



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION**

Seventeenth periodic reports of States parties due in 2005

Addendum

NEW ZEALAND* **

[16 May 2006]

* This document contains the fifteenth, sixteenth and seventeenth periodic reports of New Zealand, due on 22 December 2005, submitted in one document. For the twelfth to the fourteenth periodic reports and the summary records of the meetings at which the Committee considered the report, see document CERD/C/362/Add.10, CERD/C/SR.1538, 1539 and 1550.

** Annexes to the report may be consulted in the secretariat's files.

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Glossary of Maori terms

Aotearoa	New Zealand
Hangarau	technology
Hapū	sub-tribe
Hauora	health and physical well-being
Hui	meeting
Iwi	tribe
Kaihautū	leader, representative
Kaitiaki	guardians
Kaitiakitanga	the exercise of guardianship
Kapa haka	Maori performing arts
Kaumātua	elders
Kōhanga reo	Maori-language-immersion preschools
Kōiwi tāngata	ancestral remains
Kura kaupapa Maori	Maori-language-immersion school (primary, secondary)
Mahinga kai	traditional food-gathering place
Mātaitai	reserves
Marae	meeting house
Ngā Toi	the arts
Nohoanga	camping licences/habitation
Pākehā	New Zealand European
Pakeke/mātua	adults/parents
Pāngarau	mathematics
Pounamu	greenstone
Pūtaiao	science
Rangatahi	teenager
Raupatu	confiscation (of land)
Rangatiratanga	chiefly authority
Rohe	district
Rūnanga	board
Taiāpure	local fisheries
Tamariki	children
Tangata whenua	indigenous people, people of the land
Taonga	treasures (tangible and intangible)
Taonga tuku iho	heritage (treasures handed down)
Te Kōhanga Reo	Maori-immersion-language nest (preschool)
Te Māngai Pāho	Maori Broadcasting Agency
Te Matatini	Aotearoa Traditional Maori Performing Arts Society
Te Ohu Kai Moana	Treaty of Waitangi Fisheries Commission

Te Papa Tongarewa	Museum of New Zealand
Te Puni Kōkiri	Ministry of Maori Development
Te Reo Maori	the Maori language
Te Taura Whiri i te Reo Maori	Maori Language Commission
Tikanga-ā-iwi	social studies
Tikanga Maori	Maori protocols
Toi Iho	Maori-made
Toi Maori Aotearoa	Maori Arts New Zealand
Tōpuni	particularly sacred
Wāhi tapu	sacred sites
Wahine pakari	strong, self-assured woman
Wānanga	learning, seminar (<i>whare wānanga</i> : tertiary institution)
Whānau	family
Whakapapa	ancestry

Introduction

1. This is New Zealand's fifteenth, sixteenth and seventeenth consolidated periodic report to the Committee on the Elimination of Racial Discrimination. It has been prepared in accordance with the Committee's general guidelines, as contained in chapter IV of the report of the Secretary-General on the Compilation of Guidelines on the form and content of reports to be submitted by States parties to the International Human Rights Treaties (HRI/GEN/2/Rev.2). This report covers the period 1 January 2000 to 22 December 2005.

2. The report covers the legislative, judicial, administrative or other measures adopted in the review period that give effect to the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination. It should be read in conjunction with New Zealand's previous reports under the Convention as well as New Zealand's third and fourth periodic reports under the International Covenant on Civil and Political Rights (CCPR/C/64/Add.10 and CCPR/C/NZL/2001/4) and New Zealand's second periodic report under the International Covenant on Economic, Social and Cultural Rights (E/1990/6/Add.33). Developments in Tokelau, to which the Convention applies by virtue of New Zealand treaty action, are also covered in this report.

3. The Committee's concluding observations (A/57/18, paras. 412-434) on New Zealand's twelfth, thirteenth and fourteenth consolidated periodic report (CERD/C/362/Add.10, referred to hereafter as the "last report") included some suggestions and recommendations. Responses are provided in the body of this report. In summary:

- *Social and economic disparities between Maori and Pacific peoples and non-Maori (para. 11 of the concluding observations):* While the Committee noted the programmes and projects initiated by the Government designed to address the specific needs of Maori, Pacific peoples and other ethnic groups,¹ it remained concerned by the continuing disadvantages the former groups faced in the enjoyment of social and economic rights. This report reflects the Government's efforts to reduce these disparities. See, inter alia, paragraphs 92-100 on employment, 139-149 on health, 102-121 on education, 201-207 on housing, 150-172 on criminal justice and 82-88 on social services.
- *Low representation of Maori women in a number of key sectors and their particular vulnerability to domestic violence (para. 12):* For information on the Government's approach to improving outcomes for women, including Maori women, the Committee is referred to New Zealand's sixth periodic report on the United Nations Convention on the Elimination of All Forms of Discrimination against Women (unnumbered). The employment and income status of Maori women has improved in the period under review (see paragraphs 75-76). Maori women, however, continue to be more at risk of suffering domestic violence than New Zealand European or Pacific women. Paragraph 78 outlines the Government's efforts to address this situation.

- *Disproportionately high representation of Maori and Pacific peoples in correctional facilities (para. 13)*: While noting the measures taken by the Government to reduce the incidence and causes of crime within the Maori and Pacific communities, the Committee remained concerned at the disproportionately high representation of Maori and Pacific peoples in correctional facilities. Paragraphs 153-172 outline the Government's continued efforts to address this issue.
- *Facilitation of the institution of criminal proceedings against those accused of incitement to racial hatred (para. 14)*: The Committee noted the operation of sections 131 and 134 of the Human Rights Act, according to which the institution of criminal proceedings against those accused of incitement to racial hatred is subject to the consent of the Attorney-General. Observing that the institution of such proceedings is rare, the Committee invited the Government to consider ways and means of facilitating the institution of criminal proceedings against those accused of incitement to racial hatred. New Zealand's response to this observation is contained in paragraphs 185-186.
- *More extensive information on compliance with article 4, paragraph 15, of the Convention*: The Committee invited the Government to provide more extensive information on measures taken to comply with article 4, particularly on the proscription of racist organizations, as well as the modalities for dealing with complaints of discrimination and the remedies granted to victims who have well-founded complaints. Paragraphs 179-187 and 224-229 set out the Government's approach to these matters.
- *Detention of asylum-seekers (para. 16)*: The Committee noted with concern that almost all asylum-seekers presenting themselves at the border after the events of 11 September 2001 were initially detained. For information on the Government's approach to this issue, the Committee is referred to the Government's reports to the Committee against Torture (CAT/C/49/Add.3).
- *The New Zealand Government appears to take a narrower view of the scope of special measures than is provided for in articles 1 and 2 of the Convention (para. 17)*: Paragraphs 51-53 set out the background to the interpretation of "affirmative action" and "equality" by the courts.
- *Information on enjoyment of rights mentioned in article 5 of the Convention by ethnic minorities other than Maori (para. 18)*: The report contains information on the enjoyment of article 5 rights by Pacific peoples and other ethnic groups (see paragraphs 89-91, 95-100, 113-121, 133-138, 144-149, 192, 196-197, 198, 204-205 and 211-214). The establishment of the Office of Ethnic Affairs (see paragraphs 44-50) will help ensure continued attention to the situation of other ethnic groups in New Zealand.
- *Inclusion of human rights obligations in any new constitutional arrangements for Tokelau (para. 19)*: Paragraphs 248-252 set out Tokelau's progress towards greater self-government, including how Tokelau intends to incorporate in law its commitment to basic human rights.

- *Declaration under article 14 (para. 20)*: A review of the Government's position on this matter is in train.
- *Implementation of the Durban Declaration and Programme (global) of Action (para. 21)*: The Committee recommended that the Government take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention and include in this report information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level. The Government's efforts in this regard are outlined in paragraphs 13-15.

I. GENERAL

4. Reference should be made to the Core Document on New Zealand. New Zealand was governed from November 1999 to July 2002 by a Labour-Alliance Coalition Government. The Labour Party continued into a second term after the July 2002 general election, that time forming a coalition government with the Progressive Party. A general election again took place on 17 September 2005 and has resulted in New Zealand being governed by a Labour-Progressive Coalition Government with confidence and supply agreements with New Zealand First and United Future.

II. INFORMATION RELATING TO ARTICLES 2 TO 7 OF THE CONVENTION

Government policy and general legal framework

5. Throughout the period under review, the Government has continued to work to eliminate discrimination based on colour, religion, race or ethnic or national origin. New Zealand law specifically prohibits racial discrimination, and there continues to be a strong and active government commitment to the promotion of racial harmony.

6. Consistent with article 1, paragraph 4, of the Convention, successive Governments have held strongly that there must be equality of social and economic opportunity in this country. Only thus can a fair society be sustained, free of any form of racial discrimination, and acknowledging diversity as a strength. The government-wide policy of reducing inequalities, now part of the Opportunity for All New Zealanders framework, was a platform in the period under review for pursuing both social and economic initiatives in order to reduce disadvantage and promote equality of opportunity in New Zealand. While the task of reducing inequalities is by no means over, progress has been made and is detailed in this report.

7. The Treaty of Waitangi and its meaning for the status of Maori in New Zealand was the subject of much public and political discussion in 2004 and 2005. There continues to be a wide range of views among all political parties and the community generally on the place of the Treaty in New Zealand today and how it should be reflected in legislation and policy. The Government views this debate as important and has been supporting it through information programmes about the Treaty as well as the organization of community discussions and dialogues. The settlement of historical grievances by Maori is relatively widely accepted. This report describes the progress that has been made in this area.

8. The growth of other ethnic minority communities in New Zealand and their impact on New Zealand society have also been features in the period under review. Immigration flows have led to peoples of Asian ethnicity now outnumbering Pacific peoples. The establishment of the Office of Ethnic Affairs has been a vehicle for ensuring that the interests of other ethnic groups are taken into account in New Zealand. The Office's work is detailed in this report.

9. This report, like New Zealand's last reports, sets the context in which issues of elimination, prevention and remedy in respect of all forms of racial discrimination are addressed. Inter alia it describes efforts to improve the social, economic and cultural situation of Maori, including relevant developments in relation to the Treaty of Waitangi. It includes, too, comment on the situation of Pacific peoples and other ethnic groups within New Zealand society. Quantitative information is also provided to help illustrate developments over the reporting period. Much of this information is based on statistics from the 2001 Census, although more recent statistics have been used when possible.

10. The New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 provide the legal framework for the elimination of racial discrimination in New Zealand. Information about these Acts is provided in this report under article 2, paragraph 1, of the Convention. Comment there also demonstrates how laws and policies are developed with regard to consistency with human rights obligations, including the right to be free from discrimination.

Ethnic characteristics of the New Zealand population

11. The Land and People section of the Core Document gives a statistical and qualitative description of the New Zealand population. In brief:

- According to the 30 June 2001 population estimates, 79.2 per cent of New Zealanders identified as New Zealand European, 15.1 per cent as New Zealand Maori, 7.0 per cent as Asian, 6.7 per cent as Pacific peoples, and 0.7 per cent as Other.²
- By 2021, it is estimated that:
 - The Asian group will grow to 15 per cent (up from 7 per cent in 2001);
 - The Maori group will grow to 17 per cent (up from 15 per cent in 2001);
 - The Pacific peoples group will grow to 9 per cent (up from 7 per cent in 2001);
 - The New Zealand European group will decrease to 70 per cent (down from 79 per cent in 2001).³

12. The Core Document also contains detailed information on the different age profiles of ethnic populations in New Zealand. It is important to be aware of these differences and, in particular, the relative youth of Maori and Pacific populations. These different age profiles are an important factor in explaining differences in the many political and socio-economic statistics presented in this report.

Durban Declaration and Programme of Action

13. The Government has supported relevant General Assembly resolutions and recognizes its obligation to address the actions identified in the Durban Declaration and Programme of Action. The programme has 219 separate recommendations and New Zealand already wholly or largely complies with many of them. The Human Rights Commission has analysed and prioritized those recommendations most relevant to New Zealand, producing 10 areas of action,⁴ as set out in the list below:

1. The development of the New Zealand Action Plan for Human Rights, including a Race Relations Action Plan (paras. 14-15 of this report).
2. Public understanding of the Treaty, indigenous and human rights of Maori (paras. 20, 27, 178 and 242).
3. The promotion of cultural diversity and the human rights of migrant and ethnic minorities (paras. 46-49 and 231-242).
4. The treatment of refugees and asylum-seekers (para. 214).
5. Human rights and anti-racism education and training - in educational institutions, public agencies, workplaces and for the general public (paras. 47-49, 178 and 218).
6. The development of comprehensive data, measures and outcome indicators as well as a coordinated programme of research to provide an ongoing framework for measuring the state of race relations in New Zealand (paras. 215-220).
7. Equity in education, health, housing, justice, employment (paras. 101-121, 139-149, 202-207, 150-172 and 92-100).
8. Effective consultation with and participation in decision-making by Maori, Pacific peoples and other ethnic groups (paras. 72 and 189-196).
9. Balanced representation of Maori, Pacific peoples and other ethnic groups in the media and effective measures to combat hate speech and racist information on the Internet (paras. 175-178 and 243-247).
10. Advocacy for and participation in international measures in support of the Durban Programme of Action (paras. 14 and 218).

Progression through the New Zealand Action Plan for Human Rights

14. The Human Rights Commission included outcomes and priorities for action in each of the 10 areas above in both its New Zealand Diversity Action Programme⁵ and the New Zealand Action Plan for Human Rights (NZAPHR) presented to the Government on 31 March 2005

(more details on the NZAPHR are included in paragraph 22). Also, in February 2004, the Commission hosted the first international round table of Race Relations Commissioners in partnership with the Office of the High Commissioner for Human Rights. The focus was on the implementation of the Durban Programme of Action.

Elements of the New Zealand Action Plan for Human Rights relevant to the Convention and the Durban Declaration

15. Two sections of the NZAPHR are particularly relevant to New Zealand's ongoing implementation of the Convention: section 4, Getting it Right in Race Relations, and section 7, Getting the Framework Right, which addresses, inter alia, the place of the Treaty of Waitangi. However, issues of racial disparity also arise in the other sections. The race relations issues identified in the NZAPHR are social and economic inequality; the rights of indigenous peoples; language, refugee and migrant settlement; and cultural diversity. Actions are proposed for all these issues, which are also addressed in other parts of this report. The Human Rights Commission has also identified the NZAPHR as the appropriate means to promote New Zealand's implementation of the Durban Declaration and Programme of Action.

Draft Declaration on the Rights of Indigenous Peoples

16. New Zealand supports the negotiations to reach consensus on a text for a Declaration on the Rights of Indigenous Peoples. New Zealand's longstanding position is that the draft Declaration must satisfy several fundamental requirements. It must, among other things:

- Be consistent with international and New Zealand law and policy;
- Protect the rights of all citizens; and
- Safeguard territorial integrity and political unity as well as the responsibility of democratically-elected Governments to govern for the welfare of all their citizens.

Article 2

A. Information on the legislative, judicial, administrative or other measures which give effect to the provisions of article 2, paragraph 1

17. When developing policy proposals, consideration must be given to their consistency with the Human Rights Act 1993 and New Zealand Bill of Rights Act 1990. All policy papers to Cabinet and Cabinet Committees must include a statement about any inconsistencies of the proposal with the Human Rights Act and New Zealand Bill of Rights Act, a summary of implications and comment on whether and how the issues may be addressed or resolved.⁶

Human Rights Act 1993

18. The protections and sanctions in the Human Rights Act 1993, as noted in paragraph 12 of the last report, remain unchanged. A development in this reporting period was the passage of the Human Rights Amendment Act 2001, which came into force on 1 January 2002. The Amendment Act was designed to advance New Zealand's human rights protections and to promote further a robust human rights culture. The Amendment Act also had the effect of

binding the State sector. One of the outcomes of the Amendment Act was the amalgamation of the Human Rights Commission and the Office of the Race Relations Conciliator into one organization, the new Human Rights Commission. The role of the Race Relations Commissioner is discussed in greater detail below at paragraphs 215-220. The Amendment Act also provides for a faster and less formal process for handling discrimination complaints. This publicly funded system applies to both public and private sector activity.

Human Rights Commission

19. The new Human Rights Commission, established as a result of the Human Rights Amendment Act 2001, has a full-time Chief Human Rights Commissioner, a Race Relations Commissioner, an Equal Opportunities Commissioner and five part-time Commissioners. The Commissioners operate collectively to provide leadership, advocacy and education on human rights, and to lead and direct the work of the Commission as a whole.

20. The primary functions of the Human Rights Commission are to advocate and promote respect for all human rights in New Zealand society, and to encourage the maintenance and development of harmonious relations between individuals and among diverse groups in society. The Commission also has the role of promoting equal employment opportunities. In addition, the Commission is charged with promoting a better understanding of the human rights dimensions of the Treaty of Waitangi and their relationship with both domestic and international human rights law. The Commission also has a statutory responsibility for developing, in consultation with interested parties, a national plan of action for the promotion and protection of human rights.

21. The Human Rights Commission also has the principal role in handling complaints about discrimination. The Commission provides dispute resolution services, including information gathering, expert advice and mediation to assist parties to a dispute to come to a resolution. If a complaint is not resolved, the complainant may take the case to the Human Rights Review Tribunal (formerly the Complaints Review Tribunal) or seek representation of the complaint before the Tribunal by the Director of the Office of Human Rights Proceedings. The Commission may also unilaterally choose to refer a complaint to the Tribunal or the Director of Human Rights Proceedings.

Human Rights Commission's New Zealand Action Plan for Human Rights

22. Further to the 1993 Vienna World Conference on Human Rights, the Human Rights Commission was mandated to develop a national plan of action, in consultation with interested parties, for the promotion and protection of human rights in New Zealand. Development of New Zealand's national plan of action (now called the New Zealand Action Plan for Human Rights or NZAPHR) began in December 2002. The Commission engaged in widespread consultation and research to establish the current status of human rights in New Zealand as well as potential areas for improvement. The Status Report - a detailed assessment of the current status of human rights - *Human Rights in New Zealand Today* was published on 31 August 2004. The completed Action Plan was published on 31 March 2005 (a copy of the Plan is attached as annex 4). The Government has welcomed the contribution of the Commission and will continue to consider options for responding to the NZAPHR, including a Government Action Plan for Human Rights.

New Zealand Bill of Rights Act 1990

23. The New Zealand Bill of Rights Act 1990 (Bill of Rights) requires that, where possible, other domestic legislation be given an interpretation consistent with the rights and freedoms it affirms, including the right to be free from discrimination, and that any inconsistencies in proposed legislation be considered by Parliament. The Courts have also developed a number of remedies in relation to the Bill of Rights. A full discussion of the status of the Bill of Rights and relevant case law is included in New Zealand's third and fourth periodic reports on the International Covenant on Civil and Political Rights (CCPR/C/64/Add.10 and CCPR/C/NZL/2001/4).

24. As noted in paragraph 17 of the last report, two sections of the Bill of Rights bear on Convention rights. Under section 19, everyone has the right to freedom from discrimination as defined in the Human Rights Act 1993. This includes the right to be free from discrimination on the grounds of colour, race, ethnic or national origins, which includes nationality or citizenship. This section also provides that measures taken to assist persons or groups of persons disadvantaged because of discrimination that is unlawful by virtue of Part II of the Human Rights Act 1993 do not constitute discrimination. Section 20 protects the rights of minority groups - ethnic, religious or linguistic - to enjoy the culture, to profess and practice the religion, or to use the language, of that minority.

Employment Relations Act 2000

25. The Employment Relations Act 2000 (the Act) has replaced the Employment Contracts Act 1991, referred to in paragraph 18 of the last report, and now governs workplace relations. As with the Employment Contracts Act 1991, the Act allows an employee to raise a personal grievance against employers or co-workers (under sect. 103 of the Act) if they are discriminated against in their employment on the basis of colour, race or ethnic or national origins (sect. 105 of the Act). The Act's definition of racial harassment by an employer (sect. 109) is based on section 63 of the Human Rights Act 1993. In addition, sections 117 and 118 of the Act make employers responsible for racial harassment of the employee by other employees.

26. A complainant may choose to take proceedings for racial discrimination under the Human Rights Act or the Employment Relations Act 2000, but not both. If a complaint, including one of racial discrimination, is made under the Employment Relations Act, it will be subject to a test of justification as introduced by the Employment Relations Amendment Act (No. 2) 2004. The justification test states that the question of whether a dismissal or action was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred. If a personal grievance based on racial discrimination, or any other matter, goes to the Employment Relations Authority, the Authority can order that compensation be paid to the employee, or other action be taken to prevent further harassment in the workplace.

Treaty of Waitangi

27. The Treaty of Waitangi continues to be the founding document for the ongoing and evolving relationship between Maori and the Crown. Significant developments since the last report include:

- In 2001 Te Puni Kōkiri published *He Tirohanga o Kawa ki te Tiriti o Waitangi: a guide to the principles of the Treaty of Waitangi as expressed by the Courts and the Waitangi Tribunal*. This is a significant resource for the public sector on applying the principles of the Treaty both in policy development and operational dealings with Maori;
- The Government announced its intention to enhance public knowledge of the Treaty of Waitangi in the May 2003 budget and to set aside \$NZ 6.47 million over three years to develop the Treaty of Waitangi Information Programme, administered by a specialist unit in the State Services Commission. The purpose of the Programme has been to increase public knowledge of the Treaty through greater coordination of existing information initiatives and the development of new initiatives and resources. The Treaty of Waitangi Information Unit has engaged a wide range of respected Treaty historians in the development of resources for the programme, with the specific aim of producing resources that are accurate and balanced. The resources acknowledge that history is contestable and as such there is no single correct interpretation;
- On 15 November 2004 Cabinet agreed to extend the Information Programme by tasking the Treaty of Waitangi Information Unit with facilitating community discussions on the place of the Treaty in contemporary New Zealand. A series of discussions will take place between December 2005 and June 2006. The Human Rights Commission has also been engaged in organizing symposia and facilitated community dialogue workshops (to date involving more than 15,000 people) on the place of human rights and the Treaty in New Zealand;
- References to the Treaty appear in some new legislation, with a move away from general references to a clear articulation of the responsibilities of government or local government to provide for consultation with Maori or Maori participation in decision-making in relation to specific activities. Two significant examples of this approach are the New Zealand Public Health and Disability Act 2000 (see paragraphs 79 and 132) and the Local Government Act 2002 (see paragraphs 194-197).

28. The Treaty of Waitangi was the subject of much public and political discussion in 2004 and 2005. There continues to be a wide range of views among all political parties and the community generally on the place of the Treaty in New Zealand. The continuing impetus and evolution in the work of the Waitangi Tribunal is important, as it provides a key avenue for resolving grievances arising from past injustices to the *tangata whenua* (indigenous people).

Historical treaty settlements

29. The Government has continued to make progress towards the settlement of historical claims and has set a timetable for completion of the process by 2020. The Crown deals with the resolution of historical Treaty claims according to explicit guidelines, which include the following:

- Treaty settlements should not create further injustices - either to claimant groups or anyone else;
- The Crown has a duty to act in the best interests of all New Zealanders;
- As settlements are to be durable, they must be fair, achievable and remove the sense of grievance;
- The Crown must deal fairly and equitably with all claimant groups; and
- Settlements will take into account fiscal and economic constraints and the ability of the Crown to provide redress.

30. In settling historical Treaty claims, the Crown considers that redress should relate fundamentally to the nature and extent of the breaches suffered. The Crown also aims to strike a balance to negotiate fair, just and practical settlements that include a range of remedies to meet cultural aspects of claims as well as providing commercial and financial redress. Redress necessarily reflects present-day social and economic realities. Nationalized minerals are not available for use in Treaty settlements, as transferring rights to such resources would entail significant risk for both the Crown and the claimant group.

31. Settlements generally comprise an agreed historical account, Crown apology, and statutory instruments to recognize the claimant group's special interests in particular sites and species, and financial redress, which may be taken as cash or certain surplus Crown-owned properties. The purpose of financial redress is to re-establish an economic base as a platform for future development. It also recognizes that where claims for the loss of land and/or resources are established, Crown breaches will usually have held back the potential development of the claimant group concerned.

32. Each negotiation and settlement reflects the different interests and circumstances of each claimant group. The Government must be satisfied that the claimant community supports the negotiated settlements. A ratified settlement is then brought into effect through the enactment of settlement legislation by Parliament.

33. To ensure good progress in making settlements, the Office of Treaty Settlements was given increased resources to assist claimant groups in direct negotiations with the Crown. As a result, more groups than ever before are in negotiations or pre-negotiation discussions with the Crown. As at 31 December 2005, the Crown had concluded settlements with 20 claimant groups, involving financial redress of \$NZ 707 million (see annex 5). The Crown has reached settlements with claimant groups located in areas that make up half of the land area of New Zealand. In addition, settlements reached to date cover more than half of the tribes that

suffered *raupatu* (confiscation), recognized as the most serious Treaty breach. Good progress was also made in negotiations with claimants. As at 31 December 2005, four claimant groups had entered into Agreements in Principle or Heads of Agreement with the Crown (see annex 5). The Crown is in settlement negotiations or pre-negotiation discussion with another 21 claimant groups.

34. In November 2002, the Crown published a second edition of the 1999 guide to Treaty of Waitangi claims and negotiations with the Crown entitled *Healing the Past, Building a Future* (see References section). The purpose of this book was to provide a practical guide for claimant groups to the direct negotiation and settlement of historical grievances under the Treaty of Waitangi. 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.

The Waitangi Tribunal

35. The Waitangi Tribunal is a permanent commission of inquiry charged with making recommendations on claims brought by Maori relating to actions or omissions of the Crown that breach the promises made in the Treaty of Waitangi. The Waitangi Tribunal's recommendations are not binding upon the Crown.

36. The Tribunal has continued to play an integral role in the settlement of Treaty claims during the period under review. To date, most Maori groups have pursued a hearing of their claims, prior to settling them with the Crown. In order to integrate its inquiries more fully into the settlement process, the Tribunal introduced a new approach to its procedures in 2000. Whilst continuing to group claims into districts for joint research and hearings, the Tribunal introduced procedural innovations designed to clarify tribal representation, focus on matters in dispute and provide quicker hearings and reporting. This new approach was pioneered in the Tūranga (Gisborne) inquiry and has subsequently been deployed successfully in other districts, halving the average time taken previously for Tribunal inquiries. In 2003, in response to the wishes of the Crown and Maori tribes from the large Central North Island districts, the Tribunal developed a modular form of the new approach designed to assist large claimant groups preparing for early settlement negotiations and seeking a less comprehensive inquiry. This modular inquiry process has provided a means of swiftly researching and hearing the big-picture grievances of tribes on a regional scale.

37. Although the majority of the Tribunal's work focuses on large district inquiries into historical claims, many of its reports relate to more specific or contemporary matters granted an urgent hearing. These include claims about resources (such as petroleum or aquaculture), the settlement process (usually tribal mandates) and particular Crown policies (such as the foreshore and seabed policy). The Tribunal provided a public forum for the hearing of Maori grievances on these urgent matters and an advisory report to the Crown and claimants for their assistance in resolving areas in dispute. In 2000-2005, the Tribunal published 6 district reports and 17 reports on specific claims or issues (see annex 5 for a list of the reports).

38. The Crown has not always followed Waitangi Tribunal reports on contemporary matters, that is, those arising since September 1992. Such contemporary findings differ from assessment of historical claims, in part because they frequently relate to government policy decisions in the course of which the Government has itself made an assessment of the relationship between the Treaty of Waitangi and the particular policy.

Te Puni Kōkiri (Ministry of Maori Development)

39. Te Puni Kōkiri is the principal adviser on Government-Maori relationships. Its strategic outcome Maori succeeding as Maori is achieved by leading and supporting government through high-quality policy advice, effective monitoring and building and maintaining strong relationships. Te Puni Kōkiri recognizes the importance of Maori as individuals, in organizations and as a collective, achieving a sustainable level of success. Te Puni Kōkiri is developing the Maori Potential Approach and is guided by the following principles:

1. **Maori potential:** seek opportunities for Maori to change their life circumstances, improve their life choices and achieve a better quality of life. The principle recognizes that Maori are multidimensional, aspirational people who are supported by a distinctive culture and values system.
2. **Culturally distinct:** respect Maori as first people of Aotearoa New Zealand and recognize and value the cultural capital with which Maori enrich their communities. This reflects the role of Maori and their indigenous culture within the wider society.
3. **Maori capability:** build the capability of Maori people and extend their sense and range of choices and power to act. This principle reflects the need for Maori to view themselves as the catalysts to affect change.

Maori Land Court

40. As noted in the last report, the Maori Land Court is one of New Zealand's oldest and most important legal institutions. The Court and its administration have a close relationship with Maori, particularly in relation to land issues. Under the Foreshore and Seabed Act 2004, the Maori Land Court may hear applications for "customary rights orders" that reflect particular customary use(s) of a given area (see paragraph 64 for more detail). Otherwise, the role and functions of the Maori Land Court, as described in paragraphs 37-39 of the last report, have not changed in the period under review.

Ministry of Pacific Island Affairs

41. The Ministry of Pacific Island Affairs exists to promote the development of Pacific peoples in New Zealand to enable them to participate in, contribute to and share fully in New Zealand's civil, political, social, economic and cultural life. The Ministry is to do this in a way that recognizes and reflects Pacific cultural values and aspirations.

42. Over recent years, the Ministry's role in providing leadership for the Government's initiatives impacting on Pacific peoples has grown considerably. For example, the Ministry has acquired new and enhanced roles to ensure agency effectiveness in reducing inequalities for

Pacific peoples. There has also been increasing involvement and participation in overseeing agencies' implementation and coordination of government programmes for Pacific peoples. The growing strategic leadership role of the Ministry across the government sector has also led to other positive benefits for Pacific peoples. There is a general willingness by agencies to consult and seek policy, monitoring and communications advice from the Ministry at an early phase as they develop policy and initiatives that impact on Pacific peoples. Consequently, programmes and services are more responsive and better aligned with the needs of Pacific peoples.

43. A focus for the Ministry of Pacific Island Affairs during this reporting period has been the development of the Pacific Prosperity Strategy. The Strategy aims to shift the attention of Pacific peoples from social disparity towards self-reliance and economic prosperity. The Strategy began with the release of a series of reports on the economic status of Pacific peoples in New Zealand and the opportunity cost to New Zealand of Pacific peoples continuing to underachieve. The second phase of the Strategy was the hosting of the Pacific Prosperity Conference in November 2005. Following the conference, the Ministry, in collaboration with other agencies, is developing an Economic Strategic Action Plan as a possible pathway towards achieving Pacific Prosperity. Within the action plan, it is expected that there will be opportunities for partnerships with the private sector.

Office of Ethnic Affairs

44. In May 2001, the Office of Ethnic Affairs was launched as a unit within the Department of Internal Affairs. The Office replaced the ethnic affairs activities that were provided by the Constitution, Heritage, Ethnic Affairs and Identity Policy Group noted in paragraphs 44-46 of the last report. Te Puni Kōkiri and the Ministry of Pacific Island Affairs usually advise on issues for Maori and Pacific peoples, respectively.

45. The Office was established to support New Zealand's first Ministerial portfolio for Ethnic Affairs. Its role is to advise and inform on issues affecting people whose ethnicity distinguishes them from the majority in New Zealand.

46. The Office works with all ethnic people, including migrants, refugees and New Zealand-born descendants who identify with their ethnic heritage. It has ethnic advisers in Auckland, Wellington and Christchurch, where there is the greatest ethnic diversity, who provide a link between the community and policy advisers. It has established ethnic networks, including an ethnic women's network, to gather feedback about the issues and concerns affecting ethnic communities and has developed a website and newsletter to publicize matters of interest to ethnic people. The Office also held nine listening forums around the country between 2002 and 2004 to enable ethnic and refugee communities to meet with the Minister for Ethnic Affairs so he could hear first-hand about the issues they faced. Representatives of government agencies were also invited so that they could answer questions on policy and services.

47. The Office also works with other government agencies, both central and local, to help them develop policies and services to meet the needs of ethnic people. It focuses on cross-government policy development initiatives and services that reach all agencies. An example is *Ethnic Perspectives in Policy: Government's policy framework for the ethnic sector*. It aims to raise awareness within the Government of issues affecting ethnic people, so that policies and services will be more responsive to their needs.

48. The Office also has a role in raising awareness and improving understanding of ethnic communities and why migrants and refugees come to New Zealand, their history, their cultures and their contributions. Recent Office publications such as the *Portraits: Youth* booklet and the *Strength in Diversity* poster have been widely and well received. This positive reception affirms the need for the Office to develop a public education profile.

49. The Office is planning a range of projects that will raise the visibility and improve settlement outcomes of ethnic communities. A particular focus will be to enhance intercultural skills in the public sector by promoting the development of intercultural competence (i.e. in addition to bicultural competence). This is an area of increasing demand and expectations, as agencies strive to enhance their services for all New Zealanders.

50. The Office has also developed Language Line, a telephone interpreting service launched in April 2003 that aims to support improved access to government services for people who speak limited or no English.⁷ As of December 2005, Language Line had handled more than 45,000 successful calls.

B. Information on the special and concrete measures taken in the social, economic, cultural and other fields to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of fundamental freedoms, in accordance with article 2, paragraph 2, of the convention

Special and concrete measures for the adequate development and protection of certain groups

51. Paragraph 17 of the Committee's concluding observations on New Zealand's last report raised a question about New Zealand's interpretation of "special measures". Affirmative action programmes or "special measures" are protected by section 73 of the Human Rights Act 1993 and section 19 (2) of the Bill of Rights Act 1990.

52. The tests under section 73 of the Human Rights Act and section 19 (2) of the Bill of Rights Act differ slightly in the way they are worded. The test in section 73 of the Human Rights Act is broadly focused upon ensuring that measures to achieve equality do not breach that Act. It refers to "assisting or advancing persons against whom it is unlawful to discriminate". The test in section 19 (2) of the Bill of Rights Act is narrower, as the subject of the "measure in good faith" in section 19 (2) must have also been the sufferer of unlawful discrimination under subsection 19 (1) of that Act. The courts have never ruled on the whether there is any significance in the use of different words and the distinction may be more theoretical than practical.⁸

53. Despite the lack of certainty about the significance of the difference between the two tests, it is well established by the New Zealand courts that not all distinctions between individuals and groups of individuals will be discriminatory for the purposes of the Bill of Rights Act.⁹ In addition to section 19 (2), section 5 of the Bill of Rights Act recognizes that reasonable limits may be placed on rights, but such limitations must be "demonstrably justifiable in a free and democratic society". Such limitations can be justified where the limitation serves a

significant and important objective, and is a rational and proportionate means to achieve the objective. Most importantly, the standard recognizes that Government must be able to make distinctions amongst groups within the community, if governance is to be effective and provide for the inevitable variety of differences between people and groups.¹⁰

Review of targeted policies and programmes

54. The existence of special measures for the development and protection of certain racial groups was the subject of much discussion in 2004. The Government considers that appropriate rigour around targeted programmes is vital to ensure their credibility and public acceptance. In May 2004, the Ministerial Review Unit (MRU), reporting to the Co-ordinating Minister of Race Relations, was established with responsibility for planning, monitoring and coordinating reviews of targeted policies and programmes within the core Public Service.¹¹ The reviews were intended to furnish information in respect of each policy or programme that showed whether there was a clearly demonstrated need that the policy or programme was meant to meet; whether that need was still relevant; and whether ethnicity could be an indicator of whether or not that need was present in a particular person or group of persons. The reviews were also intended to provide a description of the intervention logic (i.e. provide a credible theory or evidence) as to how targeting by ethnicity helped address the need.

55. In assessing the information gained from the reviews, the MRU considered targeting by ethnicity appropriate where:

- A need was clearly established and those in need identified;
- Ethnicity helped identify those in need better than other available information;
- People in need were not excluded from services because of their ethnicity;
- Tailoring of the delivery of a programme for particular groups was likely to help reach those in need or increase the effectiveness of the programme; and
- There was clear evidence of effectiveness.

When one or more of the above conditions did not exist, changes to policy were recommended or further information sought. The results of all reviews are on the State Services Commission website (www.ssc.govt.nz). Information on the reviews can also be found in *Tūi-tūi-tuituiā: Race Relations in 2005*.¹² The MRU completed its work and was disestablished on 31 June 2005.

Maori development

56. The settlement of claims under the Treaty of Waitangi Act 1975 continued to be viewed as a means for supporting Maori development. In the period under review, progress was made in the allocation to Maori of fisheries assets and aquaculture interests. Maori also continued to have strong interests in land and forestry assets.

Maori fisheries

57. Paragraphs 55-62 of the last report outlined the action that had been taken in respect of Maori fisheries assets following the comprehensive settlement of Maori fisheries claims against the Crown in 1992.

58. Paragraph 59 of the last report mentioned that Te Ohu Kai Moana (the Treaty of Waitangi Fisheries Commission) in conjunction with *iwi* (traditional tribes) was required to develop a new Maori Fisheries Bill to determine how to distribute fisheries settlement assets among Maori. The Commission consulted extensively with *iwi* on the basis for the allocation model. From 1993 to 1999, consultation focused on allocation of the pre-settlement assets (transferred to the Commission before 1992). From 2000 onwards, consultation focused on allocation of the entire settlement. It took place in two rounds, each involving more than 20 *hui* (meetings) throughout the country. The proposals in the second round, “Ahu Whakamua”, included a draft Bill setting out the legislation for the proposal. Feedback showed that more than 90 per cent of *iwi* supported the proposal. The Commission then submitted its proposal, “He Kawai Amokura”, to the Minister of Fisheries for approval. The Minister approved and accepted the Commission’s proposals with some agreed minor adjustments and a government Bill was introduced for Parliament’s scrutiny in 2003. After Select Committee consideration, the Bill was passed into law in September 2004 as the Maori Fisheries Act 2004.

59. The last report noted that, as Te Ohu Kai Moana developed an agreed model for allocation of assets, a number of challenges were made to these proposals in court. One question was who was to receive an allocation. In *Te Waka Hi Ika o Te Arawa v. Treaty of Waitangi Fisheries Commission* [2002] 2 NZLR 17, the Privy Council held that the obligations of the trust imposed by the Deed of Settlement required the benefits of the settlement to be allocated to *iwi* for the benefit of all Maori. A subsequent case contested the Minister’s decision to approve the Commission’s proposals, but was held over until the Select Committee had completed its consideration. The decision upheld the overall approval and, where it recommended minor changes, it indicated that the changes made by the Select Committee satisfied those issues.

60. The new Maori Fisheries Act establishes a formal framework for the management and allocation of assets for the benefit of all Maori, with central management of any remainder of those assets. The Act also provides for the establishment of Te Ohu Kai Moana Trustee Limited (TOKM) (formerly the Treaty of Waitangi Fisheries Commission) as the organization responsible under the Act for administering, allocating and transferring settlement assets to mandated *iwi* organizations. The Act requires that all fishing quota be allocated to mandated *iwi* organizations, with each receiving its share after meeting several thresholds set out in the legislation. It requires TOKM to provide assistance to *iwi* organizations until October 2009 to achieve these thresholds. Shares in fishing companies are to continue to be held by a central company, Aotearoa Fisheries Limited. The profits of the company are to be shared, 80 per cent going to mandated *iwi* organizations in proportion to their populations and 20 per cent to TOKM to fund its work on behalf of *iwi*.

61. Customary food gathering by Maori (as referred to in paragraphs 63-66 of the last report) continues to be provided for by the Government. Since the last report, the Ministry of Fisheries has implemented two new measures in respect of customary fisheries:

- The appointment of Pou Hononga, Maori relationship managers, to improve the Crown's relationship with Maori in the area of customary fisheries regulation; and
- The establishment of an extension services team to assist each of the *hapū* (sub-tribe) and *iwi* to have input into and participate in the fisheries management processes run by the Government.

Maori Commercial Aquaculture Claims Settlement Act 2004

62. The Maori Commercial Aquaculture Claims Settlement Act 2004 (the Act) came into effect on 1 January 2005. The purpose of the Act is to settle Maori claims to commercial aquaculture from 21 September 1992 onwards and to provide for the allocation and management of aquaculture settlement assets. The Act allows the marine farming industry to continue growing without risk of litigation from contemporary Treaty grievances and ensures that *iwi* have access to coastal marine space to develop their marine farming interests.

63. There are two sets of obligations under the settlement. The Act:

- Commits the Crown to providing the Maori Commercial Aquaculture Settlement Trust with the equivalent of 20 per cent of existing aquaculture space in the coastal marine area, issued from 21 September 1992; and
- Requires 20 per cent of all new aquaculture space identified in the coastal marine area to be transferred to *iwi* via the Maori Commercial Aquaculture Settlement Trust.

Claims to aquaculture space allocated before 21 September 1992 are being addressed through the historical Treaty claims process. Maori will also be able to make claims for non-commercial marine farming customary use rights under the Foreshore and Seabed Act 2004 (see paragraph 64).

Foreshore and Seabed Act 2004

64. At the sixty-sixth session of the Committee on the Elimination of Racial Discrimination in February 2005, the Government presented a submission to the Committee under the early warning and urgent action procedure in relation to the enactment of the Foreshore and Seabed Act. The Committee requested that New Zealand provide an update on implementation of the Foreshore and Seabed Act in its fifteenth, sixteenth and seventeenth periodic reports to the Committee. Since the sixty-sixth session of the Committee, the following developments have occurred:

Background

1. As the Government advised in its February 2005 submission to the Committee (paras. 36-47.4), the Foreshore and Seabed Act established court and other procedures to recognize and address claims by Maori to customary interests in the foreshore and seabed area:

- (a) Groups may apply to the High Court for a finding that, but for the vesting of the public foreshore and seabed in the Crown, the group would have had territorial customary rights. Where the Court finds territorial customary rights would have existed, the group can opt to enter into direct negotiations with the Crown for appropriate redress or establishment of a foreshore and seabed reserve. Groups may choose instead to commence negotiations directly with the Crown and agree redress, which agreement will then go before the High Court to be confirmed.
 - (b) The Maori Land Court, a specialist tribunal also responsible for claims in relation to collectively held land, may hear applications for customary rights orders that reflect particular customary use(s) of a given area. Where the Court grants a customary rights order, the order gives legal recognition to the right of the applicant group to engage in the particular use, including for commercial purposes, subject to the scale, extent and frequency specified in the order.
2. These procedures have now provided the principal means by which the Government is currently engaged with Maori in relation to the Foreshore and Seabed Act. Noting the Committee's preference for (at paragraph 8 of its decision) "flexible application of the legislation and ... broadening the scope of redress available to ... Maori", the Government notes that a number of applicants have chosen to enter into negotiations with the Crown over areas where they would have had a claim to territorial customary rights (preferring negotiations to a direct approach to the High Court). A number of applicants have also commenced use of the Maori Land Court process seeking customary rights orders and the Government is actively involved in those applications.

New applications for customary rights orders

3. Six groups have applied to the Maori Land Court for customary rights orders. To date, two applications have advanced to the stage of public notification. They are:
 - (a) Whakatōhea *iwi* on the east coast of the North Island; and
 - (b) Te Makati *whānau* on the South Otago coast of the South Island.

The Government has filed notices of intention to appear before the Court in respect of both applications. The Government has also sought further information from the applicants on the specific nature of the particular customary rights that are claimed. At the time of completing this report, the applications were having their first Court conference to discuss procedural matters.

Progress in territorial customary rights negotiations

4. Negotiations between the Crown and representatives of Te Rūnanga o Ngāti Porou (on behalf of the *hapū* of Ngāti Porou) and Te Rūnanga o Te Whānau (on behalf of the *hapū* of Te Whānau-a-Apanui) are proceeding well.

5. The Government is aware that to establish that territorial customary rights would have existed, were it not for the Act, requires a substantial amount of evidence. Both of the Rūnanga (with resourcing assistance from the Crown) and the Government have put a great deal of effort into gathering evidence in respect of the claims.
6. At the end of September 2005, the parties to the negotiations signed Statements of Position and Intent that set out where negotiations have progressed to so far, the matters which require further negotiation and the agreed approach to further negotiation.
7. The Statements also explain that discussions have commenced on the subject of redress and acknowledge there remain issues that require further discussion and resolution between the Crown and the two Rūnanga. All parties remain committed to good faith negotiation of these issues.
8. These Statements have assisted Te Rūnanga o Ngāti Porou and Te Rūnanga o Te Whānau to inform their members of progress to date. For Te Rūnanga o Ngāti Porou, the Statement has provided an opportunity to reconfirm their mandate for continuing to facilitate the negotiations process for the relevant *hapū*.
9. The Government is also engaged in negotiations with Ngāti Porou ki Hauraki Trust (on behalf of Ngāti Porou ki Hauraki). The Government signed an Agreement to Negotiate with members of Ngāti Porou ki Hauraki Trust in December 2005. Work is continuing on gathering evidence for the application. The Government has provided resource contributions to assist the group to confirm its mandate to enter into foreshore and seabed negotiations and to assist with gathering evidence. The Government is aware of the need to consider carefully the best available evidence and to consider any possible overlapping or shared interests in relation to other groups in the claim. The Agreement to Negotiate provides mechanisms for consideration of such issues as part of the broader negotiation process.

Ongoing monitoring of the legislation

10. Both the applications to the Maori Land Court and the current negotiations for recognition of former territorial customary rights are in the early stages. The Government is paying close attention to how these cases develop and the experiences and lessons learnt as the first groups engage with the processes under the Foreshore and Seabed Act. The Government is also providing financial and resourcing assistance to groups in negotiations and taking an active part in court proceedings under the Act. As the negotiations and court applications progress, the Government will continue to assess the effects of the legislation.
11. For those groups who would have been able to demonstrate customary rights at common law, the Foreshore and Seabed Act establishes a statutory process to seek recognition of their customary rights via the courts. Doubtless, other eligible groups who have not yet approached the Crown over territorial customary rights,

nor made an application to the Maori Land Court for customary rights orders, will also be monitoring the way these cases develop so as to make their own decisions about the approach to be taken under the legislation.

12. Although robust debate on foreshore and seabed issues has continued amongst many New Zealanders, there has been no evidence of “escalating racial hatred or violence” of the kind referred to by the Committee in its early warning and urgent action procedure.

Information sharing and dialogue

13. In support of the procedures provided under the Foreshore and Seabed Act, information booklets are now available from the High Court of New Zealand and the Maori Land Court. These booklets outline the general contents of the legislation and the process for applications and hearings.
14. The Ministry of Justice, which administers the Foreshore and Seabed Act, has given presentations on the legislation to various organizations such as Te Puni Kōkiri regional offices and local councils to assist the quality of their own engagement with Maori.

Te Ture Whenua Maori Land Act 1993

65. The Te Ture Whenua Maori Land Act 1993 is based on the Treaty of Waitangi and recognizes that Maori land is a *taonga tuku iho* (heritage) of special significance to Maori people. The principles of the Act and the role of the Maori Land Court in upholding these principles were described in paragraphs 67-68 of New Zealand’s last report and they have not changed. As noted in the last report, the Maori Land Court viewed the overall principle of the Act as retention of Maori land. This view created some tension when owners wishing to develop their land were prevented from doing so because there was a risk the land might be lost. As noted in paragraph 69 of the last report, a review was undertaken to identify how to make the Act more useful and effective, in particular to make it easier to retain, occupy, develop and use Maori land. The result of that review was the Te Ture Whenua Maori Amendment Act 2002, which came into force on 1 July 2002.

66. The Amendment Act, among other things, contains provisions that remove particular barriers to Maori development and streamline processes relating to the use of Maori land. New provisions in the Amendment Act also give the Maori Land Court more effective powers to provide owners with reasonable access to Maori land surrounded by other properties through which the owners have no rights of access. Many thousands of hectares of Maori land fall into this category. Provisions to facilitate the occupation of multiply owned land by owners have also been updated. Other provisions include requirements for judges appointed to the Maori Land Court to be suitable in terms of their knowledge and experience of Maori language and culture and of the Treaty of Waitangi.

Maori reserved land

67. In May 2002, the Government reached an agreement with the owners of Maori reserved land to settle past rental losses suffered by the owners. The settlement was negotiated between the Crown and the Organization of Maori Authorities and honours a unanimous resolution made by Parliament during the passage of the Maori Reserved Land Amendment Act 1997. This resolution called on the Government to address the past rental losses suffered by the owners of the reserved lands. The agreed settlement sum was \$NZ 47.5 million.

Maori commercial activity in land and forestry

68. Maori have a specific interest in agribusiness and forestry arising from their strong relationship with the land, the return to Maori of predominantly land assets through Treaty of Waitangi settlements, and the long history of Maori incorporations with substantial land holdings. Government agencies, including the Ministry of Agriculture and Forestry and Te Puni Kōkiri, have been working to lift Maori land development through initiatives such as the provision of information booklets to assist Maori landowners and trustees with decisions about land development.

69. In terms of forestry, during the period under review, there has been a 16 per cent increase in the area of commercial forestry planted under the East Coast Forestry project (see paragraph 72 of the last report) and further progress in the return to Maori lessors of the Crown's interest in leases held by it over Maori land planted with commercial forests.

Resource Management Act 1991

70. The Resource Management Act 1991 (RMA) is the principal statute regulating environmental management in New Zealand. Whilst not carrying obligations or expectations that are race-based, it does respond to issues of indigenous custom, culture and tradition. Under the RMA, any decisions on the sustainable management of natural and physical resources must take account of the principles of the Treaty of Waitangi.

71. In 2004, consequential changes to the RMA through the Resource Management (Foreshore and Seabed) Amendment Act 2004 included adding "the protection of recognized customary activities" as a matter of national importance. Customary rights orders recognize ongoing rights to carry on or exercise customary activities, uses or practices in a specified area of the public foreshore and seabed. They must be physical activities or uses related to a natural or physical resource. Customary rights do not require a resource consent and a process for managing the effects has been implemented.

72. The Resource Management Amendment Act (2005) provides more clarity on the requirements for Maori consultation in the resource consent process and the local authority resource management plan-making process. The emphasis on consultation has moved to the plan-making process rather than the resource consent process. The changes introduced through the Amendment also require local authorities to keep records about which *iwi* authorities are to be consulted and under what circumstances.

Women

73. The Government recognizes that women in New Zealand are not a homogeneous group: their experiences, values, lives, needs and priorities are different. They have a diversity of connections to and relationships with men, children, other women, families, *whānau* (family) and communities. Policies to reduce disparities and improve outcomes for all women will be effective only when they reflect and accommodate this diversity. New Zealand is now focused on improving equality between different groups of women and resolving more difficult issues such as family violence. Many of these issues will require not only government intervention but also long-term cultural and attitudinal change.

74. For detailed information on the status of women in New Zealand, including information on the relative status of women in different ethnic and socio-economic groups, the Committee is referred to New Zealand's fifth and sixth periodic reports on the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/NZL/5 and unnumbered). New Zealand's sixth periodic report also notes policies and initiatives to improve women's outcomes. The data in New Zealand's sixth periodic report has been disaggregated by gender and ethnicity where possible. The Committee should refer, in particular, to New Zealand's comments in respect of articles 10 (Education), 11 (Employment) and 16 (Marriage and Family Life).

Women's employment

75. Some points of interest regarding women's employment, unemployment and medium hourly rates are:

- More Maori women, Pacific women and women of other ethnic groups are now in paid employment. In 2005, the participation rate for Maori women was 57.3 per cent compared to 54.8 per cent in 2001. The 2005 participation rate for Pacific women was 54.1 per cent compared to 52.5 per cent in 2001. The 2005 participation rate for women of other ethnic groups was 51.0 per cent compared to 47.9 per cent in 2001. This compares to 2005 participation rates of 62.1 per cent for New Zealand European women, 74.4 per cent for Maori men, 70.5 per cent for Pacific men and 65.4 per cent for men of other ethnic groups.
- Fewer Maori women, Pacific women and women of other ethnic groups are now unemployed. In 2005, the unemployment rate for Maori women was 10.2 per cent compared to 13.1 per cent in 2001. For Pacific women, the 2005 unemployment rate was 7.4 per cent compared to 9.4 per cent in 2001. For women of other ethnic groups, the 2005 unemployment rate was 7.4 per cent compared to 8.5 per cent in 2001. This compares to rates of 2.9 per cent for New Zealand European women, 7.2 per cent for Maori men, 6.8 per cent for Pacific men and 6.2 per cent for men of other ethnic groups.
- The median hourly earnings of Maori women, Pacific women and women of other ethnic groups have all increased from 2001 to 2005 by 16.9 per cent, 14.2 per cent and 7.7 per cent respectively. This compares to increases over the same period of 10.9 per cent for New Zealand European women. New Zealand European

women continue to have a higher median hourly rate of \$15.50 per hour compared to \$13.68 per hour for Maori women, \$12.60 per hour for Pacific women and \$14.00 per hour for women of other ethnic groups.

76. Measures to support women's participation in quality employment are detailed in New Zealand's sixth periodic report on the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

Violence within families

77. Research in the area of family violence has highlighted that:

- The proportion of Maori women who have been abused or threatened with violence by a partner at some time during their adult life is markedly higher (49 per cent) than for New Zealand European women (24 per cent) and Pacific women (23 per cent); and
- Approximately 45 to 50 per cent of battered women using Women's Refuge services are Maori. Where women are at risk, their children may also be at risk.

78. Measures to address family violence are detailed in New Zealand's sixth periodic report on the United Nations Convention on the Elimination of All Forms of Discrimination against Women. Interventions noted in that report include:

- Project Mauriora - building the capability of Maori practitioners to provide culturally appropriate interventions;
- Family Violence Funding Circuit Breaker - a collaborative funding initiative to make things easier for community service providers;
- Family Violence Intervention Programme - improving Work and Income's response to clients who experience family violence (Work and Income is a service of the Ministry of Social Development. It helps job seekers and pays income support on behalf of the Government); and
- Family Safety Teams - providing formal systems and structures to support effective inter-agency cooperation, communication and collaboration in respect to family violence; intervening (whether by way of service or support) with families experiencing violence; and developing and promoting national best practice for working with families experiencing family violence.

Disabled persons

79. Disabled Maori and Pacific peoples experience the double disadvantage of disparity, particularly in the areas of health, paid work and economic standard of living.¹³ New migrants also have difficulty accessing disability support services due to infrastructural and communication barriers, although Language Line should help improve this situation (see paragraph 50). To respond to the situation of disabled persons, the Government created the

position of Minister for Disability Issues in 2000, responsible under the New Zealand Public Health and Disability Act 2000 for developing a disability strategy and reporting each year on progress towards its implementation. The *New Zealand Disability Strategy* was released in 2001¹⁴ and the Office for Disability Issues was established on 1 July 2002. Post-census disability surveys were also undertaken in 2001 to obtain information on the status of people with disability living in New Zealand. A descriptive analysis of results from these surveys, *Living with Disability in New Zealand*, was published in 2004.¹⁵

80. The *New Zealand Disability Strategy* sets out specific objectives, including the right for Maori and Pacific peoples to be able to participate in their communities and to enjoy access to disability services. The Strategy acknowledges the Treaty of Waitangi and the necessity to consult Maori when developing and implementing disability strategies.¹⁶ Government agencies are required to implement the *New Zealand Disability Strategy* and report annually on progress to the Office for Disability Issues. Feedback reported in the 2004 progress report¹⁷ shows that progress is being made. For example, Te Puni Kōkiri is ensuring that the needs of disabled Maori are included in government policy development. The Ministry of Pacific Island Affairs is working with government agencies on the implementation and monitoring of Pacific capacity building.

Children, Young Persons and Their Families Act 1989

81. The Children, Young Persons and Their Families Act 1989 (CYPF Act) provides for culturally appropriate services for children, young people and their families. The CYPF Act directs, for example through the care and protection principles in section 13, that interventions be culturally appropriate wherever possible. The main focus of the CYPF Act is on caring for and protecting children within their families and family groups, including those recognized within particular cultures (for example, *whānau*, *hapū* and *iwi*).

Social services

82. Since 2001, the Ministry of Social Development has been working towards reform of social assistance, referred to as the Future Directions (FD) project. Although the project applies to all New Zealanders, because Maori and Pacific peoples are over-represented in the population of working-age benefit recipients and have lower annual median incomes than other New Zealanders, the FD project's social assistance reforms and sustainable employment initiatives should have a significant positive impact on these communities.

83. The first phase of FD consists of the Working for Families (WFF) package, which commenced implementation in October 2004. An objective of WFF is to help ensure that all families have enough income to raise their children and have a decent standard of living. WFF is having a significant impact on Maori. At the end of February 2006, 28.8 per cent of Childcare Assistance recipients and 27.6 per cent of Accommodation Supplement recipients were of Maori ethnicity. The impact of the Family Assistance component of the package on Maori is unknown at present.

84. The second phase of FD, announced in February 2005, involves the development of a Single Core Benefit and enhanced employment services to replace the current raft of benefits, rules and entitlements. This change is expected to reduce the time spent on administration, enabling a stronger focus on moving people from dependency to work. The Government has agreed in principle to implement the new service model from 2006 and the Single Core Benefit from 2007-2008.

85. Alongside the reform of the social assistance system, the Ministry of Social Development is also working towards the goal of sustainable employment, that is, assisting people to move into and remain in jobs with enduring prospects. Initiatives include: needs-based employment assistance for disadvantaged client groups, including Maori, Pacific peoples, refugees and migrants, and the long-term unemployed; and regional initiatives that build people's capacity, match clients to appropriate jobs and meet the needs of local employers.

Opportunity for all New Zealanders

86. The theme of social responsibility has been emphasized in developments since 1999. By this phrase, the Government means that promotion of social well-being, measured through a range of indicators, is just as important as prudent financial management. The *Social Report* has been published annually since 2002 and the 2005 report is available at www.socialreport.msd.govt.nz. The report monitors trends in a range of indicators across 10 domains, including health, paid work, cultural identity and social connectedness. As far as possible, data is disaggregated by ethnicity.

87. During 2004, *Opportunity for All New Zealanders*¹⁸ was developed as the Government's response to the *Social Report 2004*. *Opportunity for All New Zealanders* is a summary statement of the Government's vision for New Zealand and its people, and strategies to improve social outcomes, with a fundamental commitment to social justice. In relation to Maori, it is appropriate to highlight the following statement on page 15:

The disproportionate levels of unemployment, poor health, low educational attainment and poor housing among Maori must be of concern to any government. Making life better for all New Zealanders can never be achieved if New Zealand's indigenous people are left behind as a marginalized community, permanently worse off than everyone else.

Important outcomes for Maori include what everyone else values as well, like good health and a high standard of living. A further outcome for Maori is to be able to live as Maori. Beyond physical needs, Maori need their culture to survive and develop. Maori culture and language has no home other than New Zealand. If Maori culture dies here, it dies everywhere. It is in this sense that Maori are *tangata whenua*. And for these reasons government has policies and programmes that explicitly address the needs of Maori as people who are indigenous to New Zealand.

Opportunity for All New Zealanders also includes information on programmes and policies for Pacific peoples and other ethnic groups.

Reducing inequalities

88. Reducing inequalities, now included in the scope of *Opportunity for All New Zealanders*, is a government-wide policy encompassing both social and economic initiatives. It aims to reduce disadvantage and promote equality of opportunity. Across government, reducing inequalities means a focus on the following outcomes:

- Better health and reduced inequalities in health;
- Positive parenting and a reduced incidence of abuse and neglect;
- High levels of participation in education and improved educational achievement;
- Improved labour market participation, greater access to sustainable employment opportunities and reduced unemployment;
- Higher overall living standards and reduced poverty across the community;
- Affordable housing of an adequate standard;
- Reduced criminal victimization and violence;
- Valued cultural and ethnic identities; and
- Greater social capital and reduced social isolation.

Where appropriate, efforts to achieve the above outcomes are discussed in the specific sections on health, employment and so on.

Employment

89. Economic growth has continued to lift employment and has led to a shortage of labour and skills as unemployment has dropped to 3.6 per cent of the labour force in the December 2005 quarter. The Household Labour Force Survey showed the unemployment rate had continued to drop across all ethnicities over the year ended December 2005:

- Maori employment increased by 3.5 per cent from the previous year and the Maori unemployment rate dropped from 8.9 per cent in the year to December 2004 to 8.6 per cent in the year ended December 2005.
- Although employment decreased by 1.3 per cent for Pacific peoples, their unemployment rate dropped from 7.4 per cent in the year to December 2004 to 6.2 per cent in the year to December 2005.
- These rates compare to rates of around 10-13 per cent for both Maori and Pacific peoples, in a context of an overall unemployment rate around 6 per cent, at the time of the 2001 Household Labour Force Surveys. In 1999, Maori and Pacific unemployment rates were higher still, at 14 to 18 per cent.

- Other ethnic groups (that is, not Maori, Pacific or New Zealand European) have had a significant increase in employment in the past year, up 18.9 per cent and their unemployment rate decreased from 6.6 per cent to 6.4 per cent in the year to December 2005.

90. Maori employment growth outstripped that of New Zealand Europeans over the six years to December 2005, reflecting faster growth in the Maori working-age population and the disproportionate share of Maori amongst the unemployed in the late 1990s. In addition, the distribution of Maori employment has changed over the last economic cycle, with a larger share of the Maori workforce now in high-skilled occupations. Although the shift away from low-skilled occupations remains relatively slow, the Maori workforce is now less vulnerable to a negative economic shock.

91. Employment growth for Pacific peoples and other ethnic groups has followed similar trends to that for Maori (that is, stronger growth because of higher rates of working-age population growth and unemployment). The main difference is that the distributions of employment over the last six years have moved slightly away from low-skilled occupations into semi-skilled occupations instead of high-skilled and skilled occupations, as occurred for Maori and New Zealand European during this period.

Initiatives to improve employment opportunities

92. The Department of Labour produced the *People Power* publication and web-based resource in mid-July 2004. This initiative was intended to encourage employers to employ a more diverse workforce. Part of this work focused on encouraging employers to think positively about an ethnically diverse workforce.

93. Cultural linkages are also important in achieving improved labour market outcomes. Maori will form an increasingly large part of New Zealand's workforce in future years. Maori will make up one in five workers between the ages of 15 and 39 by 2021 and are increasingly playing a major role in New Zealand's business community.

94. *Hui Taumata* is an initiative by Maori to lift their social, economic and cultural outcomes to a new level. An economic development summit held in March 2005 was supported by a year-long programme of research and discussion among Maori, the wider business community, the Government, trade unions and other community groups. A task force has been established to guide work towards the aims agreed at the summit.¹⁹

95. As part of the *New Zealand Settlement Strategy* (see paragraphs 211-213), work is continuing to ease access to employment for new migrants and refugees, with a particular focus on assisting those who confront barriers relating to their ethnicity or point of origin. Assistance will be given through the provision of career information and guidance.

96. The *Pacific Workforce Development Strategy* has been developed as a coordinated government response to improve the labour market participation and workforce capacity of Pacific peoples in New Zealand. The Strategy focuses on partnership with industries and the community.

State sector employment

97. Measures have been taken in the State sector to encourage employment of a diverse range of people. Under the State Sector Act 1988 and the Crown Entities Act 2004, Public Service departments and Crown entities have the same Equal Employment Opportunities (EEO) requirements (there are no legislative EEO requirements for employers in the private sector). Each Public Service department and each Crown entity is required to:

- Operate a personnel policy that complies with the principle of being a good employer (including an EEO programme);
- Make that policy, including the EEO programme, available to its employees; and
- Ensure compliance with that policy, including its EEO programme and report in its annual report on the extent of its compliance.

An EEO Programme is defined in the legislation as “a programme that is aimed at the identification and elimination of all aspects of policies, procedures and other institutional barriers that perpetuate, or tend to cause or perpetuate, inequality in respect to the employment of any persons or group of persons” (see section 58 of the State Sector Act and section 118 of the Crown Entities Act, respectively). Public Service departments and Crown entities should also have provisions in their personnel policies that require recognition of the aims, aspirations, employment requirements and cultural differences of ethnic and minority groups.

98. The State Services Commission (SSC) has produced several publications that help in promoting and monitoring EEO, including annual reports on EEO Progress in the Public Service. Recent reports have focused on progress for different ethnic groups. These reports are all available on SSC’s website (www.ssc.govt.org).

99. In addition, the Human Rights Commission’s EEO Commissioner has the role of providing guidance for departments and Crown Entities to help ensure good and consistent EEO practice in the State sector.

100. The Office of Ethnic Affairs is also engaged in supporting diversity in the State sector. It is developing training and resources to enhance people’s intercultural and cross-cultural skills and to improve their understanding of how difference affects the State sector and the value of diversity. It has also developed *Culture - Peeling back the layers*, a CD-ROM for use in the public sector, which is designed to stimulate awareness of ethnic diversity in the workplace and promote intercultural competence.

Education

Maori education

101. Over the past five years, the Government has maintained its focus on eliminating differences in participation and achievement for Maori learners in the education system from early childhood through to tertiary education. It has maintained and developed this focus by:

- Developing and implementing a range of changes to the education system;
- Working in cooperation with Maori organizations, *iwi* and *whānau* to promote the benefits of education for Maori; and
- Identifying ways to improve education experiences for Maori learners.

The above all form part of the Government's *Maori Education Strategy*.

Changes to the education system

102. The Government's programme of system change started with changes to the National Administration Guidelines. Schools are now required to focus explicitly on the educational progress and achievement of all students, including specific planning and reporting requirements on the achievement of Maori students. The Government also worked with the early childhood, school and tertiary sectors to produce three high-level strategic documents to influence the future direction of education: the *10-year Strategic Plan for Early Childhood Education, Ngā Huarahi Arataki*, the *Schooling Strategy* and the *Tertiary Education Strategy 2002-2007*. These strategies provide platforms for:

- Involving *iwi* and *Maori* in the provision of quality service delivery that meets their aspirations, for their *tamariki* (children) specifically, and Maori development more broadly;
- Increasing Maori participation and achievement across these sectors; and
- Supporting the provision of *kaupapa* Maori education provision (State-supported forms of education provision where Maori language is used as the primary medium of instruction).

103. In conjunction with these broad sector strategies the Government has reinforced and extended work in specific areas that support learning for Maori, including literacy and numeracy assessment, and greater use of information and communication technology.

Cooperation with Maori organizations, iwi and whānau

104. The Government has supported specific initiatives by *whānau*, *hapū* and *iwi* to improve Maori educational success, including cooperation with and support for *iwi* working to influence and effect change in education, particularly in schools and early childhood services in their areas.

105. Ministers of Education have also worked alongside the paramount chief of the Ngāti Tūwharetoa tribe who has, since 2001, facilitated and hosted a series of national and regionally focused conferences, participated in by a range of Maori people, on improving Maori education outcomes.

106. *Whakaaro Mātauranga* is a programme aimed at increasing Maori demand for quality education. It has two interlinked strands: an information campaign called *Te Mana ki te taumata - get there with learning*, to promote positive messages about education to Maori communities; and the appointment of Pouwhakataki, who work with education providers and *whānau*, *hapū* and *iwi* to promote positive educational messages that support participation and achievement of Maori.

Improving education experiences for Maori learners

107. The interaction between the teacher and the learner is crucial to improving Maori achievement and participation in school. Unfortunately the schooling system has been performing on average less well for Maori students. A programme of work has been developed aimed at:

- Raising teacher expectations of Maori learners;
- Supporting and developing teacher capability to work with Maori learners; and
- Increasing the supply of quality Maori teachers.

108. *Whānau* of learners also influence educational achievement. Maori *whānau*, however, are more likely to feel alienated from the mainstream schooling system and less likely to go to the school and/or engage with educators, partly due to their own negative experiences of schooling. Engaging Maori *whānau* and parents in school in ways that support their children's learning is a priority for the Government.

109. The Government has continued to support Maori language learning and the demand for an education that embraces the language, philosophies and culture of Maori. The numbers of learners attending *kōhanga reo* (centres for preschool-aged children and their families where the curriculum is delivered in the Maori language), *kura kaupapa* Maori and *wharekura* (State primary and secondary schools where Maori is the principal medium of instruction) has been steady over the past five years. The participation rate for Maori students in *kaupapa* Maori-based tertiary organizations such as *wānanga* has increased dramatically.

110. Building a high-quality infrastructure to support *kaupapa* Maori education is a growing priority. Significant investments are continuing to be made in the early childhood and schooling sectors to provide quality teaching and learning resources as well as materials and assessment tools in the Maori language that support the curriculum.

Results to date

111. As a result of government strategy there have been some shifts in participation and achievement outcomes over the past few years for Maori learners, including:

- An increase in Maori participation in early childhood education. In 2005, 10,208 Maori children participated in *kōhanga reo*, 11,924 participated in education and care services, and 7,933 attended kindergarten. This compares to 2001 participation figures of 9,743 Maori children in *kōhanga reo*, 9,523 in education and care services, and 7,335 in kindergarten;
- More Maori candidates gaining school qualifications and transitioning to tertiary education. While Maori students continue to be the largest proportion of school-leavers with little or no formal qualification, the proportion of Maori school-leavers in this category decreased by 24.3 per cent between 1993 and 2004. This decrease compares to a 12.1 per cent decrease for New Zealand Europeans over the same period;
- More Maori learners participating in tertiary education. Maori participate in tertiary education at a much higher rate than non-Maori. Nearly a quarter (23 per cent) of Maori aged 15 and over participated in tertiary education in 2005, a rate 77 per cent higher than that for non-Maori. This difference is primarily due to the 174 per cent increase in Maori enrolment in tertiary education since 1998, compared to only a 61 per cent increase for non-Maori.

112. However, there are still concerning trends that need to be addressed, including above average rates of truancy and absenteeism, and early departure from the school system, often without a qualification. Overall, though, progress to date indicates that raising Maori achievement and participation, and eliminating differences for Maori, are achievable goals.

Pasifika education

113. Pasifika²⁰ communities have an important presence in New Zealand, particularly in the Auckland region. The *Pasifika Education Plan* (the Plan), released in 2001, sets out the Government's targets for Pasifika education. The Plan focuses on increasing participation in quality early childhood education; at the secondary level, improving literacy and numeracy, reducing at risk situations and increasing the number of students leaving senior secondary schooling with a qualification; and, at the tertiary level, increasing participation, improving retention and encouraging higher levels of study.

114. Reports on implementation of the *Pasifika Education Plan* have yielded some good results. There has been strong growth in participation rates in early childhood education (ECE). Eighty-three per cent of Pasifika 4-year-olds participated in ECE services in 2003, up from 79 per cent in 2002 and 76 per cent in 2001. In the primary and secondary school levels, the average performance of Pasifika students is still significantly lower than that of other students. However, there are upward shifts in achievement at these levels. National Certificate of Educational Achievement (New Zealand's main national qualification for secondary school students) results show that 34 per cent of Year 11 Pasifika students gained a qualification in 2003, 4 per cent more than in 2002. Pasifika students are also demonstrating a commitment to tertiary education. In 2003, 25,402 or 15 per cent of Pasifika peoples over age 15 formally enrolled as domestic students²¹ in tertiary institutions, slightly higher than the 13 per cent rate for all domestic students.

115. As with Maori education, the role of the community in engaging in and supporting Pasifika education has also been recognized. The Ministry of Education has focused on strengthening links with Pasifika families and communities, as well as keeping communities better informed of the Government's efforts in Pasifika education. This latter goal has been pursued through a variety of means, including face to face meetings through *fono*, circulation of newsletters such as *Talanoa Ako - Pacific Education Talk* and use of the Internet and radio programmes.

English-language training

116. Learners from Non-English-Speaking Backgrounds (NESB) make up a significant group at risk of not benefiting from the educational opportunities available to them. In 2004, there were 82,000 NESB students from more than 150 countries of origin. Included in this group were 16,000 international fee-paying students and nearly 26,000 students funded through ESOL (English for Speakers of Other Languages).

117. The 26,000 ESOL students are primarily refugee and migrant students, with the greatest learning needs in basic oral, reading and writing instruction in English. To meet the English-language learning needs of these students, the Ministry of Education continues to provide supplementary funds to schools for ESOL students over and above the usual per student funding. In addition, in 2004, the Government lengthened the ESOL funding period for most students from three to five years and raised the amounts per student, especially at the secondary school level.

118. Other initiatives designed to assist NESB students include the employment of 10 Refugee and Migrant Educational Co-ordinators. They work directly with schools, parents and NESB students to promote the belonging and well-being of migrant and refugee students and their families in school. A positive correlation between successful engagement of families and the achievement of students has been confirmed in a number of research studies.

119. The Adult ESOL Strategy was launched in May 2003 to meet adult English-language learning needs. The principles of the strategy are that: the development and provision of adult ESOL is learner-centred and based on partnerships with migrant/refugee communities; adult ESOL provision is aligned to and an integral part of migrant settlement and refugee resettlement processes; adult ESOL recognizes and values the cultures of all learners; adult ESOL provision supports and creates pathways to further learning and/or employment; and adult ESOL provision is of a high quality, easy to access, affordable and encourages participation and achievement.

120. Included in the targets for the strategy are that: all adult refugees with ESOL needs will not wait more than six months for the opportunity to access an ESOL programme by 2006; Pacific and other ethnic communities will be engaged in processes to ensure the needs of ESOL learners from their groups are met effectively; and the population of people with no English-language skills (around 50,000) will be reduced by half by 2012.

121. Since the launch of the strategy, new funding, including targeted study grants, has provided increased opportunities for Pacific peoples and other migrant and refugee peoples in a diversity of programmes, including family literacy, community bilingual and formal programmes. To enhance quality provision, from 2006, study grants will be available for bilingual tutors to gain ESOL qualifications.

Language

122. English and Maori are the official languages of New Zealand. The diversity of the New Zealand population means that a variety of other languages are also spoken in New Zealand.

123. The paragraphs above on education have shown what is being done to assist non-English-language speakers in schools and as adults in the community. And, as noted in paragraph 50, the Office of Ethnic Affairs has developed Language Line to assist non-English-language speakers with access to government services.

124. One of the issues raised in consultation on the New Zealand Action Plan for Human Rights in 2004 was the need for a national languages policy to address the wide range of issues relating to language in New Zealand. Efforts have been made to advance discussion of language issues, including through the establishment of a language policy network by the Human Rights Commission. The language policy network looks at issues such as language discrimination, access to interpretation services and the place of the Maori language, Pacific languages, and languages spoken by other ethnic groups. The Commission is also working to promote a new Pacific Languages week, similar to the existing Maori Language week.

125. The Maori language continues to have a special place in New Zealand. As mentioned in paragraph 100 of the last report, Maori has been an official language of New Zealand since 1987 and there have been efforts to encourage its greater usage in New Zealand, primarily through the Maori Language Strategy (MLS), initially promulgated in 1999. The MLS was revised and updated in 2003, building on an extensive research programme.²² It established a vision for the future of the Maori language, based on extensive consultation with Maori and other New Zealanders in 2002 and 2003:

By 2028, the Maori language will be widely spoken by Maori. In particular, the Maori language will be in common use within Maori *whānau*, homes and communities. All New Zealanders will appreciate the value of the Maori language in New Zealand society.

126. Some developments under the MLS include: ongoing work by the Ministry of Education to develop a bilingual education framework to coordinate investment in Maori language education; new funding for an ongoing Maori language information programme; new funding for the upgrade of Maori radio stations; and the establishment of the Maori Television Service (see paragraph 245).

127. The Government has also recognized the need to support Pacific languages in New Zealand. According to the 2001 census, the proportion of Pacific peoples speaking their first language was 62 per cent for Samoans, 54 per cent for Tongans, 26 per cent for Niueans and

Fijians, and 17 per cent for Cook Islanders. The Government has an important role in preserving the Niue, Tokelau and Cook Island Maori languages, in particular, because the majority of Cook Islanders, Niueans and Tokelauans live in New Zealand.

128. The Ministry of Education has published language curriculum guidelines for early childhood centres and schools for Samoan and Cook Islands Maori, and is developing ones for Tongan, Niuean and Tokelauan. Each curriculum is supported through community partnerships that contribute to the development of contextualized teaching and learning materials, and teacher capability. In the New Zealand Curriculum redevelopment project, Pasifika languages are positioned alongside key international languages such as French, Japanese, Spanish and Chinese as languages of choice for schools and their students.

129. In 2005, the Ministry of Pacific Island Affairs initiated the *Mind Your Language Project* to help build the critical mass of Pacific peoples able to hold an every day conversation in their mother tongue. As part of the Project, the Ministry, in conjunction with a Niuean provider, Niu Development Inc., ran a pilot programme in Auckland to develop a language resource for the Niuean community. Once this pilot is complete, it is anticipated that similar resources will be developed for both the Cook Island Maori and Tokelauan languages.

Health

130. The overarching objectives of the health and disability sector are to improve the health of all New Zealanders - that is, to improve not just the length of life but people's length of life free from pain or disability - and to reduce health inequalities. As in other areas of government social services, an underlying concern has been to maintain protection for the most vulnerable groups.

131. New Zealand's last report outlined substantial changes in the New Zealand health and disability sector. Further change has occurred in this reporting period. The separation between the purchaser of health care and the provider of health services has been replaced with a new system of 21 District Health Boards (DHBs), which have devolved responsibility for the planning, funding and provision of health and support services to their local populations. DHB governance boards comprise seven members who are locally elected and four members who are appointed by the Minister of Health to ensure an appropriate mix of skills and representation. At least two members of each board must be Maori. In August 2005, board membership comprised 74.3 per cent New Zealand European, 23.4 per cent Maori, 2.8 per cent Pacific peoples and 7.9 per cent other ethnic groups.

132. The governing legislation for DHBs is the New Zealand Public Health and Disability Act 2000 (the Act). Objectives of the Act are: to improve, promote and protect health; to promote inclusion, participation and independence of people with disabilities (see paragraphs 79-80 for more detail); to provide the best care and support; to reduce health disparities for Maori and other population groups; and to provide a community voice in personal and public health and disability support matters. The Act recognizes the principles of the Treaty of Waitangi and provides mechanisms to enable Maori to contribute to decision-making on, and delivery of, health and disability services. The Act also requires DHBs to reduce, with a view to eliminating, health disparities between different population groups, in particular Maori, Pacific peoples and those from lower socio-economic groups.

Health status of Maori and Pacific peoples

133. While the health status of Maori continues to improve, it is still unsatisfactory compared to most of the rest of the population. Life expectancy at birth for the whole population for the years 2000-2002 was 76.3 years for males and 81.1 years for females.²³ Although the gap between Maori and non-Maori life expectancy is narrowing (after some years of widening) life expectancy is still about 8 years lower for Maori (69.0 years for Maori males and 73.2 years for Maori females). Life expectancy is slightly better for Pacific peoples (71.5 years for Pacific males and 76.7 for Pacific females), but still lower than the average for the whole population.²⁴ The main health issues affecting Maori and Pacific peoples are: cancer; diabetes/cardiovascular disease; low immunization coverage; comparatively high rates of preventable hospitalization; and high prevalence of smoking and obesity.

134. New Zealand's infant mortality rate has fallen markedly over the last 50 years, decreasing from 22.8 deaths per 1,000 live births in 1961 to 5.6 deaths per 1,000 live births, in 2004. Maori continue to have a higher infant mortality rate compared to the total population, although the gap is closing. In 1996, the infant mortality rate for Maori was 11.5 deaths per 1,000 live births, compared to 7.1 for the total population. In 2004, the infant mortality rate had declined to 7.2 for Maori and 5.6 for the total population. The infant mortality rate for Pacific peoples is also higher than for the total population. In 1997-2001 Pacific peoples had an infant mortality rate of 7.1 per 1,000 live births, compared to 5.1 per 1,000 live births for the total population.²⁵

135. Sudden Infant Death Syndrome (SIDS) remains a major cause of infant mortality and a particular problem for Maori. In 2001 the SIDS rate for Maori was more than six times higher than the rate among Pacific peoples and five times the rate of other ethnic groups. The causes for the increased risk of SIDS in the Maori population are explained to some extent by the higher prevalence of risk factors among this population. These risk factors are largely socially determined and include higher prevalence of poorer living conditions, higher bed-sharing rates (bed-sharing is a risk factor when combined with smoking) and higher smoking rates in pregnancy and post-natally. Reducing SIDS rates continues to be a priority for the Government.

Health issues for other ethnic groups

136. Migrants who enter New Zealand as permanent residents, people on work permits allowing a stay of two years or more, refugees and asylum-seekers are eligible for publicly funded health and disability services on the same basis as residents.

137. On arrival, the most common health issues for refugees are communicable diseases such as tuberculosis, hepatitis B and sexually transmitted infections. However, in addition to pre-migration experiences such as torture, loss and grief, the challenges of settlement and acculturation also may be associated with depression and post-traumatic stress disorder. Mental health services are available to most refugees on arrival and work is under way to improve primary health care, including mental health services. Most refugees are enrolled, wherever possible, with a primary health-care service that specializes in refugee health care. The Government has acknowledged the high health needs of the refugee population by directing additional funding to primary health-care centres providing "wrap around" care to refugees.

138. Asian people in New Zealand currently have a lower prevalence of most chronic diseases (other than diabetes) compared to persons of other ethnicities, and are less likely to access health services.

Initiatives to improve the health status of Maori, Pacific peoples and other ethnic groups

Maori health initiatives

139. Since the last report, there have been a number of attempts to improve Maori health, for example through more appropriate health and disability services. These attempts have been aimed at both mainstream and Maori health providers because, as noted in the last report, the majority of Maori access mainstream services.

140. *The New Zealand Health Strategy* (2000), which is required under the New Zealand Public Health and Disability Act 2000, sets out the Government's current platform for action on health. The principles of the Strategy are:

- Acknowledging the special relationship between Maori and the Crown under the Treaty of Waitangi;
- Good health and well-being for all New Zealanders throughout their lives;
- An improvement in health status of those currently disadvantaged;
- Collaborative health promotion and disease and injury prevention by all sectors;
- Timely and equitable access for all New Zealanders to a comprehensive range of health and disability services, regardless of ability to pay;
- A high-performing system in which people have confidence; and
- Active involvement of consumers and communities at all levels.

141. *He Korowai Oranga* (2002), a separate Maori health strategy, develops further that special relationship between Maori and the Crown, while *Reducing Inequalities in Health* (2002) sets out a framework and principles that can be used at national, regional and local levels to reduce inequalities in health.

142. *He Korowai Oranga* sets a 10-year direction for Maori health development and provides guidance at a strategic level on ways to achieve Maori health improvements and tackle health inequalities. The overall aim of *He Korowai Oranga* is *whānau ora*: Maori families supported to achieve their maximum health and well-being. *He Korowai Oranga* recognizes that both Maori and the Government have aspirations for Maori health and will play critical roles in achieving the desired outcome for *whānau*. To this end, *He Korowai Oranga* provides direction to both parties on how they can work to achieve the goal of *whānau ora*. It also provides a framework for the public sector on how to fulfil its role of supporting the health status of *whānau*, such as through policies that actively promote *whānau* well-being, quality education, employment opportunities, suitable housing, safe working conditions, improvements in income and wealth, and addressing systemic barriers.

143. *Whakatātaka*: The Maori Health Action Plan 2002-2005, released in November 2002, outlines how the Government will implement *He Korowai Oranga*. *Whakatātaka* identifies that the whole of the health and disability sector is responsible for improvements in Maori health and disability outcomes, along with Maori development in the health and disability sector. *Whakatātaka* sets out to achieve change at the systems level within DHBs, that is, all DHB activities are to be directed towards improving Maori health (rather than concentrating efforts through ad hoc programmes and initiatives). It seeks to build on the strengths and assets within *whānau* and Maori communities. It also establishes a clear linkage to other health strategies and plans, and ensures there is consistency towards the common aim of *whānau ora*. Many of the objectives of *Whakatātaka* are incorporated in the Ministry of Health work programmes and DHB annual and strategic plans.

Pacific peoples' health initiatives

144. New Zealand's rapidly growing Pacific population also faces particular health problems. To address these problems, a *Pacific Health and Disability Action Plan* was released in February 2002. Pacific communities were involved in the development of the Plan, which has six priorities:

- Pacific child and youth health;
- Pacific health lifestyles and well-being;
- Pacific primary health-care and preventive services;
- Pacific provider development and workforce development;
- Participation by disabled Pacific peoples; and
- Pacific health and disability information and research.

A review of activities under the plan will be completed in 2006.

145. The Ministry of Health focused first on Pacific provider and workforce development. In this regard, the Pacific Provider Development Fund (PPDF) was set up to improve access by Pacific peoples to health services and thus assist in reducing inequalities in health by:

- Supporting the development of a qualified Pacific health workforce by assisting Pacific peoples to gain health qualifications and further skills and experience;
- Further developing the range and quality of services delivered by Pacific providers to ensure Pacific peoples have a greater choice of services; and
- Facilitating the development of credible models of Pacific health care for application by both mainstream and Pacific providers. This will increase the capability of health professionals and health practitioners to interact effectively with Pacific peoples.

146. Other initiatives under provider and workforce development include a *Pacific Health and Disability Workforce Development Plan*, under which the Ministry of Health has entered into a three-year agreement with the Health Research Council for a Pacific health research programme that focuses on Pacific provider and workforce development. The Ministry of Health also continued to provide financial and mentoring support to up to 30 Pacific students studying towards a health or health-related qualification through the Pacific Health Workforce Awards.

Initiatives for low income groups

147. Progress is also being made on a work programme to improve the health of low income groups, which include disproportionate numbers of Maori and Pacific peoples. A draft framework, *Reducing inequalities in Health: an Overview*, was completed in June 2001 and the final version, together with an action pack, was disseminated at the end of that year. Its aim is to reduce inequalities in health for Maori, Pacific peoples and people on low incomes by building better health outcomes through intersectoral collaboration. Projects in this area include an intensive home-visiting programme to the target population and the development of partnerships, combining the expertise of both central and local government, *iwi* and local providers, to mobilize communities and extend access to primary care.

Initiatives for other ethnic groups

148. A handbook for health professionals, *Refugee Health Care*, was launched at the end of 2001 following nationwide consultations with health workers and refugee groups. These consultations identified the need for a resource to assist health workers to provide safe, accessible, culturally appropriate care to refugees and asylum-seekers. It includes information and advice on physical and mental health issues common to refugees, and agencies for special health needs, referral and support. Interpretation services with expertise in the health area are becoming more readily available, especially in hospital settings in the Auckland region.

149. In addition, following the development of the Office of Ethnic Affairs' *Ethnic Perspectives in Policy*, which was subsequently endorsed by Cabinet, the Ministry of Health is developing a framework for Ethnic Action and Responsiveness To Health (EARTH). EARTH will be a tool to help the Ministry lead the development of comprehensive policy, funding, service and workforce requirements as well as monitoring and evaluation initiatives for ethnic people (defined in this context as non-Maori, non-Pacific, non-New Zealand European) across the health sector in New Zealand. The Ministry of Health is also working on a process that will require District Health Boards to include ethnic people in their mandatory planning and accountability processes to address inequalities.²⁶

Criminal justice system

Courts

150. As noted in the last report, in New Zealand everyone charged with an offence has a right under section 24 (g) of the New Zealand Bill of Rights Act 1990 to language interpretation if needed. In practice, this includes the use of indigenous language, having documents served and filed in Maori. This right is also recognized in the Maori Language Act 1987.

151. The Courts must also have regard to the different cultures and traditions of ethnic groups who use the system. In 2000, the Ministry of Justice published a report on the use of section 16 of the Criminal Justice Act 1985.²⁷ At the time of the report, section 16 provided that an offender could request the court to hear any person on the ethnic or cultural background of the offender, the way in which that background may relate to the commission of the offence, and the positive effects that background may have to help in avoiding further offending. The report found that section 16 was under-utilized, with only 14 per cent of survey respondents perceiving that it was used as frequently as it could be used. The main reasons given were a general lack of awareness of the provision and resistance on the part of some of those working within the system. The report made a number of recommendations which are reflected in section 27 of the Sentencing Act 2002. This section provides for a court to hear submissions on:

- The offender’s personal, family, *whānau*, community and cultural background and the way in which it may relate to the offence;
- Any processes that are available to resolve issues relating to the offence;
- How support from the family, *whānau*, or community may be available to help prevent further offending; and
- How the offender’s background, or family, *whānau*, or community support may be relevant in respect of possible sentences.

The Court must hear a person called by the offender unless it is satisfied that there is some special reason that makes this unnecessary or inappropriate. If the Court declines to hear the person, it must give reasons for doing so.

152. Two areas of possible discrimination against ethnic groups within New Zealand merit attention. Juries are selected without bias. However, because of the ethnic or national origins of potential jurors, many do not have the “good understanding” of English specified on the jury summons form. It also appears that Maori may be less likely to be called upon for jury service if they live in rural areas. The Law Commission Report, *Juries in Criminal Trials*²⁸ recommended increasing the size of jury districts from a radius of 30 km to 45 km in order to (among other things) help improve Maori representation (based on the number of Maori living in rural areas). This recommendation is included in the Criminal Procedure Bill 2004 currently before Parliament. A good understanding of English is a factor overcome by immigration criteria - a certain level of English is required for most migrants in recognition of the importance of early integration into the community - and by time, as migrants become more fluent in English. Migrants may not serve on juries until they become permanent residents.

Crime prevention, programmes for prison inmates and addressing the problem of reoffending

Crime prevention

153. The Crime Prevention Unit (CPU) of the Ministry of Justice is the principal adviser to the Government on crime prevention strategies. It promotes effective crime-reduction initiatives and supports government and community partnerships to achieve crime reduction.

154. Few crime prevention programmes funded by the CPU are specifically race-based: the CPU funds services that draw clients from high-risk groups in high-crime locations and funding is therefore based on need. For some programmes, this focus has resulted in a high level of uptake by Maori and Pacific peoples. For example, the CPU funds 28 youth-at-risk/community youth programmes nationally. An estimated 70 per cent of the young people accessing these programmes are Maori and Pacific peoples.

155. The CPU engages with Maori on a number of levels and for different purposes. The defining characteristic of CPU relationships with Maori is engagement as partners for the prevention and reduction of offending. For example, there are partnership relationships with four *iwi* for the development of *Iwi* Crime Prevention Plans; funding for one *iwi* and one Maori service provider for the delivery of Restorative Justice Programmes; funding for one *iwi* for the delivery of a Neighbourhood Based Safety Programme; and funding for a number of Maori service providers for the delivery of youth at risk/community youth programmes.

156. The CPU is also engaged in developing Pacific Crime Prevention Strategies for Auckland, Wellington and Christchurch. The work involves the profiling of offending and victimization, a stock-take of mainstream and Pacific providers, community consultations, gap analysis and an overview of agencies, local government and non-government strategies/plans and initiatives for crime prevention. This work will lead to the development of action plans for crime prevention activities in the three main centres of Pacific population.

Responses to Maori offending

157. Maori continue to be over-represented as offenders in the criminal justice system. Maori make up approximately 14 per cent of the New Zealand population, but approximately half of those in New Zealand's prisons and just under half of those serving community-based sentences. The development and delivery of initiatives to effectively reduce reoffending by Maori remains an imperative for the justice sector, including the Ministry of Justice and the Department of Corrections.

158. Reasons for the over-representation of Maori as offenders include the relative youth of the Maori population. In 2000 Maori had a median age of 22.1 years compared to a median age of 36.1 years for non-Maori. There is no current evidence that shows ethnicity is a contributing factor for offending by Maori. However, Maori are particularly exposed to risk factors associated with anti-social and criminal behaviour, including:

- Limited social ties;
- Having family problems;
- Poor achievement at school;
- Poor self-management;
- Low income, poor skills;
- Demonstrating anti-social attitudes;

- Abusing drugs and alcohol; and
- Living in a neighbourhood that is poor, disorganized and overcrowded, with high rates of crime.

159. The Department of Corrections has started a project to review work on the causes for the disproportionate representation of Maori in the criminal justice system and to identify the main issues and any gaps in knowledge. It is intended that this work will highlight areas for further policy work and potentially provide guidance for future directions in improving responding to Maori.

160. Corrections works closely with Maori communities and other agencies. The Chief Executive's Maori Advisory Group, which includes six external members, has been established to provide direct advice and feedback to the Chief Executive on strategic, policy and operational issues that affect Maori communities.

161. It is considered essential to protect and safeguard Maori culture within new prison facilities being built in New Zealand. To this end, Corrections and Maori partnership activity has focused on engaging with Kaitiaki (guardians) groups, being the *hapū/iwi* that are recognized Maori guardians of national resources in the geographical region or area of the new prison site. The management philosophy for the new facilities has been significantly influenced by the respective Kaitiaki groups, beginning with the vision that each has for restoring wellness and well-being in their communities. In the case of the recently completed Northland Region Corrections Facility, Kaitiaki have had significant input in all aspects of the development, design and building. They were involved in the staff-recruitment process and are now involved in the operation of the facility.

162. Corrections now has Maori Focus Units based in five prisons. These are intended as rehabilitative interventions, aimed at reducing a Maori offender's risk of reoffending. They function as therapeutic environments where staff and prisoners work together to promote learning and application of cultural principles to thoughts, beliefs and actions. Those involved seek to influence each other towards the goal of a responsible and pro-social life in the community.

163. The Specialist Maori Cultural Assessment is an assessment tool that provides more in-depth cultural information about Maori offenders, both in prison and in the community. The assessment tool seeks information about those aspects of Maori well-being that may help the offender reduce their reoffending and motivate the offender to address their reoffending using a cultural approach.

164. The *Whānau* Involvement Plan (WIP) is a framework that aims to provide a more effective service to Maori offenders both in prison and serving community-based sentences. Its purpose is to enable offenders' *whānau* to support, assist and engage their *whānau* member in the corrections system. Areas being developed to support the WIP include providing *whānau* with information on services, resources and support available to them and the offenders; and empowering *whānau* within the corrections system through early engagement in offender management.

165. The Department also uses the Maori Culture Related Needs Assessment (MaCRNs). It is an in-depth needs assessment that determines whether or not an offender who identifies as being Maori and acknowledges their Maori descent may have a compromised or negative cultural identity. If this is the case, initiatives can be applied to that offender to assist them in motivating themselves towards addressing their offending behaviours, identifying and changing their attitudes and beliefs, and developing a positive cultural identity.

166. MaCRNs was recently the subject of a claim to the Waitangi Tribunal on the basis that it put Maori offenders at a disadvantage in terms of the type and length of sentences they received. Specifically, it was claimed that the MaCRNs tool disadvantaged Maori offenders because: it classified positive aspects of Maori culture and family as causing crime or as aggravating factors for sentencing; it failed to acknowledge that the cultural criteria it used were equally applicable to other cultures and ethnic groups in New Zealand; and the outcome of a MaCRNs assessment influenced the sentencing, sentence management and sentence termination processes. In finding in favour of the Department of Corrections, the Tribunal considered that there was not enough evidence to establish that any prejudice had been or is being caused to Maori offenders through the MaCRNs programme run by the Department. Their report stated the Department “acted in good faith in seeking to reduce Maori reoffending through the development of ... MaCRNs”.

Responses to Pacific peoples' offending

167. Pacific peoples are also over-represented as offenders. They make up approximately 7 per cent of the New Zealand population but approximately 10 per cent of those in New Zealand's prisons and serving community-based sentences. Although Pacific offenders have a relatively low reoffending rate, on average, they commit more serious and violent offences than offenders of other ethnicities.²⁹

168. The pilot *Saili Matagi violence prevention programme* commenced at Auckland Prison in 2003. It incorporates the principles of Western offender interventions and Pacific cultural values, beliefs and concepts. The programme has Pacific content and uses cognitive behavioural therapy, an approach used by all Corrections criminogenic programmes. Although aimed at men serving prison sentences for violent offences, it continues when they are released, with Pacific service providers supporting and guiding the offender's reintegration into the community.

169. Corrections has established the Chief Executive's Pacific Advisory Group, which provides direct advice and feedback to the Chief Executive on strategic, policy and operational issues that affect Pacific communities. Advice to this group is provided by the Pacific Peoples' Regional Corrections Liaison Committee comprising representatives from the Pacific community. Matters considered by the latter Committee have included the design and commissioning of new prisons and consultation processes with Pacific communities.

Other ethnic groups

170. People of Asian ethnicity make up about 2 per cent of those in prison and 1 per cent of those serving community-based sentences. Other ethnic groups³⁰ comprise just 1 per cent of both groups. Translation services are available to non-English speakers and, under the new Corrections Act 2004, the manager of a prison must ensure that a prisoner who is a citizen of

another country is advised in writing that the prisoner may require the manager to inform a consular representative of his or her detention. Any correspondence addressed to a representative by the prisoner will be forwarded to that representative without delay.

Youth justice

171. Reducing youth offending and the over-representation of young Maori in the youth justice system continues to be a priority for the Government. In 2002, the Government launched its *Youth Offending Strategy*, which includes a number of proposals designed to improve services to Maori *rangatahi* (teenagers/youth) and *whānau*. For example, the Strategy recommends:

- An increase in Maori Police Youth Aid staff (being implemented through the National Youth Policing Plan 2005-2006);
- That there be Maori designed and delivered programmes to youth at risk (funding for such programmes is now available through the Department for Child, Youth and Family Services); and
- That programmes for serious young offenders incorporate *tikanga Maori* (Maori protocols) (the Specialist Conservation Corps Programme and the pilot *Te Hurihanga* programme have been designed to do this).

The National Youth Policing Plan also acknowledges the need to develop more positive relationships with young Maori.

172. A whole-of-Government response is being developed to address the underlying social factors that contribute to youth gangs and youth crime in Counties Manukau, Auckland. This work has arisen out of concerns about a reported increase in youth-related crime and, in particular, violent crime. In population terms, Counties Manukau is one of the fastest growing regions in New Zealand. It has the highest proportion of youth, is one of the most ethnically diverse (with 165 different ethnic groups, including a high proportion of Maori and Pacific peoples), includes second- and third-generation migrant families, and has a strong concentration of households with low incomes. The response will bring together central and local government and community members, and seeks to improve outcomes for Counties Manukau youth. Areas to address include:

- Economic deprivation;
- Parents' extreme work-life imbalances, which make actively engaging in their children's lives difficult;
- Parents' difficulties managing their children's behaviour;
- Breakdown of migrant community structures that support parents; and
- Boredom amongst some youth.

Article 3

Information on the legislative, judicial, administrative or other measures which give effect to the condemnation of racial segregation and apartheid and to the undertaking to prevent, prohibit and eradicate all practices of this nature in territories under the jurisdiction of the reporting State

173. The Government is firmly opposed to racial segregation and apartheid. Practices or policies of this kind are prevented from occurring in New Zealand under the Human Rights Act 1993 (the Act). Part IA of the Act makes Government, government agencies and anyone who performs a public function accountable for unlawful discrimination under the Act. Policies or practices of racial segregation and apartheid would fall into the category of unlawful discrimination.

Article 4

A. Information on the legislative, judicial, administrative or other measures which give effect to the provisions of article 4 of the Convention, in particular measures taken to give effect to the undertaking to adopt immediate and positive measures designed to eradicate all incitements to, or acts of, racial discrimination

1. Measures taken to declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof

174. The comments in New Zealand's last report on the legislative mechanisms that are in place to eradicate all incitements to or acts of racism remain applicable. No amendments in this regard have been made to the Human Rights Act 1993 since the last report was compiled.

175. As in the previous reporting period, a substantial number of the complaints under section 61 of the Human Rights Act 1993 were about the media - just less than half of the complaints received between 1 January 2002 and 30 June 2005. Although the Human Rights Commission receives a substantial number of complaints under section 61, most are not progressed as formal complaints. The Commission has offered mediation and taken other action in a number of these cases. Its decisions have been based on the high threshold in section 61, particularly when the impact of the New Zealand Bill of Rights Act 1990 freedom of expression provision is considered in relation to the words used. Offensiveness of a race-related comment is not sufficient on its own. The comment must also be a probable cause of ethnic hostility or contempt. The vast majority of comments that are complained about are considered unlikely to contribute to serious ethnic unrest.³¹

176. While New Zealand does not have a specific offence of "hate speech", section 131 of the Human Rights Act 1993 creates the offence of inciting racial disharmony:

- (1) Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$7,000 who, with intent to excite hostility or ill-will against, or bring into contempt or ridicule, any group of persons in New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons:
- (a) Publishes or distributes written matter which is threatening, abusive, or insulting, or broadcasts by means of radio or television words which are threatening, abusive, or insulting; or
- (b) Uses in any public place (as defined in section 2 (1) of the Summary Offences Act 1981), or within the hearing of persons in any such public place, or at any meeting to which the public are invited or have access, words which are threatening, abusive, or insulting,

being matter or words likely to excite hostility or ill-will against, or bring into contempt or ridicule, any such group of persons in New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons.

However, the police are more likely to prosecute offences of this kind under the Crimes Act 1961 or the Summary Offences Act 1981.

177. In addition, the fact that a victim of an offence was targeted because he or she is part of a particular group can be taken into account at sentencing as an aggravating factor under the Sentencing Act 2002. Section 9 (1) (h) of the Act, which came into force on 30 June 2002, provides that where an offender commits an offence wholly or partly because of hostility towards a group of persons who have an enduring common characteristic such as race, colour or nationality, amongst others, the Court must take this into account at sentencing as an aggravating factor. The hostility must be because of the common characteristic and the offender has to believe that the victim has that characteristic. The Sentencing Act codifies many of the principles that Courts have previously taken into account when passing sentence, including racial motivations.³² Paragraphs 224-229 discuss how a victim may be compensated. Since the Sentencing Act came into force, there have been few cases where section 9 (1) (h) has been a relevant consideration.

178. Since New Zealand's last report, there have been a small number of reported incidents where some ethnic groups have been subject to some harassment and abuse. Newspaper reports seem to indicate that there were significantly more prosecutions for racially motivated crime than usual in 2005.³³ The scale of the harassment/abuse is mostly of a minor nature with few instances of physical harm. These incidents appear to be isolated. Members of the community have taken steps to counteract these events and promote racial harmony within New Zealand. A number of public institutions have also taken measures to promote racial harmony, for example:

- The Human Rights Act (as amended in 2001) requires that the Human Rights Commission encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society. The Commission is also required to promote by research, education and discussion a better understanding of the human rights dimensions of the Treaty of Waitangi and their

relationship with domestic and international human rights law. To this end, the Commission has developed resources and organized public forums so that the public has a better understanding of the human rights dimensions of the Treaty (see also paragraph 27).

- The New Zealand Police have embarked on a strategy that aims to improve relationships with ethnic communities, increase ethnic recruitment, train police and focus policing on deterring offences of inciting racial disharmony and other race relations offences. The strategy identifies the need to identify and understand ethnic related victimization and to improve Police knowledge and skills to deter violence motivated by racism, racial discrimination and related intolerance.
- The Government Administration Committee, a Parliamentary Committee, is currently conducting an inquiry into “hate speech” with a view to assessing whether the current protections under the Human Rights Act are adequate and whether to extend the scope of the Act to protect against religious intolerance and homophobia. However, in its confidence and supply agreement with United Future (see paragraph 4), the Government agreed not to support any legislative initiatives to place limits on freedom of speech through so-called “hate speech laws”. Therefore, no legislative action is expected on this issue during the current parliamentary term.

2. Measures taken to give effect to the undertaking to declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and to recognize participation in such organizations or activities as an offence punishable by law

179. The comments in New Zealand’s last reports concerning the proscription of racist organizations still hold (see also paragraphs 183-184).

3. Measures taken to give effect to the undertaking not to permit public authorities or public institutions, national or local, to promote or incite racial discrimination

180. The Human Rights Amendment Act 2001 repealed section 151 of the Human Rights Act (that is the government immunity provision relating to Acts and regulations, as well as the temporary exemption in relation to the new grounds of discrimination). The Amendment Act also repealed the exemption in relation to immigration, although a provision was added to the Immigration Act 1987 that provides a procedural exemption only. This exemption means that the publicly funded complaints process is not available in actions that allege discrimination in relation to the Immigration Act and regulations made under the Act and any policy made validly under the Act. The Human Rights Commission is also prohibited from bringing or joining any action in relation to the Immigration Act, regulations or policies listed above.

181. The only exemption remaining under section 153 relates to actions of the Government that distinguish between New Zealand citizens and other persons, or between Commonwealth citizens and aliens. This exemption permits only distinctions to be made between these groups - it does not permit discrimination.

182. Although the Immigration Act 1987 provides for a partial exemption from human rights scrutiny, immigration legislation policies and practices are still subject to the non-discrimination standard provided for under the New Zealand Bill of Rights Act 1990. This means that policy and legislative proposals must be assessed for consistency with the right to be free from discrimination under section 19 of the Bill of Rights Act 1990. A range of remedies has been developed under the Bill of Rights Act. These may include damages (in respect of discriminatory conduct or policies) or declarations of inconsistency in respect of legislation.

B. Information on appropriate measures taken to give effect to general recommendations I of 24 February 1972, VII of 1985 and XV of 1993, by which the committee recommended that the States parties whose legislation was deficient in respect of their implementation of article 4 should consider, in accordance with their national legislative procedures, the question of supplementing their legislation with provisions conforming to the requirements of article 4 (a) and (b) of the Convention

183. As advised in the last report, sections 61 and 63 of the Human Rights Act 1993, which deal with racial disharmony and racial harassment, contain prohibitions that apply to “any person”. As a matter of statutory interpretation (via the Acts Interpretation Act 1924 and its replacement the Interpretation Act 1999), the word “person” refers to groups and organizations as well as to individuals. The Human Rights Act does not prohibit the establishment of organizations per se. Nonetheless, under sections 61 and 63 it is unlawful for any organization to publish material likely to excite hostility against or bring into contempt any group of persons on the ground of the colour, race or ethnic or national origins of that group of persons.

184. Further, any individual or organization can be charged under section 131 of the Act (see paragraph 176) with the offence of inciting racial disharmony. Section 131 of the Human Rights Act corresponds with section 25 of the predecessor Race Relations Act 1971. When the 1971 Act was under consideration, the view was taken that section 25 of that Act satisfactorily implemented the obligations in respect of the Convention’s article 4 (b).

185. The Attorney-General’s consent to prosecutions under section 131 of the Human Rights Act 1993 is intended to ensure that the law is used appropriately. The requirement of an Attorney-General review of proposed prosecutions ensures, consistently with other human rights principles, that:

- (1) Individuals are not unduly exposed to the onerous consequences of vexatious and unsubstantiated criminal prosecutions; and
- (2) An appropriate balance is reached between the individual’s right to freedom of expression and the prevention of incitements to racial hatred.

Similar provisions occur in other areas of the law (around war crimes, for example).

186. The requirement that the Attorney-General consent to prosecutions under section 131 of the Human Rights Act 1993 is not intended as a barrier to criminal proceedings, and there is little evidence to suggest that it is. Since 1994, there have been only 9 applications for a prosecution under section 131 (or previously section 26 of the Race Relations Act 1971). The existing

procedures are working well, with the Attorney-General able to consider applications within a reasonable time frame. Following review of these proposed criminal prosecutions, the Attorney-General's consent was given to one prosecution under section 131. Prosecutions in the remaining cases would not have been consistent with the principles outlined above.

C. Information in response to decision 3 (VII) adopted by the Committee on 4 May 1973

187. Section 131 of the Human Rights Act 1993 (see paragraphs 176 and 183-184) provides for a specific imprisonable offence in accordance with the provisions of article 4 (a) and (b).

Article 5

Information on the legislative, judicial, administrative or other measures which give effect to the provision of article 5 of the Convention; in particular, measures taken to prohibit racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law notably in the enjoyment of the rights enumerated in paragraphs (a) to (f) of article 5 of the Convention

188. For information concerning the legislative, judicial, administrative and other measures adopted by New Zealand, reference should be made to New Zealand's first and third periodic reports and to the relevant parts of this report under articles 2 and 4. The Committee is also referred to reports submitted by New Zealand as a State party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The Human Rights Act 1993 maintains in full the provisions of the Race Relations Act 1971 and the Human Rights Commissions Act 1977 relevant to the provisions of article 5.

Political Rights

Central government

189. The Electoral Act 1993, the Act that introduced the mixed member proportional (MMP) system (discussed in paragraph 150 of the last report), continues to provide for separate Maori representation. Maori retain the option of enrolling to vote on the Maori electoral roll or the general electorate roll. This choice is exercised both at initial enrolment (at age 18) and at five-year intervals by means of a Maori option period following the national census. The option asks all enrolled Maori voters to identify their choice of roll. Under MMP, the number of Maori seats is not fixed, but is determined at the end of the option period by a formula based on the ratio of Maori opting for each of the two rolls.

190. The Maori option was last held in 2001, at which point the number of Maori on the Maori electoral roll was sufficient to increase the number of Maori seats in Parliament from six to seven. Fifty-five per cent of declared Maori voters are now on the Maori roll, the highest proportion since the introduction of the option. The Maori electoral option will next be conducted in 2006.

191. Maori may also be elected to Parliament by standing for a general or list seat. Following the 2002 general election, there were 19 members of Parliament who identified as being of Maori descent, and 21 following the 2005 election. In addition, three Pacific MPs and two Asian MPs were elected in 2002, and the same number of each group again in 2005. Amongst the political parties registered with the Electoral Commission to contest each general election as it arises are invariably a number specifically representing Maori, Pacific peoples or other ethnic groups. The Maori Party, formed in 2004, won four Maori electorate seats in 2005 bringing three new Maori members into Parliament.

192. New Zealand's voter turnout rate in 2002 was 72.5 per cent of the estimated voting-age population compared to an OECD median of 71 per cent over 1997-2002. Voter turnout was 76.5 per cent in 2005. Corresponding voter turnout as a percentage of those enrolled was 76.9 in 2002 and 80.9 in 2005. Election surveys indicate that non-voters are more likely to be members of Maori or Pacific peoples ethnic groups. The Electoral Commission is trying to increase participation amongst Maori and Pacific peoples through education and research-based projects.

Local government

Local Electoral Act 2001

193. This Act enables the establishment of Maori wards for cities and districts and for Maori constituencies in regions. Similar to the Maori Parliamentary seats, these Maori wards and constituencies establish areas where only those on the Maori Parliamentary electoral roll vote for the representatives. They overlie the general wards and constituencies, which also cover the whole city, district or region. Where these wards or constituencies exist, those voting in them get only the same number of votes as anyone else.

Local Government Act 2002

194. The Local Government Act 2002 requires all councils to:

- Establish and maintain opportunities for Maori to contribute to decision-making processes;
- Ensure processes are in place for consulting with Maori and consider ways in which they can foster the development of Maori capacity to contribute to decision-making processes; and
- Provide relevant information to Maori.

195. When the council is making any important decision involving land or a body of water, they must take into account the relationship of Maori and their culture and traditions with their ancestral land, water, sites, *wāhi tapu* (sacred sites), valued flora and fauna, and other *taonga* (similar to existing requirements on councils when taking decisions under the Resource Management Act 1991).

196. The Local Government Act 2002 also requires councils, when making decisions, to give consideration to the views and preferences of all people that are likely to be affected by, or to have an interest in, the matter being considered. The Act includes principles that a council should, when undertaking consultation:

- Provide persons who have an interest in a decision or matter with reasonable access to relevant information in a manner and format that is appropriate to their preferences and needs; and
- Encourage people that have an interest in a matter to present their views to the council.

197. Under the Local Government Act 2002, councils also have a responsibility for the development and maintenance of positive race relations in their communities. Councils are required to prepare a Long Term Council Community Plan, which must address the community's economic, social, cultural and environmental well-being. The plans must reflect community consultation and many emphasize the importance of developing diverse and inclusive communities. Many councils have also been active in fostering community development, migrant settlement and cultural events that have contributed to the celebration of diversity and the development of harmonious relationships.

Civil rights

Employment

198. Paragraphs 92-100 describe the Government's efforts to ensure employment opportunities for Maori, Pacific peoples and other ethnic groups. In pursuing employment opportunities, all New Zealand residents enjoy access to all of the rights in article 5 of the Convention. Employment rights (such as the right to a written contract, grievance procedures and freedom from discrimination or harassment) are protected by the Employment Relations Act 2000 and the Human Rights Act 1993, which extend to all people in New Zealand.

199. If a person encounters racial discrimination in employment, he or she may choose to take an action for racial discrimination under the Human Rights Act or the Employment Relations Act, but not both. Under the Employment Relations Act 2000, there have been 12 personal grievance cases featuring claims of racial discrimination or harassment from 1999 to 30 June 2005. Of the 304 complaints about race discrimination received by the Human Rights Commission in 2004, 64 (about 16 per cent) related to employment or pre-employment. The remaining complaints were about racial harassment. A number of the complaints were significant enough for the complainant to take industrial action or, in two cases, resign. In 2005, the Commission received 597 complaints about race discrimination. Of these, 142 complaints proceeded to resolution through the Commission's dispute resolution services. About 20 per cent of these 142 complaints (or 29 complaints) related to employment matters.

200. Although research and evidence³⁴ suggest that new migrants and refugees experience difficulty in obtaining employment, this suggested difficulty is not reflected in the complaints data. Possible reasons for this apparent anomaly include that the review of complaints coincided

with a period of relatively low unemployment, the possibility of accessing other complaints mechanisms and, at least among refugees, lack of awareness of the mechanisms for complaining, language difficulties or because of a belief that lodging a complaint may affect their residency status or ability to sponsor other family members.

Housing

201. The right to adequate housing remains a fundamental expectation in New Zealand society. The Government has two main methods for assisting with the provision of housing:

- The Accommodation Supplement (AS), which provides targeted financial assistance to help low-income people with accommodation costs irrespective of their tenure (i.e. renters, boarders and homeowners are eligible);
- Income Related Rents (IRR) for tenants in State-owned houses.

There has also been increasing, though still small-scale, government support for homeownership. The introduction of the Mortgage Insurance Scheme is designed to increase home ownership for moderate income New Zealanders. There has also been increased attention paid to housing refugees and new migrants.

Housing for Maori

Table 1
**Comparison of Maori and New Zealand European tenure
and housing assistance rates³⁵**

	Percentage of population	Percentage of homeowners	Percentage of renters	Percentage of IRR/State house tenants	Percentage of AS recipients
Maori	15*	47	53	30**	28
New Zealand European	80*	73	27	33**	46

* An individual can identify with more than one ethnicity (8 per cent of the New Zealand population identified themselves in this way in 2001).

** Ethnicity is of the primary signatory of the tenancy.

202. A number of factors adversely affect Maori access to housing and their ability to sustain good-quality housing. Factors include income levels, unemployment, larger than average household sizes and the relatively youthful age structure of the Maori population. As a result, homeownership rates are much lower for Maori than for the general population (see table 1 above), and the proportion of Maori renting is correspondingly much higher.

203. Most housing assistance to Maori is delivered via the Accommodation Supplement (66,000 of a total 236,000 recipients are Maori) and State housing (18,820 of 63,132 State housing tenants). A small number of programmes directed at areas where Maori experience hardship include:

- The Low Deposit Rural Lending Programme, established in 1995, which provides low-cost loan finance to households in rural areas in the North Island of New Zealand;
- The Rural Housing Programme, established in 2001, which provides assistance in rural areas in the North Island to households in substandard housing.

Housing for Pacific peoples

Table 2

Comparison of Pacific peoples and New Zealand European tenure and housing assistance rate³⁶

	Percentage of population	Percentage of homeowners	Percentage of renters	Percentage of IRR/State house tenants	Percentage of AS recipients
Pacific peoples	7*	38	62	24**	6
New Zealand European	80*	73	27	33**	46

* An individual can identify with more than one ethnicity (8 per cent of the New Zealand population identified themselves in this way in 2001).

** Ethnicity is of the primary signatory of the tenancy.

204. Pacific peoples' access to and ability to sustain good-quality housing is limited (see table 2 above), by factors similar to those applying to Maori.

205. One housing issue for Pacific peoples is overcrowding and its health effects. The Healthy Housing programme is a joint project between Housing New Zealand Corporation and a number of District Health Boards. It targets localities with high health needs and with high concentrations of Housing New Zealand properties. It aims to assist families with high rates of hospital admissions for preventable infectious diseases, for example, by providing extra bedrooms for larger households. Since its introduction in 2001, the Healthy Housing programme has assisted 2,800 families.³⁷

Access to rental accommodation

206. The Residential Tenancies Act 1986 (RTA) declares that any discrimination in tenancy agreement matters that contravenes the Human Rights Act 1993 is unlawful. Section 53 of the Human Rights Act makes specified actions in the provision of land, housing and other accommodation unlawful if those actions are taken by reason of any of the prohibited grounds of discrimination contained in section 21 of the Act. Complaints of discrimination may be taken up

with either the Tenancy Tribunal under the RTA, or under the Human Rights Act, in the first instance through the Human Rights Commission. During the review period, the Tenancy Tribunal received 26 applications on the grounds of discrimination and another 82 applications where discrimination was listed amongst other matters. These figures do not distinguish between racial and other categories of discrimination.

207. At present the RTA is under review. The review should address any issues around discrimination that might surface. Rights and obligations of tenants and landlords are being advertised in written English and an increasing number of minority languages, to help ensure that all landlords are aware of the need to avoid discrimination and tenants are aware of their right to equal treatment.

Immigration

208. The New Zealand Immigration Programme (NZIP) now consists of three streams: Skilled/Business (60 per cent of the NZIP), Family Sponsored (30 per cent) and International/Humanitarian (10 per cent). The streams are explained in detail in annex 7.

209. Overall, the source countries of migrants to New Zealand continue to be diverse. The largest source country of residence approvals in the Skilled/Business Stream in the 2004/05 financial year was the United Kingdom, followed by South Africa, China and India (in that order). In the same year, the largest source countries of residence approvals through the Family Sponsored Stream were the United Kingdom, China, India and Fiji. In the International/Humanitarian Stream, most approvals came through the Pacific Access Category (PAC) and the Samoan Quota (SQ), reflecting the special relationships between New Zealand and various Pacific States. In terms of refugees, Afghans formed the largest group (entering New Zealand through the Refugee Quota), followed by Somalis.

210. Further changes to New Zealand's immigration policies are likely. In May 2005 the Minister of Immigration announced a review of the Immigration Act 1987 in response to significant changes to New Zealand's needs and the international environment since 1987. The review is still taking place.

Settlement policies

211. The objectives of migrant settlement and refugee resettlement policies are to ensure that migrants and refugees successfully adapt to life in New Zealand as quickly as possible, so that they achieve the fullest possible participation in New Zealand's economic, social and cultural life. The *New Zealand Settlement Strategy*, launched in December 2004, provides the framework within which settlement-related policy and services may be developed. The Strategy establishes a government-wide framework to achieve agreed settlement outcomes for migrants, refugees and their families, so that they may achieve the following six goals:

- (i) Obtain employment appropriate to their skills;
- (ii) Are able to access appropriate information and responsive services;
- (iii) Are confident using English in a New Zealand setting or can access appropriate language support;

- (iv) Are able to form supportive social networks and establish a sustainable community identity;
- (v) Feel safe expressing their ethnic identity and are accepted by, and are part of, the wider host community; and
- (vi) Participate in civic, community and social activities.

212. The Strategy is realized through a wide range of initiatives managed across Government. In addition, the Strategy encourages central and local government, community organizations, business and industry, and local communities to partner together in providing opportunities and support to migrants and refugees.

213. The Department of Labour's new Settlement Division is implementing the *Settlement Support New Zealand Initiative*. This will improve migrants' access to local information and responsive services, and will foster joint-settlement planning among services in settlement areas at a local level. The Department of Labour and Statistics New Zealand are also conducting a quantitative long-term research project called the Longitudinal Immigration Survey: New Zealand (LisNZ). The survey will provide reliable data about migrants' initial settlement experiences in New Zealand and the outcomes of immigration policies. This information will be used to improve immigration selection and settlement policies, and to help assess the impacts of immigration on New Zealand's society and economy.

Refugees

214. Information on refugees and refugee-status claims, including New Zealand's approach to asylum-seekers after 11 September 2001, can be found in New Zealand's third periodic report to the Committee against Torture (CAT/C/49/Add.3).

Article 6

A. Information on the legislative, judicial, administrative or other measures which give effect to the provisions of article 6 of the convention, in particular, measures taken to assure to everyone within the jurisdiction of the reporting State effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to the Convention

215. As noted in paragraph 18 above, the Human Rights Amendment Act 2001 amalgamated the Human Rights Commission and the Office of the Race Relations Conciliator into one organization (the Human Rights Commission). A focus on race relations is a primary function of the new Human Rights Commission. The Human Rights Commission now has a full-time Race Relations Commissioner who provides leadership on matters of race relations.

216. As part of the amalgamation, a Race and Ethnic Relations Team was established to support the Race Relations Commissioner. The Team has staff in Auckland, Wellington and Christchurch. It provides education and information on race and ethnic relations, and carries out legal and policy analysis to inform submissions to Government and other bodies.

217. Reference has been made above to the Commission's role in relation to the Treaty of Waitangi in its human rights, including race relations, dimensions. The Race Relations Commissioner has specific responsibility for leading Commission discussion on race relations and for providing advice and leadership on race relations issues.³⁸

218. One of the main activities of the Commissioner is education. The Race Relations Commissioner undertakes a programme of public speaking at events, conferences and meetings. As noted in paragraph 14, in February 2004, the Commission hosted the first international round table of Race Relations Commissioners in Auckland, in partnership with the United Nations Office of the High Commissioner for Human Rights.

219. Dealing with complaints and enquiries remains one of the most important aspects of the Commission's work. Individuals and groups are thereby provided an avenue of legal redress regarding discrimination on grounds of colour, race and ethnic or national origins. The complaints function also acts as a barometer on race discrimination matters that concern New Zealanders.

220. The generic dispute resolution service described in paragraph 21 above replaced the earlier system of conciliating and determining complaints relating to discrimination, racial harassment and racial disharmony. Complaints received by the Race Relations Conciliator and Human Rights Commission since 1999 are set out in annex 6. Information about specific projects and activities of the Race Relations Commissioner is available on the Human Rights Commission website at <http://www.hrc.co.nz>, and in the Commission's report titled *Race Relations in 2004* (see annex 2) and *Race Relations in 2005* (see annex 3).

B. Measures taken to assure everyone the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination

221. Section 6 of the Human Rights Act 1993 (as amended by the 2001 amendment) changed the way in which the Commission might initiate proceedings under the Declaratory Judgements Act 1908. It removed the reference to the Proceedings Commissioner, replacing it with the Director of the Office of Human Rights Proceedings, and also now requires the Commission to consider its obligations under section 5 (2) (a).

222. It can also be noted that the expiry of section 151 and the enactment of Part IA have extended the availability of the publicly funded complaints resolution process to complaints against the Government. Similarly, the Human Rights Review Tribunal (previously the Complaints Review Tribunal) may now grant a range of remedies in respect of proven complaints against the Government under Part IA.

C. Information on the practice and decisions of the courts and other judicial and administrative organs relating to cases of racial discrimination as defined under article 1 of the Convention

223. Detailed information on the practice and decisions of the Race Relations Conciliator and Commissioner are contained in the reports of the Office. Reports for the years ended 30 June 2000 through 2004-2005 are attached as annex 1.

D. Information in connection with general recommendation XXVI on article 6 of the convention (2000)

224. In New Zealand the provision for financial compensation for damage suffered by a victim applies to all sentencing, not just that involving racial discrimination. As outlined above at paragraph 177, section 9 (1) (h), of the Sentencing Act 2002 requires that, in sentencing or otherwise dealing with an offender, the court must take into account whether the offence was committed wholly or partly because of hostility towards a group of persons who have an enduring common characteristic, such as race, colour or nationality. Section 9 (1) (h) is essentially a codification of existing case law, which has held that it is an aggravating factor for the purposes of sentencing that the offending was motivated by hostility towards a particular group.

225. The sentence of monetary reparation has been part of New Zealand's criminal justice system since 1985. The current sentencing law, governed by the Sentencing Act 2002, has a strong emphasis on reparation from an offender to the victim. A court may impose a sentence of reparation if an offender has, through or by means of an offence of which the offender is convicted, caused a person to suffer:³⁹

- (a) Loss of or damage to property; or
- (b) Emotional harm; or
- (c) Loss or damage consequential on any emotional or physical harm or loss of, or damage to, property.

226. Reparation cannot be ordered for physical harm to the extent that a victim will be compensated by the Accident Compensation Corporation scheme, which is a no-fault system providing personal-injury cover for all New Zealand citizens, residents and temporary migrants.

227. If a court is lawfully entitled to impose a sentence of reparation, it must do so unless satisfied that the sentence would result in undue hardship for the offender or their dependants or that any other special circumstances would make it inappropriate. If a court does not impose a sentence of reparation in a case where it is lawfully entitled to do so, it must give reasons.⁴⁰

228. An offender and victim may also choose to have a restorative justice conference. A restorative justice conference is intended to be a relatively informal forum where both parties can discuss what happened and consider ways forward, such as an apology and/or financial reparation. The court must take into account the outcome of any restorative justice process when sentencing the offender.

229. An offender may also voluntarily offer to make amends to the victim, whether financial, by way of an apology, by means of the performance of any work or service, or by any other means, and this is taken into account by the court when sentencing the offender.

Article 7

Information on the legislative, judicial, administrative or other measures which give effect to the provisions of article 7 of the Convention, to general recommendation V of 13 April 1977 and to decision 2 (XXV) of 17 March 1982, by which the Committee adopted its additional guidelines for the implementation of article 7

A. Education and teaching

230. Information on education programmes for Maori, Pacific peoples and members of other ethnic groups appears in this report under article 2 (b). With regard to human rights education, as noted under articles 2, 4 and 6, one role of the Human Rights Commission and Race Relations Commissioner is educating the public about human rights.

B. Culture

231. For information relevant to this section, the Committee is also referred to responses in the current report under article 2 (a) and 2 (b). These responses cover the roles of official agencies such as Te Puni Kōkiri and community institutions in the preservation and advancement of New Zealand's cultures and traditions in all their variety, and in the promotion of mutual acceptance. Local government also plays a role in the development and maintenance of positive race relations in local communities, including through support for cultural events (see paragraph 197 for more detail). The paragraphs below describe the roles of the various agencies and institutions that have a specific mandate of promoting and protecting New Zealand's cultural heritage and diversity.

232. Archives New Zealand is the official guardian of the New Zealand Government's heritage documents. Its holdings include the originals of the Treaty of Waitangi, government files and records, maps, paintings and photos. Archives New Zealand's main roles are to ensure Government's activities are recorded and that records of enduring value are kept permanently and to provide access to these records. The materials held by Archives New Zealand are evidence of governmental activities over time and as such are an important accountability tool. They inform our understanding of history and document the relationship between the Maori and the Crown. The archives are often used to research Treaty of Waitangi claims and to trace *whakapapa* (ancestry).

233. The National Library of New Zealand is unique among national libraries in that it is a central government department, governed by the National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003. The purpose of the National Library is to enrich the cultural and economic life of New Zealand and its interchanges with other nations by collecting, preserving and protecting documents, particularly those relating to New Zealand and the Pacific, and making them accessible for all the people of New Zealand. Maori, as *tangata whenua*, have a special relationship to much of the material held by the National Library, especially that held in

the Alexander Turnbull Collection. The National Library confirms its commitment to maintaining the Maori material collections as pre-eminent in the world and has established a “Services to Maori” division that fosters relationships with *iwi* and Maori groups. The National Library’s governing Act requires it to be responsive to the cultural interests of Maori.

234. The National Library regularly holds workshops, exhibitions and events to allow people to experience New Zealand’s diverse cultural heritage through a variety of means, including literature, performances and joint projects with other cultural institutions. Two very successful National Library exhibitions related to the history of the Chinese and Tongan communities in New Zealand and focused on the contribution these groups have made to New Zealand’s social, cultural and economic development. The National Library also takes a keen interest in “digital divide” issues and has advocated strongly for the full participation of indigenous peoples in ICT developments at the World Summit on the Information Society.

235. The Ministry for Culture and Heritage provides advice relating to cultural policy, including commenting on cultural property rights and protection. In the period under review, this has included advice and programmes relating to cultural property rights and the protection of tangible and intangible heritage, particularly Maori heritage. The Ministry for Culture and Heritage also provides funding for cultural agencies and programmes, including Creative New Zealand, Te Papa Tongarewa, NiuFM, Television New Zealand, New Zealand On Air, the New Zealand Historic Places Trust and Te Matatini (Aotearoa Traditional Maori Performing Arts Society).

236. The New Zealand Historic Places Trust is responsible for the establishment and maintenance of a Register of New Zealand’s historical and cultural heritage, including historic places, areas and *wāhi tapu* areas. Under the Historic Places Act 1993, any person may apply to the Historic Places Trust’s Maori Heritage Council to have any *wāhi tapu* or *wāhi tapu* area entered on the Register. In addition, the functions of the Maori Heritage Council include providing advice and assistance to the Trust Board on issues concerning Maori heritage. In particular, the Maori Heritage Council seeks to ensure that, in the protection of *wāhi tapu*, *wāhi tapu* areas and historic places and areas of interest to Maori, the Trust meets the needs of Maori in a culturally sensitive manner and develops and reflects a bicultural view in the exercise of its powers and functions. Legislation also protects archaeological sites by making it unlawful for any person to destroy, damage or modify the whole or any part of an archaeological site without the Trust’s prior authority.

237. The Museum of New Zealand Te Papa Tongarewa continues to be a pre-eminent bicultural institution, with a Kaihautū (Maori leader) leading bicultural policy within the museum. Regular exhibitions with *iwi* involvement as well as the location of the *marae* (meeting house) in the centre of Te Papa reinforce this perspective. In 2003, the Government approved and funded a repatriation policy for the return of *kōiwi tāngata*⁴¹ (Maori ancestral remains) and mandated Te Papa as the Crown’s agent to undertake the repatriation of *kōiwi* from overseas institutions. While *kōiwi* are mainly held as cultural artefacts in overseas museum collections and institutions, they have profound spiritual importance to Maori and it is their aspiration that *kōiwi* be repatriated to New Zealand.

238. Creative New Zealand has two funding boards: the Arts Board (including the Pacific Arts Committee) and Te Waka Toi (Maori Arts Board). A feature of Creative New Zealand's work has been the establishment of Toi Iho (Maori-made mark), which is a means of certifying the copyright and cultural authenticity of Maori art.

239. Toi Maori Aotearoa/Maori Arts New Zealand is an organization funded through Creative New Zealand and responsible for the development of Maori arts. Toi Maori recently promoted a major North American tour in 2005 of an exhibition, *Toi Maori: The Eternal Thread*.

240. Te Matatini Society Incorporated (Te Matatini) is funded through the Ministry for Culture and Heritage. Te Matatini (formerly known as the Polynesian Festival Committee, and, from 1998 as the Aotearoa Traditional Maori Performing Arts Society) has been in existence since 1972. The main focus of Te Matatini is on the long-term development of Maori performance art through providing support for the national *kapa haka* (Maori performing arts) competitions, regional development for fourteen *rohe* (tribal areas) that make up the membership of the Society, festivals, events, exhibitions, *wānanga*, workshops, master classes, Maori performance arts in schools, the South Pacific Arts Festival, and international festivals and events.

241. Popular music is also a major area of Maori and Pacific cultural achievement, with a number of Maori and Pacific artists gaining international reputations in the period under review. The Government provides support for the growth of popular music as a form of cultural expression (see also paragraphs 244 and 246).

Promotion of tolerance and racial harmony

242. The Government has been engaged in a number of initiatives to encourage tolerance and understanding amongst different racial, ethnic and religious groups, including:

Race Relations Day: from 2002, the Human Rights Commission has promoted the observance of the International Day for the Elimination of Racial Discrimination as Race Relations Day, providing a theme, posters and educational materials. Community participation in the Day is increasing rapidly, with particularly strong participation by schools, local government, the media, the arts and ethnic community groups.

International Decade for the World's Indigenous Peoples: Te Puni Kōkiri had lead responsibility for implementation of New Zealand's domestic programme of action for the first Decade. The focus of New Zealand's implementation of the first half of that Decade was He Taonga Te Reo Maori (the Maori Language is a Treasure) while the second half focused on He Taonga Tuku Iho no Ngā Tipuna (the Treasures Handed Down by the Ancestors). Several prominent conferences, publications, inter-indigenous exchanges, recordings and language resources were funded as a means of raising the profile and awareness of the objectives of the first Decade.

Treaty of Waitangi Information Programme: In May 2003, Cabinet agreed to establish the Treaty of Waitangi Information Programme and allocated \$NZ 6.47 million to it for the period June 2003 to June 2006. The goal of the programme is to increase public knowledge of the Treaty of Waitangi, by coordinating existing resources and by developing new initiatives and

resources, including printed information (for the education sector as well as pamphlets and booklets) and electronic resources. The intention is to increase the range, distribution, accessibility and provision of factual information about the Treaty. Paragraph 27 of this report refers to the Treaty of Waitangi Information Unit's role in facilitating community discussions on the place of the Treaty in contemporary New Zealand.

Commemorating Waitangi Day Fund: This Fund supports events that commemorate the signing of the Treaty of Waitangi in 1840 and promote nation and community building. Funding is approved for activities that encourage a wider range of communities, especially local government and/or communities in partnership with *tangata whenua*, to participate in Waitangi Day events. Funded activities have included community days in Lower Hutt and Manukau City, at which *tangata whenua* were involved in running Treaty and arts workshops.

New Zealand Diversity Action Programme: The Human Rights Commission played a central role in facilitating the New Zealand Diversity Action Programme, which arose from a national diversity forum at Parliament in August 2004. The forum was convened in response to the desecration of two Jewish cemeteries and an assault on a group of young Somali refugees in Wellington. The programme comprises 10 steps to strengthen cultural diversity and operates on a partnership principle. Partner organizations, including local and central Government, universities, business and religious organizations, register one or more projects that will contribute to the achievement of the 10 steps.

The Poll Tax Heritage Trust: In 2002 the Prime Minister made a formal apology to New Zealand's Chinese Community and their descendants, who were forced to pay a poll tax under the Chinese Immigrants Act 1881 (the tax was finally abolished in 1944). The apology was followed up with consultation between the Government and the representatives of families of early Chinese settlers. This process resulted in the formation of a government-administered community trust with a \$NZ 5 million seeding grant. The role of the Trust is to fund projects to encourage an understanding of the history of the Chinese in New Zealand and to promote public awareness of ethnic diversity.

C. Information

243. Access to media in one's own language is recognized as essential. NZ On Air (Broadcasting Commission) continues to have a responsibility under the Broadcasting Act 1989 to ensure that a range of broadcasts is available to provide for the interests of, inter alia, ethnic and religious minorities in the community. To this end, NZ On Air funds 11 access radio stations throughout New Zealand in population areas of 50,000 people or more. These stations provide ethnic and community groups with an opportunity to broadcast regularly, in their own languages, material specific to their interests. The access station in Auckland, for example, broadcasts programmes in around 50 languages, reflecting that community's ethnic diversity.

244. Since 2002, a national Pacific radio network, Niu FM, has been funded by the Government to provide programming in Pacific languages for communities across New Zealand. The network was established to contribute to the Government's goal of building the capacity of Pacific communities. Two Pacific community radio stations, in Auckland and Wellington, are also supported. In addition, a contestable pool of funding is available to communities to enable them to produce radio programmes for, by and about themselves, which may be broadcast on

commercial, *iwi* or access radio in New Zealand. NZ On Air also funds a variety of television programmes and series of particular interest to ethnic minorities. It also encourages the production of commercially successful music by musicians and music producers from a variety of ethnic backgrounds.

Maori broadcasting

245. The Maori Broadcasting Agency, Te Māngai Pāho, funds broadcasting services to promote Maori language and culture, including a network of 21 *iwi* radio stations and radio news services in *te reo Maori* (the Maori language). The Maori Television Service (MTS), also funded through Te Māngai Pāho, began broadcasting to the whole of New Zealand in March 2004. It is governed by the Maori Television Service Act 2003, which specifies the governance arrangements for MTS (including provision for the appointment of four of seven directors by a Maori electoral college) and the Maori language requirements for programming content. In addition, other public broadcasters such as Television New Zealand have requirements to support Maori language and culture in their broadcasting charters and access to funding for Maori programming to fulfil these requirements.

246. As well as Te Māngai Pāho, NZ On Air also supports Maori broadcasting by funding Maori mainstream television programming and Maori language and culture programming on National Radio. NZ On Air also ensures that the work of Maori songwriters and musicians is represented on radio and television, and has instituted a policy designed to promote the recording of commercially viable hit songs in *te reo Maori*.

247. Paragraphs 137-138 of New Zealand's last report sets out the legislation applicable to reporting by the media on race relations (see also paragraphs 174-178 above).

Tokelau

248. Reference should be made to previous New Zealand reports for the situation with respect to Tokelau. For further background information, reference should be made to the report to Parliament of the Administrator of Tokelau and to the working papers issued each year by the United Nations Special Committee on Decolonization.

249. The 1,600 people of Tokelau live in villages on three widely separated atolls. In each village/atoll the focus is on caring for individual members of the community in a communal manner. Due to the homogeneity of its people and the inclusiveness of Tokelauan society, racial discrimination is neither present nor a matter of concern.

250. Under a programme of constitutional devolution developed in discussions with Tokelau leaders in 1992, Tokelau with New Zealand's support has developed institutions and patterns of self-government to enable its people to make a valid choice, under an act of self-determination, concerning their future political status. As a first step, that part of Government which deals with the interests of all of Tokelau was returned to Tokelau in 1994. In 2003 the Administrator's powers were formally delegated to the three Village Councils and the General Fono. Since 2003

work has been carried out in Tokelau and in New Zealand on a draft Constitution and draft Treaty of Free Association with New Zealand. The Constitution and the draft Treaty of Free Association with New Zealand formed the basis of an act of self-determination which took place under United Nations supervision in February 2006. The requisite two-thirds majority was narrowly missed on this occasion. It is expected that a further referendum will be held in the next year or two.

251. As part of the work on the Constitution, Tokelau has been considering how it should express its commitment to basic human rights. Since the last century, Tokelauans have been familiar with these ideas as an important part of Christianity, but they are much less familiar with them in the context of law and government. As systems and personnel become better established, the Government of Tokelau will be able to consider what further steps Tokelau might take in the light of the obligations accepted by New Zealand on its behalf under the Convention. Already the draft Constitution affirms Tokelau's commitment to the Universal Declaration on Human Rights.

252. Tokelau is assured of the continuing interest and support of the New Zealand Government in its development of self-government and in assisting Tokelau in its development as a country.

Notes

¹ Except where specifically stated, for the purposes of this report, the term "other ethnic group(s)" means persons belonging to an ethnic group other than New Zealand European (i.e. New Zealanders of European ethnicity), New Zealand Maori or the Pacific peoples' group.

² Statistics New Zealand (2001), *Population estimates, 30 June 2001*. Wellington: Statistics New Zealand.

³ Statistics New Zealand (2005), *2001-base national ethnic population projections (series 6)*. Wellington: New Zealand. Percentages add to more than 100 per cent because Census respondents were able to identify with more than one ethnicity.

⁴ De Bres, Joris (2003), *The Durban Declaration and Action Programme on Racism: Its Relevance to New Zealand*. Wellington: Human Rights Commission.

⁵ The New Zealand Diversity Action Programme was adopted by a citizen's forum at Parliament in August 2004, with facilitation by the Human Rights Commission. It comprises 10 steps to promote more harmonious race relations and respect for diversity. Organizations from central or local government and civil society may become partner organizations and commit to participating in one or more steps.

⁶ Cabinet Office (2001), *Step by Step guide Cabinet and Cabinet Committee Process - Policy Development Process Required by Cabinet*. Wellington: Cabinet Office, 3.39 et seq.

- ⁷ The 37 languages available from Language Line include Maori, Pacific languages, Asian languages, Middle Eastern languages and European languages. A full list can be viewed at: http://www.ethnicaffairs.govt.nz/oeawebsite.NSF/wpg_URL/What-We-Do-Language-Line-Language-List?OpenDocument.
- ⁸ *Coburn v. Human Rights Commission* [1994] 3 NZLR 323 and *Amaltal Fishing Company Ltd. v. Nelson Polytechnic* [1996] NZAR 97 are the only two cases that have addressed section 73.
- ⁹ *Quilter v. Attorney-General* [1998] 1 NZLR 532.
- ¹⁰ Thomas, J., partly dissenting *Quilter v. Attorney-General* [1998] 1 NZLR 532.
- ¹¹ Thirty-six departments listed in the first schedule of the State Sector Act.
- ¹² Human Rights Commission (2006), *Tūi-tūi-tuituiā: Race Relations in 2005*. Wellington: Human Rights Commission, pp. 14-15.
- ¹³ Ministry of Social Development (2005), *The social report 2005*. Wellington: Ministry of Social Development, p. 131.
- ¹⁴ Ministry of Health (2001), *The New Zealand Disability Strategy: Making a world of difference, whakanui oranga*. Wellington: Ministry of Health.
- ¹⁵ Ministry of Health (2004), *Living with Disability in New Zealand*. Wellington: Ministry of Health. Available at: <http://www.moh.govt.nz/moh.nsf/0/8fd2a69286cd6715cc256f33007aade4?OpenDocument>.
- ¹⁶ Ministry of Health (2001), *The New Zealand Disability Strategy: Making a world of difference, whakanui oranga*. Wellington: Ministry of Health, pp. v-vi and 12-13.
- ¹⁷ Office for Disability Issues (2004), *Progress in implementing the New Zealand Disability Strategy: 2003-2004. Fourth annual report from the Minister of Disability Issues to the House of Representatives*. Wellington: Office for Disability Issues, p. 61.
- ¹⁸ Office of the Minister of Social Development and Employment (2004), *Opportunity for All New Zealanders*. Wellington: Office of the Minister of Social Development and Employment. Available on www.msd.govt.nz/opportunity-for-all.
- ¹⁹ For further information see: <http://www.huitaumata.maori.nz>.
- ²⁰ Pasifika is the term used by the Ministry of Education to refer to Pacific peoples.
- ²¹ This excludes students with no reported ethnicity and all international students.
- ²² For further details see Te Puni Kōkiri (2002), *The Health of the Māori Language in 2001*. Wellington: Te Puni Kōkiri.

- ²³ Source: Statistics New Zealand, New Zealand Life Tables, 2000-2002: <http://www.stats.govt.nz/analytical-reports/nz-life-tables-2000-2002/default.htm>.
- ²⁴ Note that the life-expectancy-at-birth figures for Pacific peoples were sourced from Pacific population projections, and so do not provide a precise measure of Pacific mortality or of mortality differentials between the Pacific ethnic group and other ethnicities.
- ²⁵ 2004 infant mortality rates are not available for Pacific peoples.
- ²⁶ Ministry of Health (2006), *Ethnicity reporting requirements, Operational Policy Framework for District Health Boards 2006/7*. Wellington: Ministry of Health.
- ²⁷ Chetwin, Alison, Waldegrave, Tony and Simonsen, Kiri (2000), *Speaking about Cultural Background at Sentencing: Section 16 of the Criminal Justice Act 1985*. Wellington: Ministry of Justice. Available at http://www.justice.govt.nz/pubs/reports/2000/section_16/documents/section_16.pdf.
- ²⁸ Law Commission (2001), *Law Commission Report No. 69*. Wellington: Law Commission.
- ²⁹ In this section, “other ethnicities” means offenders from any ethnic group other than the Pacific peoples’ group. It includes New Zealand European and New Zealand Maori.
- ³⁰ In this section, the term “other ethnic groups” means persons belonging to an ethnic group other than New Zealand European, New Zealand Maori, Pacific peoples or Asian.
- ³¹ For further information on how the Commission balances section 61 with the right to freedom of expression, see: Human Rights Commission (2004), *Human Rights in New Zealand Today/Ngā Tika Tangata o Te Motu*. Wellington: Human Rights Commission, chapter 18.
- ³² *R. v. Curry* 28/9/00, CA272/00; CA273/00; CA326/00.
- ³³ Human Rights Commission (2006), *Tūi-tūi-tuitiā: Race Relations in 2005*. Wellington: Human Rights Commission, p. 57.
- ³⁴ Human Rights Commission (2004), *Race Relations in 2004: together we grow*. Wellington: Human Rights Commission.
- ³⁵ Based on 2001 Census data and HNZC March Housing Assistance Monitoring Report.
- ³⁶ Based on 2001 Census data and HNZC March Housing Assistance Monitoring Report.
- ³⁷ As of May 2005.

³⁸ The introduction to *Tūi-tūi-tuitiā: Race Relations in 2005* (see annex 3) contains a list of Commission initiatives that give effect to the statutory function of promoting positive race relations. While not exhaustive, it provides an indication of the extent of the Commission's activities in this area.

³⁹ Sentencing Act 2002, section 32.

⁴⁰ Sentencing Act 2002, section 12.

⁴¹ For the purposes of repatriation of *kōiwi*, the term “kōiwi tāngata” is defined as any part of the human body (skeletal or soft tissue) that is in an unmodified state since death. This includes all Toi Moko, which are tattooed, preserved heads. Kōiwi does not include items that have been modified entirely or partly from human bone (for example, carved or decorated).
