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Tēnā koe i ngā āhuatanga o te wā

Thank you for the opportunity to provide additional information to the New Zealand Government's 2006 Draft Report to the Committee. It is an opportunity which is very much appreciated.

The Māori Party was formed out of the intense discontent, marginalisation and frustration felt by many Māori over the New Zealand Government's 2004 decision to legislate away Māori rights to the foreshore and seabed. Officially launched in July 2004, and with 21,500 plus members (a political party membership record in Aotearoa/New Zealand), the Māori Party has four members in New Zealand's 121 member Parliament. Our purpose is to articulate a strong and independent Māori voice in Parliament, for the good of the nation.

We acknowledge and sincerely thank the Committee members for their March 2005 finding that the New Zealand Government's Foreshore and Seabed Act 2004 did indeed contain discriminatory aspects against Māori. This provided critical support to the position of the Waitangi Tribunal, the New Zealand Human Rights Commission, and whānau, hapū and iwi Māori throughout Aotearoa.

However, not only did the New Zealand Government dismiss the findings of, and publicly belittle the Committee – and the subsequent report of the United Nations Commission on Human Rights' Special Rapporteur, Professor Rudolpho Stavenhagen – they have, since that time, continued to pursue a legislative and policy programme which has continued the intense discontent, marginalisation and frustration of many Māori, unabated.

The status of Māori as tangata whenua and the human rights protections guaranteed and affirmed to us under Te Tiriti o Waitangi 1840 continue to be ignored or further eroded. As a consequence, the significant employment, income, education, health, housing, incarceration disparities between Māori and non-Māori also continue, unabated.

The attached report therefore highlights and brings to the attention of the Committee, those actions undertaken by the New Zealand Government which

breach the International Convention on the Elimination of All Forms of Racial Discrimination. These actions are not detailed in New Zealand's 2006 Draft State Report to the Committee.

Although some of the actions we outline have occurred after the end of the official reporting period, 22 December 2005, we have included them here because they help give a fuller, clearer picture of the extent of racial discrimination operating in New Zealand at this time. Also included in the attached report, and as a separate document, are questions that the Committee may want to raise with the New Zealand Government, and suggested recommendations for addressing those issues.

We wish the Committee well in its task ahead. Kāti mo tēnei wā.

Heoi anō

Tariana Turia
Co-Leader, Māori Party

Dr Pita R Sharples
Co-Leader, Māori Party

REPORT TO THE

UNITED NATIONS COMMITTEE

ON THE ELIMINATION OF RACIAL DISCRIMINATION

SHADOW REPORT

Presented by the Māori Party
in response to the
2006 Advance Report of the New Zealand Government

May 2007

Additional Information to the
2006 Advance Report of the New Zealand Government

Article 2

A Information on the Legislative, Judicial, Administrative or Other Measures Which Give Effect to the Provisions of Article 2, Paragraph 1

Treaty of Waitangi

Contradicting the work detailed in the New Zealand Draft Report, the Government has also:

1) Amended the Treaty of Waitangi Act 1975, in order to specify a closing date for submitting historical claims with the Waitangi Tribunal[1]. This amendment was made without prior discussion with or agreement from hapū and iwi Māori. The amendment has also been made without any indications of additional funding and staffing for the Waitangi Tribunal;
2) Supported a Private Member's Bill in Parliament to delete the principles of the Treaty of Waitangi from all legislation[2];
3) Sought to remove the Treaty of Waitangi from the Schooling Curriculum by deleting references to it in the Ministry of Education's 2006 draft Curriculum consultation document[3];
4) Removed direct references to the Treaty of Waitangi or its principles in new health policy, action plans and contracts;
5) Removed references to the Treaty of Waitangi and its principles from internal and external government policy documents from early 2004 in response to the public backlash against unsubstantiated claims of Māori 'privilege' and the Treaty of Waitangi, unleashed by a speech given by the former leader of the major opposition party;
6) Refused to support the recommendation of the Constitutional Arrangements Committee, who recommended that an independent institute would be an appropriate mechanism to co-ordinate constitutional debate[4];
7) Continues to claim that while the Treaty of Waitangi has never been ratified into domestic law, it is the basis of New Zealand's constitutional arrangements – this despite the fact that neither Parliament nor Cabinet are required to recognise the Treaty in either of their respective roles.

Historical Treaty Settlements

8) Treaty settlements continue to be hugely problematic for Māori. Settlement policies and processes are such that every Treaty Settlement is creating new breaches of the Treaty of Waitangi. The Government continues to set all of the terms of settlement. In particular, there are serious problems with:

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[1] Via the Māori Purposes Bill, introduced to by the Government to Parliament on 13 June 2006.
[2] Principles of the Treaty of Waitangi Deletion Bill, promoted by Doug Woolerton (New Zealand First Party). The Bill was tabled in Parliament on 29 June 2006, and the First Reading debate took place on 26 July 2006. The Justice and Electoral Parliamentary Select Committee is yet to report back to Parliament on the Bill.
[3] *The New Zealand Curriculum: Draft for consultation 2006* (August 2006), Ministry of Education.
[4] Report of the Constitutional Arrangements Committee (10 August 2005); Government Response to the Report of the Constitutional Arrangements Committee (1 February 2006).

- *Quantum for settlement*: Claimant groups face the unenviable choice of accepting a pre-determined financial settlement or not settling. Claims are being settled, on average, for around 2% of the value of the original claim;
- *Full and final settlement*: Settlement legislation contains a clause stating it is a 'full and final' settlement for Crown breaches of the Treaty against the claimant group, despite the creation of new Crown grievances through the settlements process;
- *Large natural groupings policy*: In order to minimise the number of claims to fit with Crown imposed time and financial constraints, the Crown has determined that claims are to be settled in 'large natural groupings'. Crown definitions of tribal identity are taking precedence over those of hapū and iwi. Smaller hapū and iwi within large natural groupings are often being denied due process;
- *Appointment of negotiators*: While hapū and iwi appoint negotiators to represent them in the claims process, the Crown approves who is able to represent hapū and iwi;
- *Settlement Entities:* The Crown determines the shape and form of settlement entities required for claimants to receive settlement monies and assets. These entities do not reflect traditional structures, and there is very little scope for them to do so;

9) In the Te Arawa historical Treaty claim, Crown process flaws have been found by the Waitangi Tribunal to have created and exacerbated mandate difficulties for the claimant groups[5]. The third hearing on this matter has shown that, not only does the Government routinely dismiss Waitangi Tribunal recommendations, but that recommendations are not necessarily reported to the Minister responsible[6];
10) The Te Arawa Lakes Settlement Act 2006 created a new Treaty grievance by extinguishing Te Arawa interests in their lake water. Instead, the Crown is to own the lake water through a new invention called 'Crown stratum'. Crown stratum is defined under section 11 of the Act as the "space occupied by water and the space occupied by air above each Te Arawa lakebed". This Act marks the first instance of the Crown staking a claim to the ownership of fresh water. It has set an extremely worrying legal precedent that could well be repeated in pending settlements with various iwi and hapū over their rivers. The Waitangi Tribunal's 1999 *Whanganui River Report* concluded that the guardianship, possession and control of the river, exercised by hapū is able to be recognised as ownership under English law; ownership protected by Article II of the Treaty of Waitangi due to the river's status as a taonga.
11) The Government has issued notices of sale of land owned by the State-owned Enterprise, Landcorp – including land subject to Treaty claims[7]. Landcorp is required to offer a right of first refusal to the Government's Office of Treaty Settlements, giving them the opportunity to acquire land for use in settlements. This option has been refused without communication

[5] Te Arawa Mandate Report (10 August 2004); and Te Arawa Mandate Report: Te Wāhanga Tuarua (30 March 2005).
[6] Waitangi Tribunal Te Arawa Mandate Hearing, 9 March 2007.
[7] Rangiputa Station, subject to a claim by Ngāti Kahu; and Whenuakite Station, subject to a claim by Ngāti Hei.

with claimant iwi. The Government is currently reviewing their decision to sell these coastal properties.

12) Most recently, the Crown has, for the first time, sought to become a beneficiary alongside iwi of Treaty settlement funds – namely Crown Forestry Rental Trust funds – by proposing to legislate access to funds ahead of settlement with all claimant groups, breaching the Trust Deed and the 1989 agreement between Māori and the Crown. The recent High Court case found that while the Crown is in fiduciary breach to the Māori claimants, it has no jurisdiction over Parliament who may legislate any law regardless of such breaches[8].

The Waitangi Tribunal

13) The Waitangi Tribunal continues to be inadequately funded by the Crown. As a consequence, hearings are often long and therefore costly to claimant groups;

14) The other critical impediment is that the Waitangi Tribunal has recommendatory powers only, so that its rulings are not generally binding on the Crown;

15) Because of the lengthy nature of Tribunal hearings, and the fact that their rulings have no value, claimant groups are being pressured into direct negotiations with the Crown through the Office of Treaty Settlements, who use identical processes despite the nature, size or resources of individual claimant groups.

Te Puni Kokiri (Ministry of Māori Development)

16) Te Puni Kokiri is required under statute to monitor government departments and agencies which provide, or have a responsibility to provide, services to or for Māori "for the purpose of ensuring the adequacy of those services"[9], and that those services accord with Crown obligations under the Treaty of Waitangi. Due to a number of previously unfavourable reports (many of which were not made public), this monitoring role has been significantly downsized and is generally no longer occurring due to Government pressure to remove resources away from monitoring work[10]. By abdicating on its monitoring duties, Te Puni Kokiri is currently in breach of the law.

17) Te Puni Kokiri is a government department, and as such, viewpoints and opinions advanced by it cannot be taken to represent the viewpoints and opinions of Māori – as has occurred in a number of fora including United Nations fora. As a separate party to the Treaty of Waitangi, hapū and iwi Māori are entitled to have a separate and distinct voice.

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

[8] Case was heard in the High Court, 26-27 April 2007.

[9] Under section 5(1)(b) of the Ministry of Māori Development Act 1991.

[10] Finding of Māori Affairs Parliamentary Select Committee annual financial review of Te Puni Kokiri in 2005/06 (2007).

and Equal Enjoyment of Fundamental Freedoms, in Accordance With Article 2, Paragraph 2 of the Convention

Review of Targeted Policies and Programmes

18) 'Race-based' funding became a focus of public attention as a result of the January 2004 speech on Māori 'privilege' referred to in point (4) of this report. Instead of defending their position (e.g. as a duty under article 3 of the Treaty of Waitangi), the Government called for a review of all race-based targeted programmes. The words 'Māori' and the 'Treaty of Waitangi' became extremely unpopular across the public sector as the Government sought to counteract the view that they favoured Māori;

19) The review sought to re-target on the basis of need rather than ethnicity, although 'need' was never clearly articulated or defined;

20) Of the 57 programmes reviewed, 21 programmes were altered, 16 required further work, and 20 did not change. The majority of changes were to education and health programmes (8 and 7 respectively), with eligibility widening to include other groups also deemed to be in need. The Government justified the changes by either stating a lack of evidence that the targeting was delivering desired results; or because needs had changed from when the programmes were introduced – this despite appalling statistics for Māori education and Māori health;

21) The reports on each of the 57 programmes summarised a huge volume of work undertaken by government departments and agencies across the public sector over a 14 month period (May 2004 to June 2005). While it has not been possible to determine the total cost of the review, it was doubtlessly an expensive exercise with an explicit purpose to remove resources from Māori for political gain.

Māori Fisheries

22) The objections raised in relation to Treaty settlement policies and processes are also relevant here. One of the key issues in the fisheries settlement, and subsequent passage of the Māori Fisheries Act 2004, has been the Crown's requirement for iwi to develop themselves into entities suitable to the Crown, in order to receive their fisheries quota allocation. This has greatly circumvented the ability of hapū and iwi to develop and form entities and models of governance consistent with tradition, tikanga and tino rangatiratanga;

23) Both the Māori Fisheries Act 2004 and the Māori Commercial Aquaculture Claims Settlement Act 2004 extinguish Māori property rights to fish, fisheries and fisheries development and instead replace them with quota allocations and a percentage commercial space, respectively. These reduced rights are reserved until iwi have qualified to be an iwi, according to Crown requirements;

24) A subsequent amendment to the Māori Fisheries Act 2004[11] has meant that the quota shares held by Māori can be reduced in relation to fish stocks/availability, while other quota holders (those with 28N rights granted prior to the fisheries settlement) are not subject to share reductions;

[11] Via the Māori Purposes Bill, introduced to Parliament on 13 June 2006.

25) The Māori commercial fisheries settlement is under further threat from the Government's recent *Shared Fisheries* proposal[12]. What is being proposed is for Māori commercial customary fisheries quota to be reduced for a greater allocation to be made to the recreational fishing sector. There has also been no specific consultation with the Māori fishing industry on this proposal.

Foreshore and Seabed Act

26) Contrary to the details provided by the Government, the Māori Party would like to clarify that the court and other procedures to recognise and address claims by Māori to customary interests in the foreshore and seabed area are limited by:
    - The Crown's ability to further privatise or sell parts of foreshore and seabed;
    - The requirement of hapū and iwi, if applying for a customary rights order, to own the contiguous dry land and be able to prove an uninterrupted relationship since 1840;
    - The fact that customary rights orders, if granted, are customary use rights only and do not amount to customary authority;
    - Crown restrictions on use rights to traditional activities only, denying the right of development and commercial benefit outside of this restriction;
    - The ability of non-Māori to apply for and be granted these customary rights orders;
    - The requirement that hapū and iwi need to first be granted a customary rights order, and then be registered with the Ministry of Justice, before being able to discuss redress with the Crown;
    - Redress being limited to an ability to influence decision-making under the Resource Management Act.
27) Despite Government claims that the need for the Foreshore and Seabed Bill was to protect public access to beaches, the Government was – at the same time – negotiating permits for companies to prospect for petroleum and minerals in the seabed;
    - The Government has issued licenses to Iron Ore NZ Ltd to prospect for minerals along the West Coast of the North Island, and has sold permits for the exploration of petroleum offshore from Taranaki and Whanganui;
    - Iron Ore NZ has subsequently sold a 60% interest in their licence to British-Australian mining giant, Rio Tinto;
    - Under the Crown Minerals Act and the Resource Management Act the Government and local councils are obligated to consult with local iwi and hapū. This has not been done;
28) The Māori Party has a private member's bill to repeal the Foreshore and Seabed Act 2004 on the agenda of Parliament[13], which the Government has ridiculed and debased.

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[12] *Shared Fisheries: Proposals for Managing New Zealand's Shared Fisheries: A Public Discussion Paper*, released November 2006.

[13] Foreshore and Seabed Act (Repeal) Bill, in the name of Tariana Turia.

Resource Management Act 1991

29) As part of their Sustainable Water Programme of Action, the Government has implemented a 'cap and trade' regime for the trading of water and waste-water permits, under the Resource Management Act 1991. International water companies have already begun to purchase and trade water and waste-water permits. No Government-initiated public debate on water privatisation has occurred. Instead, water is being privatised by stealth;
    - To privatise water rights the Government would need to first establish Crown ownership of water and simultaneously extinguish Māori customary ownership rights. However, the Government has learnt much from the foreshore and seabed issue and has approached the issue of ownership of water via a much less direct path;
    - Government hui have shown that water ownership is a key issue for Māori;
    - Government has actively promoted the popular view that rivers are 'public property' but, when challenged, claim that under English common law, rivers cannot be owned by anyone;
    - However, under the Resource Management Act 1991, the Crown is able to claim the right to control, manage and allocate water-use and waste-water. A property right to water is thus still being claimed;
    - In locales with high water use charges, e.g. Auckland City Council, low income homes and families are racking up water bills which they are unable to afford. Bankruptcy notices are being served on those unable to meet the payments;
    - A 2003 report prepared the Government noted that certainty and security of water rights is the most problematic of water property rights. In such an environment, Māori assertions of ownership are unwelcome;
    - With the legal precedence now set in the Te Arawa Lakes Settlement Act 2006, the intense concern is that the Crown will extinguish hapū and iwi rights to river water and vest them in the Crown as has happened with the lake water of Te Arawa.

Children, Young Persons and Their Families Act 1989

30) The Government introduced an amendment to this Act in Parliament on 22 June 2004[14]. The stated purpose of the bill is to improve the youth justice system, and to address serious youth offending and reduce re-offending in particular. However, by increasing the powers of the authorities including the police, and reducing the power of whānau, the Bill erodes the most significant and world renown intents of the Act – namely, the centrality and importance of the whānau and communities in the care and protection of children and young people, and to youth justice. The Bill also erodes the recognition of young people in their own right, included in the original Act. Instead, the Bill treats young people as adults, enabling 14 year olds to be remanded to adult prisons pending hearing, trial or sentencing.

[14] It is currently at the Second Reading Stage, having been recommended for passage by the Social Services Parliamentary Select Committee.

Social Services

31) The Government's *Working for Families* targeted tax-relief package does not include benefit recipients and their children, and so does not address the increasing levels of poverty experienced by the nations most vulnerable families, including some 250,000 children[15];
32) Government figures show that of these 250,000 children, 93,423 are Māori – 37% of those living in poverty. As a proportion of the Māori population, 46% of all Māori children live in poverty, compared with 20% of non-Māori children[16];
33) The *Social Report 2005*[17] and the *New Zealand Living Standards 2004*[18] report, confirmed that the differences in living standards between low and high income earners have grown dramatically since 2000. The reports show that the proportion of Māori, Pacific Peoples, beneficiaries and low-income families with children living in severe hardship has also significantly increased;
34) In early 2007, there have been name changes to different support payments available to families, with the same names now being used for different types of support payments[19]. Because the support system is marketed towards working families, but with some aspects still applying to all families, people who are entitled may be excluded due to confusion about eligibility. Evidence shows that the introduction of complications disproportionately impact upon Māori uptake rates;
35) The development of a Single Core Benefit system and programmes to assist people in to work are deficient, primarily because similar effort is not being put into the creation of full-time work that is adequately paid, nor into developing economic polices that could boost wages and employment, including employment in smaller towns and rural areas. Little recognition is given to the needs of the child care or wider family responsibilities of beneficiaries. Given that a disproportionately high number of Māori parents are on benefits, more Māori are being forced from welfare to join the growing numbers of the working poor and have their children insufficiently supervised due to the inaccessibility of affordable, quality childcare.

Employment

36) The Government's Draft Report to the Committee fails to make clear that over the last 18 months, the Māori unemployment rate has been at least twice that of non-Māori, and at least three times that of Pākehā (European New Zealanders);
    - For example, in September 2005, the Māori unemployment rate was 9.4%; the non-Māori unemployment rate was 3.1%; and the Pākehā unemployment rate was 2.4%. In March 2007, the Māori unemployment rate was 8.6%; the non-Māori unemployment rate was 3.7%; and the Pākehā unemployment rate was 2.9%[20];

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[15] Child Poverty Action Group media release, 9 November 2005.
[16] Based on 2001 census data.
[17] *Social Report 2005* (2006), Ministry of Social Development.
[18] *New Zealand Living Standards 2004* (2006), Ministry of Social Development.
[19] Family Support is now the Family Tax Credit; Family Tax Credit is now the Minimum Family Tax Credit.
[20] From *Household Labour Force Survey* results.

37) The *Hui Taumata 2005* was not a Māori initiative. It was a $1 million Government-sponsored initiative understood by Māori to be an election 'sweetener' to counteract the political unrest created by the Foreshore and Seabed legislation;
38) The Government's Draft Report also neglects to mention income disparities between Māori and non-Māori. Data from the *New Zealand Income Survey* (June 2005 quarter), shows that both within each industry grouping and across industry groupings as a whole, there are significant income differences. On average Māori earn 13% less than their non-Māori colleagues.

Education

39) The *Social Report 2005* noted that well-being for Māori in education is poor, and criticised actions taken to reduce educational inequalities as being uneven and inconsistent;
40) Reports including *Ngā Haeata Mātauranga: Annual Report on Māori Education 2005*[21] and *New Zealand Schools 2005*[22] outline how poorly the compulsory schooling sector is delivering to Māori:
    - 53% of Māori boys and 45% of Māori girls leave school without gaining level one NCEA (National Certificate of Educational Achievement) qualifications. Non-Māori rates are less than half that of Māori;
    - 42% of Māori students did not meet the literacy and numeracy requirements for level one NCEA, compared with 22% of non-Māori;
    - There are disproportionately high rates of school expulsions and suspensions for Māori, as well as increased truancy rates;
41) While reports show that Māori-immersion classes and schools (kura kaupapa Māori and wharekura) produce identifiably higher attainment rates for Māori, 91.6% of Māori students are educated within mainstream primary and secondary schools[23]. More kura kaupapa Māori are needed, but the government restricts their growth to only five new kura per year;
42) Although Māori participation rates in tertiary education exceed non-Māori participation rates, approximately 80% of Māori tertiary students are enrolled in secondary school-level (certificate) courses. The proportion of Māori students enrolled in degree level courses remains significantly lower than that of non-Māori[24].

Te Reo Māori (Māori language)

43) The proportion of Māori who speak te reo Māori has fallen from 25.2% in 2001 to 23.7% in 2006[25];
44) Despite the status of te reo Māori as an official language of New Zealand, the 2006 Draft Schools Curriculum relegates te reo Māori to a status equal to other languages excluding English, which is given preference.

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[21] *Ngā Haeata Mātauranga: Annual Report on Māori Education 2005* (2006), Ministry of Education.
[22] *New Zealand Schools: Nga Kura o Aotearoa 2005* (2006), Ministry of Education.
[23] *Ngā Haeata Mātauranga: Annual Report on Māori Education 2005* (2006), Ministry of Education.
[24] *Ngā Haeata Mātauranga: Annual Report on Māori Education 2005* (2006), Ministry of Education.
[25] Tui Tui Tuituia: Race Relations in 2006 (2007), Human Rights Commission.

Health

45) The New Zealand Government's Draft Report acknowledges the unsatisfactory health status of Māori compared with the rest of the population. Providing more detail to this, the prevalence of heart disease and cancer mortality is twice as likely for Māori as non-Māori, with cardiovascular mortality up to three times more likely for Māori [26]. Cardiovascular mortality is decreasing at a slower rate for Māori than non-Māori, while cancer mortality for Māori is increasing but decreasing for non-Māori [27]. Māori are three time as likely as non-Māori to have diabetes, and more than six times as likely to die from diabetes[28];

46) The difference in Māori and non-Māori life expectancy is 8.5 years: 8.7 years difference between Māori and non-Māori women; and 8.2 years difference between Māori and non-Māori men[29]. This difference has increased from 1986, where the difference between Māori and non-Māori women was 8.46 years and the difference between Māori and non-Māori men was 6.98 years[30];

47) The *Social Report 2006*, the *New Zealand Living Standards 2004* report, and the *Decades of Disparity III* report all state that for Māori health to improve, family incomes must be increased to at least an extent to be free of poverty. Until this happens, the plethora of Māori health plans, strategies and initiatives will continue to be largely ineffective;

48) The *Decades of Disparity III* report goes further than this, analysing the ways in which ethnicity and socioeconomic position shape the health inequalities experienced by Māori [31]. The findings showed that being Māori is a determining factor in poor health, even when socioeconomic status is taken into account – clear evidence of ongoing racial discrimination in the provision of health services in New Zealand;

49) Māori-led health services continue to receive a small proportion of Government health funds, limiting their availability and thus access to them, and perpetuating existing disparities by forcing Māori providers to operate on inadequate funding.

Criminal Justice System

50) Māori men and women continue to be disproportionately arrested, convicted and sentenced to prison that non-Māori, even when there is evidence of similar offending behaviour and even when there has been less serious offending behaviour;

51) Prison numbers demonstrate this. In 2005, 48.3% of the total male prison population was Māori, and 56.5% of the total female prison population was Māori; and with Māori only 14% of the national population. These figures have not altered since 1986 where Māori compromised 50% of the prison

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[26] *Tātau Kahukura* (2006), Ministry of Health.
[27] *Cancer in New Zealand: Trends and projections* (2002), Ministry of Health.
[28] *Tātau Kahukura* (2006), Ministry of Health.
[29] "Life Expectancy Continues to Increase" (media release), Statistics New Zealand, 30 March 2004.
[30] *Puao-Te-Ata-Tū* (1986), Department of Social Welfare.
[31] *Decades of Disparity III: Ethnic and Socioeconomic Inequalities in Mortality* (2006), Ministry of Health & Otago University.

population[32]. Twenty years on, in 2006, Māori were 49.5% of the total prison population[33];

52) Police began a year-long trial of taser-stun guns in September 2006, despite strong public opposition, particularly from Māori community groups. Points of opposition included:
    - the lack of any public consultation, including with Māori;
    - no evidence that an additional weapon is needed for front-line police;
    - that Māori will be disproportionately targeted in taser gun use;
    - that Māori are more in danger of harm or dying from taser gun use, given overseas data shows people with heart conditions and mental health issues are more at risk. Māori are much more likely to be hospitalised and die from heart disease and heart failure than non-Māori, and far more likely to present for mental health issues than non-Māori[34];
53) In February 2007, of the 31 subjects who had been shot with a taser, 9 have been Māori (29%).

Article 5

Information on the Legislative, Judicial, Administrative or Other Measures Which Give Effect to the Provisions 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 the Enjoyment of the Rights Enumerated in Paragraphs (A) to (F) of Article 5 of the Convention

Political Rights

54) *Central Government*: Provisions regulating the general electorate seats are entrenched in the Electoral Act 1993, while those concerning Māori representation are not. What this means in practical effect is that all sections containing provisions related to Māori representation can be repealed by a simple majority in Parliament. By contrast, any change to the provisions relating to the general electorate seats requires either a 75% majority in Parliament, or a referendum;

55) *Local Government*:
    - Only one local government body has established Māori wards (seats) under the Local Electoral Act 2001 – the Bay of Plenty District Council. These seats have been under continuous threat of removal since they were established. A Private Member's Bill to repeal the provisions in the Act which allow for separate Māori representation on local authorities is currently being debated in Parliament[35]. An internal review of the membership of the Bay of

[32] *Puao-Te-Ata-Tū*(1986), Department of Social Welfare.
[33] Information contained in response to Parliamentary written question 13919.
[34] *Mental Health: Service Use in New Zealand 2003* (2006), New Zealand Health Information Service.
[35] The Local Electoral (Repeal of Race-Based Representation) Amendment Bill, tabled by Tony Ryall on 12 October 2006. The debate, and vote, on the first reading of the Bill is yet to be

Plenty District Council has resulted in a proposal for the three Māori seats to be reduced to two. Māori opposition to the reduction has meant the matter may now be placed with the Electoral Commission;

- Many local government bodies are not fulfilling their obligations to consult with Māori under the Local Government Act 2002 and the Resource Management Act 1991. Of those that bodies that do seek to consult, the consultation is still ad hoc in application and most often has very little impact on the final decisions made.

United Nations Declaration on the Rights of Indigenous Peoples

56) The New Zealand Government has actively sought to oppose passage of the Declaration on the Rights of Indigenous Peoples, or to have a watered-down version of the Declaration passed. The Government has tabled amendments, vigorously lobbied other states, and has opposed the original Sub-Commission text and voted against the Chair's amended text in 2006;
57) The New Zealand Government has been particularly opposed to the notion of Indigenous self-determination and instead considers that a lesser human right to a lesser form of political authority is sufficient;
58) The Government has formed and maintained this position, but are yet to meet with any mandated hapū or iwi representatives on this matter. The Government has never sought a hapū and iwi position on the Declaration ;
59) Through oral and written Parliamentary questions, it has been established that the Government has facilitated 6 meetings on this issue. They have no records of attendance, including if any hapū or iwi representatives attended. The Government has not facilitated any meetings for 6 years despite tabling significant amendments to the original Sub-Commission text in 2003, and despite repeated calls from Māori to meet.

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

Māori Broadcasting

60) Mainstream broadcasters were state funded for upwards of 30 years before there were any commercial expectations. For Māori Television, commercial expectations were immediate. Māori Television should be given at least the same amount of time to develop the Māori television broadcasting industry before commercial expectations are made;
61) There have been no operational funding increases to Māori radio broadcasters in the last 10 years.

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completed.

Suggested questions to be asked of the New Zealand Government:

- Why did the Government dismiss the 2005 recommendation of the Constitutional Arrangements Committee, to establish an independent institute to co-ordinate constitutional debate?[36]

- Why is the Government both undertaking and supporting actions which devalue the significance of the Treaty of Waitangi as New Zealand's founding document?

- Since coming to Office in 1999, how many Treaty Settlements have been commenced by your Government and taken through to final settlement?

- Why is it that in Treaty settlement negotiations with iwi, the Crown chairs the negotiations? Would it not be better for an independent body to be established for that purpose to ensure both parties negotiate in good faith?

- Do you think it acceptable that Te Puni Kokiri no longer carries out its statutory obligations of monitoring government departments because previous monitoring reports have embarrassed the Government by highlighting the departmental failure to provide adequate services to Māori?

- Given that the Government has stated that water is not to be traded, why is it that you have failed to shut down the activities of a company which you have referred to as a de facto water trader? (the company is Hydro Trader);

- Why is it that following economic deregulation and privatisation of state entities from the mid 1980s, that Māori disproportionately continue to earn less than the average wage, that Māori graduates earn less than their non-Māori peers with equivalent qualifications and experience, and that Māori employees still face institutional racism within the work place?[37]

- What is the justification for limiting the pace of development of Kura Kaupapa Māori when there is clear evidence that it produces better educational outcomes for Māori?[38]

- Why did the 2005 Budget omit any specific funding for Māori health programmes "despite the evidence favouring culturally appropriate prevention programmes and healthcare services designed to address Māori health needs"?[39]

- Would you consider that your justice system has an institutional and systemic bias given that a study led by Peter Doone, former Police

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[36] Report of the Constitutional Arrangements Committee (10 August 2005); Government Response to the Report of the Constitutional Arrangements Committee (1 February 2006).
[37] *New Zealand Income Surveys*; *Income of Student Loan Scheme Borrowers* (2005), Ministry of Education.
[38] *Ngā Haeata Mātauranga: Annual Report on Māori Education 2005* (2006), Ministry of Education.
[39] *Journal of the New Zealand Medical Association* (3 June 2005), "The New Zealand Government's 2005 Budget: missed opportunities for significant public health progress", Vol 118 No. 1216.

Commissioner, showed that Māori are apprehended more, charged more, prosecuted more, convicted more, incarcerated more and are sentenced more harshly than non-Māori when committing the same crime?[40]

- What comment would you make to the suggestion, given the above systemic bias projections, that those likely to be incarcerated in the future will be Māori; and if that is the case, what actions will you be taking to eliminate this bias rather than continue to plan and implement policies based on inaccurate and institutionally racist data?

- For what reasons has the Government failed to meet with hapū and iwi to discuss the draft Declaration on the Rights of Indigenous Peoples, and now the Declaration on the Rights of Indigenous Peoples, despite repeated requests to do so?

[40] *Report on combating and preventing Māori Crime* (25 September 2000), Crime Prevention Unit.

Suggested recommendations for the New Zealand Government

- That an independent Commission be established to facilitate constitutional debate and constitutional change in line with Te Tiriti o Waitangi;

- That the Crown be required to act in accord with good faith principles throughout the Treaty settlements process;

- That the Waitangi Tribunal be accorded the discretionary power to make binding recommendations on the Crown;

- That the Foreshore and Seabed Act 2004 be repealed, and that the Crown then engage with Māori to determine a solution which would recognise the inherent rights of Māori in the foreshore and seabed and ensure continued public access;

- That Māori aspirations to be self-determining be prioritised in the development of all economic, social and cultural legislation, policies and initiatives;

- That legislation be introduced to eliminate institutional racism from all Government departments and agencies;

- That an official poverty measure be introduced, with the Government required to meet yearly incremental reductions towards an end goal of poverty elimination;

- That amendments be made to the Resource Management Act 1991 and the Local Government Act 2003 to ensure that the authority of hapū and iwi is properly recognised and affirmed;

- That the New Zealand Government call a series of meetings with iwi and hapū throughout the country to discuss support for the Declaration on the Rights of Indigenous Peoples.