused to conduct their defence. The trials of the remaining charges of participation in a criminal organisation and unlawful possession of firearms are now scheduled to commence on 13 February 2012.

## **D. Report of the Independent Police Conduct Authority**

18. In the previous response, the Government advised that the Independent Police Conduct Authority, an independent public body headed by a Judge of the High Court, intended to conclude its investigation of police conduct (related to Operation Eight) in 2011. In light of the Committee's request to the Government for an update, the Authority has advised that its investigation is awaiting the resolution of the court proceedings and has provided the following statement:

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<sup>9</sup> *Hamed & ors v R*, [2011] NZSC 27, 24 March 2011 (grant of leave to appeal and direction of hearing dates) and 2 September 2011 (decision upholding appeal) (publicly accessible via <http://www.courtsofnz.govt.nz/from/decisions/judgments-supreme/judgments-supreme-2011>).

<sup>10</sup> *R v Bailey* HC Auckland CRI-2007-085-7842, 7 October 2009 and *R v Bailey* HC Auckland CRI-2007-085-7842, 15 December 2009 (High Court); *Hunt v R* [2010] NZCA 528 (Court of Appeal) (publicly accessible via <http://jdo.justice.govt.nz/jdo/Search.jsp>).

“The Independent Police Conduct Authority (‘the Authority’) is conducting a detailed investigation into whether there was any misconduct or neglect of duty on the part of the Police during Operation 8 and its termination and into relevant policies, practices and procedures of Police. The Authority's investigation is in response to a number of complaints received from lawyers on behalf of clients and the Ruatoki Valley community generally, and from a Tuhoe Tribal Authority and individual complainants.

Paragraph 47 of the previous response stated that the report detailing the outcome of that investigation would be released in 2011. The Authority has had to extend the timeframe of its investigations into, and reporting back on, Operation 8 issues in order to take account of a number of important developments, most recently the Supreme Court’s decision of 2 September 2011. Ongoing court proceedings and associated issues of sub judice have been relevant to the timing of the Authority’s report. Importantly, the fair trial rights of the accused remain protected by a number of Court orders restricting the disclosure of sensitive information. In addition there are natural justice processes that must be observed by the Authority before its report can be finalised.

These restrictions continue to influence the timing of finalisation and delivery of the Authority’s investigation report. While due process in the Courts continues to take its course the Authority must proceed with considerable care in determining what of its findings may or may not be published. Subject to those very important considerations, the Authority remains committed to completing its independent investigation, and to reporting its findings both publicly and to complainants, as soon as is reasonably practicable.”

19. The New Zealand Government will advise the Committee when the Authority releases its final report.

#### **E. Law Commission Project on Public Safety and Security**

20. Paragraphs 50 and 51 of the previous response discussed the New Zealand Law Commission Project on Public Safety and Security. That project followed a decision of the Solicitor-General to dismiss an application from the Police to lay charges under the Terrorism Suppression Act 2002. The Solicitor-General did not consider the alleged activities were within the ambit of that Act.

21. The Commission was asked to consider whether existing legislation should be amended to cover the conduct of individuals that creates risk to, or public concern about, the preservation of public safety and security. This project did not proceed due to other work priorities and has now been removed from the Commission’s work programme.

## Annex

### Glossary of Māori Terms

Hapū – sub-tribe

Hangi – traditional method of cooking food using heated stones buried in a pit oven

Iwi – tribe

Kaitiakitanga – guardianship

Mana – authority

Mana tuku iho – defined in section 9 of the Marine and Coastal Area (Takutai Moana) Act as inherited right or authority derived in accordance with tikanga

Rohe – area

Tangata whenua – indigenous people, people of the land

Tikanga – customary uses and practices

Wāhi tapu – sacred sites

Waka – canoe

Whānau – family

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