

Mana ki te Tangata

The New Zealand Action Plan for Human Rights



***Priorities for Action:
2005-2010***

Foreword

Mihi

Ki ngā Marae maha o te motu, ngā maunga iringa kōrero, ngā awa tukutuku roimata, ngā reo, ngā mana, me ngā waka, tena koutou katoa. He nui ngā mihi, he nui ngā kaupapa, kawea i runga i te ōrite o te tika, te pono, te rangimārie me te aroha

Human rights are vital to peace, security and sustainable development worldwide. Poverty, conflict, violence and terrorism flourish where human rights are denied.

In New Zealand, human rights underlie our expectations about life, education, health and work, about our personal security, equal opportunity and fair treatment, about our ability to have a say and our system of government.

The Human Rights Commission has a statutory responsibility to develop a national action plan for the better protection and promotion of human rights in New Zealand. In meeting that responsibility, we have worked in partnership with the Children's Commissioner.

Mana ki te Tangata / The New Zealand Action Plan for Human Rights (the Action Plan) is the first such plan to be drawn up for this country. It identifies what must be done over the next five years so that the human rights of everyone who lives in New Zealand are better recognised, protected and respected.

The Action Plan builds on the achievements of successive generations of New Zealanders committed to ensuring that everyone gets a fair go. It builds on the legislation, policies and programmes of successive governments, whose largely pragmatic and practical approach has delivered much.

New Zealand meets international human rights standards in many respects, and often surpasses them. We have most of the elements necessary for the effective promotion, protection and fulfilment of human rights. As adults we are generally free to say what we think, read and view what we like, worship where and how we choose, move freely around the country, and feel confident in the laws that protect us from discrimination and the arbitrary abuse of power. Most New Zealanders today also experience the benefits of the economic, social and cultural rights - education, decent work, good health, and affordable, healthy housing.

We are confident that this plan is achievable because in so many areas, government strategies and policies are already acknowledging and addressing the issues. Equally it reflects the evidence that in some crucial areas, New Zealand falls well short of fully recognising and actively respecting the human rights of all its people.

The Action Plan draws on *Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu*, the first comprehensive assessment of the status of

human rights in New Zealand, and the contributions of over 5,000 individuals, groups and organisations who made submissions and participated in nationwide consultations and in the extensive public opinion research. It has benefited from the generous and critical guidance of the members of the National Advisory Council, and the Race Relations, Children's Rights and Disability Sector Advisory Groups. Members of the Government Liaison Committee and staff of government departments provided consistently challenging and high quality information, analysis and advice, as did colleagues from the Mental Health Commission, Te Taura Whiri I Te Reo Māori: the Maori Language Commission, the Families Commission, the Electoral Commission, the Offices of the Health and Disability Commissioner, the Privacy Commissioner and the Ombudsmen.

The Action Plan identifies key human rights outcomes and the actions needed to achieve them. Implementation programmes with specific timelines will be developed with the relevant agencies and organisations. Just half the proposed actions fall within the sphere of government.

The Action Plan recognises that while government has specific responsibilities for the promotion and protection of human rights, responsibilities extend beyond the State to regional and local government, to the business and community sectors, to voluntary groups and organisations. Indeed, each of us has a responsibility to respect and protect the rights of others. This is crucial in the case of children, and of those adults who are dependent on others for their care and survival.

We are confident that this Action Plan provides a practical and constructive commitment to the rights set out in the Universal Declaration of Human Rights. In the turbulent, fast changing world of the 21st century, those rights provide the best basis for ensuring the dignity, equality and security of every man, woman and child in New Zealand.

“He aha te mea nui o tenei Ao?
Māku e kī atu he tangata, he tangata, he tangata”.

Rosslyn Noonan
Chief Commissioner
Te Amokapua

Cindy Kiro
Children's Commissioner
Kaikomihana mō ngā tamariki

Joris de Bres
Race Relations Commissioner
Kaihautu Whakawhanaunga ā Iwi

Judy McGregor
EEO Commissioner
Kaihautu Ōritenga Mahi

Robyn Hunt
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Kaihautu

Joy Liddicoat
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Kaihautu

Warren Lindberg
Commissioner
Kaihautu

Merimeri Penfold
Commissioner
Kaihautu

Michael Powles
Commissioner
Kaihautu

1. Introduction Timatatanga

1.1 The New Zealand Action Plan for Human Rights / Mana ki te Tangata

In the turbulent, fast changing world of the 21st century, the rights set out in the Universal Declaration of Human Rights provide the best basis for ensuring the dignity, equality and security of every man, woman and child in New Zealand.

By acting now, the human rights of all New Zealand's people can be strengthened over the next five years. *Mana ki te Tangata / The New Zealand Action Plan for Human Rights* (the Action Plan) sets out what is required to achieve measurable improvements between 2005 and 2010.

The Action Plan builds on the evidence and analysis presented in *Human Rights In New Zealand Today / Ngā Tika Tangata O Te Motu* (the status report), the first comprehensive assessment of the status of human rights in New Zealand, published in September 2004. It showed where New Zealand is doing well in protecting human rights and where we must do better.

The report used as its framework the rights set out in the Universal Declaration of Human Rights (UDHR) and codified into international law through United Nations Covenants and Conventions and the eight core International Labour Organisation (ILO) labour standards. The Treaty of Waitangi also formed part of that assessment framework. Internationally there is increasing acknowledgement of the inter-relatedness of individual and collective or group rights. The Treaty of Waitangi provides for both, and so encourages New Zealand to build a dynamic culture of human rights that incorporates both.

New Zealand has the essential elements necessary for the effective protection, promotion and fulfillment of human rights, the status report concluded. In many respects we meet international human rights standards and often surpass them.

The most pressing issues to emerge were those relating to:

- ❖ the poverty and abuse experienced by a significant number of New Zealand children and young people
- ❖ the pervasive barriers that prevent disabled people¹ from fully participating in society
- ❖ the vulnerability to abuse of those in detention and institutional care
- ❖ the impact of poverty on realisation of the most basic human rights
- ❖ the entrenched economic and social inequalities that continue to divide Maori and Pacific people from other New Zealanders
- ❖ the challenge of the place of the Treaty of Waitangi now and in the future.

¹ The term "disabled people" is used in this Action Plan, as it was in the status report, in accordance with the recommendations of the Disability Sector Advisory Group. This follows the approach taken in the New Zealand Disability Strategy.

These are the themes and issues on which the Action Plan focuses. The Action Plan proposes:

- ❖ actions to reduce violence, abuse and neglect experienced by children and young people
- ❖ increased, direct and systematic participation of disabled people in policy development and decision-making
- ❖ a focus on the elimination of poverty to ensure that, as a priority, every child and every disabled person in New Zealand has an adequate standard of living
- ❖ actions to safeguard children, young people and adults in detention and institutional care
- ❖ development of early childhood centres and schools as human rights communities
- ❖ measures that enable every child to grow up able to communicate in English and Maori and, where it is different, their mother tongue
- ❖ ways of improving democratic participation, including that of children and young people, and widening access to justice
- ❖ a focus on the place of the Treaty of Waitangi in New Zealand's constitutional arrangements
- ❖ steps to achieve harmonious relations among New Zealand's diverse communities
- ❖ steps to strengthen both the recognition and the realisation of economic, social and cultural rights
- ❖ commitment to ensuring that the legal framework fully protects human rights
- ❖ comprehensive procedures to ensure that legislation and policy are developed in accordance with human rights standards.

The Action Plan starts with a focus on children, disabled people and race relations. It then covers civil and political rights, economic, social and cultural rights, and the legal and policy framework for protecting and promoting human rights in New Zealand.

1.2 Identifying priorities for action / Tirohanga mahi tuatahi

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu provided a comprehensive survey across the range of civil, political, economic, social and cultural rights. Its data, analysis and conclusions are at the heart of the Action Plan, but also stand independent of it, and will have impact well beyond it. The Action Plan, like the status report, also draws on the Commission's EEO Framework for the Future, New Zealand's Census of Women's Participation, the Inquiry into Accessible Public Land Transport, and the Human Rights and Treaty of Waitangi Project.

The Action Plan focuses on a limited number of issues and areas for concentrated attention over the next five years. It is framed around specific outcomes in those areas where New Zealand most needs to improve its human rights performance. The Action Plan identifies priority actions which will contribute directly to achieving the specified outcomes. In selecting both

outcomes and priority actions, the Commission took public comment on the status report into account.

Before choosing each specific action, the Commission asked:

- ❖ Will the action make an improvement to one of the most pressing or significant human rights issues identified in the status report?
- ❖ Does the action build on or address a gap in current actions and strategies, or respond to evidence that current actions or strategies are not working?
- ❖ Does the action demonstrate the value of a human rights approach by explicit reference to international human rights standards, or by promoting participation, empowerment, transparency, accountability or non-discrimination?
- ❖ Is the action realistic and achievable?
- ❖ Can the action be implemented or its implementation be started in the next five years?

While the Commission has completed detailed analysis and justification of each action, the Action Plan itself is short and succinct. It simply introduces each issue, states the desired outcome and lists the priority actions.

1.3 Implementation of the Action Plan / Te whakakaupapatanga o te ritenga mahi

In many other countries, the task of preparing such a plan has been undertaken by government. The New Zealand Parliament, in giving this responsibility to the Human Rights Commission, recognised the importance of an independent and inclusive process. Cabinet made clear its commitment to the development of the Action Plan when, in 2002, it directed the Secretary for Justice to advise all Chief Executives of the Government's support for the process and its intention that the public service should cooperate actively with the Commission.

The Cabinet recognised that the Action Plan would cover civil, political, economic, social and cultural rights consistent with New Zealand's obligations under international human rights law.

While some actions can be implemented immediately, others will require detailed development and timelines. The responsibility for that work rests with the agencies and organisations that have the relevant statutory or community mandate. In a few cases, the Human Rights Commission or the Office of the Children's Commissioner will be the lead agency for implementation of an action. In most cases, it will be government agencies, territorial local authorities or community organisations. But there is no reason to wait for someone else to act. Crucial steps towards implementing the suggested actions can also be taken by individuals or families, in their homes and neighbourhoods; by employers, employees and unions in their workplaces; and by parents, teachers, trustees and students in early childhood centres and schools throughout New Zealand.

Over the next five years, the Human Rights Commission will work with agencies and organisations responsible for priority actions, and will report annually on progress in implementing the Action Plan and its impact on promoting respect for human rights and encouraging harmonious relations.

2. Getting it Right for Children and Young People² Kia tika mo ngā tamariki, rangatahi

States Parties shall respect and ensure the rights set forth in this present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Article 2, United Nations Convention on the Rights of the Child

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Preamble, United Nations Convention on the Rights of the Child

2.1 Introduction / Timatatanga

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu identified human rights abuses against children and young people as one of the greatest challenges facing New Zealand. The most serious human rights abuses experienced by children and young people relate to violence and poverty. Bullying and discrimination are widespread in some school environments. Better protection of children and young people is a major human rights challenge for everyone.

Children and young people live, learn and grow as part of families, whanau and communities. The extent to which children and young people in New Zealand are able to fully enjoy their basic rights depends on the extent to which all people in New Zealand enjoy human rights. Equally, a society that meets the basic rights of its children and young people (to freedom from discrimination, education, health, an adequate standard of living and safety from violence) is building a future in which all its members are more likely to enjoy their human rights.

Outside the home, the most important places for realising the rights of children and young people are early childhood centres and school communities. The concept of early childhood centres and schools as human rights communities appears throughout this section. This concept involves students and their families, as well as principals, teachers, Boards of Trustees, and the wider community. It has a number of specific actions. These include learning about rights and responsibilities, and creating an environment where there is freedom from violence, bullying and harassment, where individuality and diversity are respected, and where all those involved are able to participate fully.

² The phrase “children and young people” is used in this document to refer to people under the age of 18 years, in line with the definition of “children” in the United Nations Convention on the Rights of the Child.

2.2 Protection and fulfillment of rights / Te tiaki me te tutuki pai o ngā tika

Outcome: The human rights of children and young people are respected, protected and fulfilled.

The status report noted that New Zealand has three formal reservations to the United Nations Convention on the Rights of the Child. These relate to children unlawfully in New Zealand, the protection of children in employment and the mixing of young and adult prisoners. The government work programme on compliance with the United Nations Convention on the Rights of the Child identifies the steps that need to be taken toward the lifting of New Zealand's reservations to the Convention.

The status report also identified a specific gap in the legal framework for the protection and fulfillment of the rights of children and young people aged between 16 and 18 years in New Zealand.

Priorities for action:

- Lift New Zealand's three reservations to the United Nations Convention on the Rights of the Child
- Make the safeguards in the Children, Young Persons and Their Families Act 1989 available for all children and young people aged 18 and under who are charged with criminal offences.

2.3 Participation in decision-making / Te urunga ki ngā whakataunga

Outcome: Every child and young person in New Zealand is able to express their views and be heard on matters that affect them, and have their views taken into account in accordance with their age and maturity.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu noted that the importance of participation rights is recognised in both the *Agenda for Children* and the *Youth Development Strategy Aotearoa*. Opportunities for genuine involvement in decision-making processes are limited in many settings, however, including schools and judicial processes. There is a need to actively promote participation rights in government and non-government sectors, and to develop and promote educational resources, guidelines and other tools to involve children and young people in decision-making processes. In order to participate fully in society, children and young people also need to know their democratic rights and responsibilities. The current review of the social studies curriculum in New Zealand offers an opportunity to address this.

Priorities for action:

- Encourage families to include children and young people in decisions that affect them
- Increase student participation in decision-making within schools
- Develop the curriculum to include democratic rights and responsibilities
- Ensure that the child's or young person's voice is given due weight in court and tribunal proceedings that affect them

- Require the consent of children aged 12 or older to any order for their adoption
- Ensure that central and local government agencies take account of the views of children and young people when making decisions that affect them
- Ensure that central and local government agencies assess the impact of proposed and existing policies and practices on children and young people
- Ensure that children and young people have access to complaints mechanisms which are available, accessible and appropriate.

2.4 Safety and freedom from violence / Kia wātea kia maru mai i ngā mahi tukino

Outcome: Every child and young person in New Zealand is safe and violence is not tolerated.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu concluded that too many children and young people in New Zealand suffer from abuse and neglect. This violence is able to continue only because it is sanctioned throughout New Zealand society.

The safety outcome in the Civil and Political Rights section of this plan proposes actions to address family violence generally, including child abuse. The priorities chosen for this section are focused on prevention of child abuse and injury. Families, early childhood centres and schools all have a crucial role to play in preventing violence against children and young people.

Government agencies and communities are already working to improve child and youth safety through strategies such as *Te Rito: New Zealand Family Violence Prevention Strategy* and *SKIP: Strategies with Kids - Information for Parents*. It is critical to ensure that their ongoing implementation is effective. Many schools and early childhood centres have effective policies and programmes to reduce violence. Developing schools and early childhood centres as human rights communities can strengthen these programmes by providing a comprehensive approach to the rights and responsibilities of the child or young person.

The United Nations Committee on the Rights of the Child has recommended that section 59 of the Crimes Act 1961 (which allows force to be used on a child for discipline where it is deemed reasonable in the circumstances) be reviewed to effectively ban all forms of corporal punishment. The Government has signaled that it will review this law in 2005.

The status report found high rates of intentional and unintentional injury of children in New Zealand. While New Zealand has a generic injury prevention strategy, it does not specifically address children and young people.

Priorities for action:

- Support families to eliminate family violence by expanding community-based programmes that demonstrate best practice, promote and protect human rights and include a strong child focus
- Support schools and early childhood centres to promote non-violent conflict resolution, combat bullying and harassment, and prevent sexual and other abuse
- Strengthen public education programmes aimed at promoting positive, non-violent forms of discipline and respect for children's rights to human dignity and physical integrity
- Repeal Section 59 of the Crimes Act 1961
- Develop and implement a specific child and youth injury prevention strategy, covering both intentional and unintentional injuries.

2.5 Rights of children in institutional care or detention / Ngā tika o ngā tamariki i roto i ngā kāinga whakaruruhau, me ngā waahi mauhere

Outcome: Children and young people are given maximum opportunity to grow up in a family environment, and where they are lawfully detained or taken from their whanau/families they are safe and are treated with respect for their human rights.

The United Nations Convention on the Rights of the Child recognises that the child should, wherever possible, grow up in a family environment, and that the family should be afforded the necessary protection and assistance to provide this role. The status report found that the families of disabled children face particular challenges and may therefore require specific support.

The status report also identified several serious concerns for the rights of children and young people in institutional care or detention. It found indications that practice in Child, Youth and Family residences is not meeting standards in legislation and guidelines. An independent review of the Child, Youth and Family Services grievance panel system found that the current system is not working effectively and is not providing adequate protection to children and young people in residences. In addition, there are not enough beds for young people who need to be detained and not enough options to release young people on supported bail.

The status report also identified that young people are sometimes held in police cells for lengthy periods or mixed with adults in police cells or prisons. It identified a lack of available official information on the numbers, characteristics and experiences of children and young people in detention. The Ministry of Youth Development is currently working with the Department of Corrections to develop a best interests test in relation to age-mixing in detention.

Priorities for action:

- Monitor and enforce existing legislation, regulation and policies on the care and protection of children and young people
- Support families of disabled children so that they are able to care for their children themselves (as opposed to institutional care)

- Increase the availability of beds in Child, Youth and Family and youth justice residential facilities
- Increase and improve provision of specialised services for children and young people with mental illness or drug and alcohol dependency
- Develop effective grievance procedures so that complaints by children and young people in residential care and other placements arranged by Child, Youth and Family Services will be responded to promptly and effectively
- Develop an integrated dataset to record the numbers, characteristics and experiences of children in institutional care
- Review Police training on the circumstances and grounds on which children and young people can be arrested and held
- Increase the availability and use of the supported bail scheme
- Ensure that all children and young people who are detained remain separate from adults unless the separation is not considered to be in the best interests of the child or young person.

2.6 Elimination of child poverty / Te whakakahore i ngā tikanga rawakore o ngā tamariki

Outcome: Every child and young person in New Zealand has an adequate standard of living.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu found that nearly one in three children and young people in New Zealand live in poverty. This has significant implications for their development and experience of human rights. While a number of government actions are contributing to improving this situation, such as the *Working for Families Budget Package 2004*, research into poverty in New Zealand shows that policy challenges still exist in three key areas: affordable housing (the largest and first paid item in the household budget); adequate income support; and education, training and community support.

Priorities for action:

- Ensure access to adequate and affordable housing for all children, young people and their families
- Ensure that families with dependent children have an adequate income to meet the needs of those children regardless of their source of income.

(Further actions to promote the right to housing and to an adequate standard of living are set out in the section of this plan addressing economic, social and cultural rights.)

2.7 Education for all children and young people / Te mātauranga mo ngā tamariki rangatahi

Outcome: Every child and young person in New Zealand has equitable access to appropriate quality education services.

New Zealand has ratified the United Nations Conventions that stipulate provision of free compulsory education. Free primary and secondary

education is built into New Zealand legislation and confirmed through Ministry of Education policy documents. There is evidence that pressure continues to be exerted on parents and carers to pay school “fees” and other school expenses.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu noted that participation and achievement rates for Maori, Pacific peoples and those from poor communities are disproportionately low. The report also found that participation and achievement levels of some groups (e.g. disabled children and young people) are not known. Being able to participate fully in education enhances student achievement. Education in te reo Māori based on kaupapa Māori is one way to increase educational achievement and participation.

The latest report on the *Competent Children* study establishes that participation in early childhood education makes a lasting contribution to children’s achievement at school. The *Schooling Strategy for New Zealand* aims to provide a framework for improving student outcomes in schooling. In the meantime, specific measures need to be taken to comprehensively assess participation rates and to remove barriers to full participation.

Priorities for action:

- Pilot the concept of *early childhood centres and schools as human rights communities* for implementation throughout New Zealand
- Ensure that accessible quality early childhood education is available to all
- Strengthen, publicise, monitor and enforce existing legislation and policies on free primary and secondary education
- Amend the National Education Guidelines to make human rights obligations explicit, including the right to education
- Challenge persistent barriers to free primary and secondary education, including through strategic litigation
- Review the legal power of schools to suspend, exclude, expel and refuse to enroll students
- Establish an independent mechanism to review all suspensions, exclusions, expulsions and refusals to enroll students
- Improve the quality and quantity of resources for kaupapa Māori education
- Expand the supports available to students who have special or additional needs and evaluate the effectiveness of funding and support for disabled students
- Expand quality counselling and health services in schools.

(Priorities for action in relation to access to quality health services are contained in the section on economic, social and cultural rights.)

2.8 Respect for identity / Te whakapumau tuakiri

Outcome: The diversity of all children and young people in education is respected, and they are equally able to maintain and develop their own identity, including gender, ethnicity, language, culture, religious belief, disability, family status and sexual orientation.

The status report identified that the fundamental right to identity is not a reality for all children and young people in New Zealand. Early childhood education centres and schools are ideal places in which to learn about and practice acceptance of difference and diversity. The development of schools and centres as human rights communities would provide a comprehensive approach to all the actions in this section.

Priorities for action:

- Make provision for the use of New Zealand Sign Language by Deaf children, including employing teachers competent to teach in NZSL
- Support Boards of Trustees and education staff to model respect for diversity in the classroom and school community
- Support all teachers to develop effective skills to teach children with a variety of learning styles, different learning needs and diverse identities and social backgrounds
- Support schools and early childhood centres to combat bullying and harassment and promote respect for difference
- Promote a greater emphasis on New Zealand's history and development throughout the school curriculum.

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State

Article 16, Universal Declaration of Human Rights

2.9 The rights of the family / Nga tika o te whānau

Outcome: Families are actively supported to play their central role in the protection of human rights.

Families play a central role in the protection of human rights. In New Zealand most families are able to fulfil this role by:

- ❖ loving, protecting and caring for family members
- ❖ sharing resources, knowledge and time
- ❖ participating in education, society and the economy
- ❖ passing on values and culture.

However, the status report identified a number of factors that make it difficult for some families to fulfil this role, such as a lack of acceptance of differences, abuse of dependent family members, structural disadvantage and discrimination, and barriers to some family members participating fully in society. As a priority for action, the report identified the challenges facing families in their core role as caregivers, including the care of dependent children, disabled people and older people.

As families in all their different forms become stronger and more resilient, the situation will improve for all family members, including children, and those who are elderly or disabled, and this will help to protect their human rights. Since its formation at the start of July 2004, the Families Commission has been working on identifying the issues that affect families. Many of the actions identified in this plan are expected to bring about improvements for families. This section focuses on the need for better understanding of the challenges facing families today.

Priority for action:

- Undertake research on the experiences of families with dependent children, and families caring for older people or disabled people.

3. Getting it Right for Disabled People Kia tika mo te hunga hauā

Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow citizens of the same ages, which implies first and foremost the right to enjoy a decent life, as normal and full as possible.

Article 3, United Nations Declaration on the Rights of Disabled Persons

3.1 Introduction / Timatatanga

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu identified the pervasive barriers that prevent disabled people from fully participating in society as a key human rights issue. Disabled people may also experience multiple disadvantage in terms of their ethnicity, age, gender or sexual orientation. In spite of significant progress in developing a high-level framework and strategy and the increasingly effective voice of disabled communities, in their daily lives disabled people remain among the most disadvantaged citizens in New Zealand.

Disabled people may have physical, sensory, neurological, psychiatric, intellectual or other impairments. An aging population means that increasing numbers of people in New Zealand have impairments. The outcomes and priorities for action in this section address issues affecting older people who experience disability as well as disabled people generally.

Knowledge of the experience of disabled people is limited and this affects policy design and delivery and everyday practice in schools, homes, workplaces and public places.

3.2 Protection and fulfillment of rights / Te tiaki me te tutukitanga pai o ngā tika

Outcome: The rights of disabled people are respected, protected and fulfilled.

The status report identified the invisibility of disabled people as a key barrier to the realisation of rights. New Zealand is participating in the development of an international Disability Convention, which aims to ensure visibility and status for disabled people. Within New Zealand, the Human Rights Act 1993 provides protection against discrimination, although many consider that it provides a lower level of rights for disabled people compared with others.

While the New Zealand Disability Strategy provides an excellent framework, in order to make a difference in people's everyday lives, there is an urgent need to make progress in implementing it. The collection and use of data also needs to be improved so that this progress can be assessed.

Priorities for action:

- Take a leadership role in the development of a comprehensive international human rights disability convention
- Support the continued participation of disabled people and their organisations, including Indigenous disabled people, in the development of this convention
- Review the Human Rights Act 1993 exceptions relating to disability
- Strengthen accountability for the implementation of the New Zealand Disability Strategy by developing and achieving specific targets
- Improve direct involvement of disabled people in the monitoring and evaluation of the New Zealand Disability Strategy implementation
- Improve the collection and use of disaggregated data in relation to disabled people.

3.3 Participation in decision making / Te urunga ki ngā whakataunga

Outcome: Every disabled person in New Zealand is able to express their views and have their views taken into account on matters that affect them.

Participation in making decisions is both a right in itself and also a means to better protect and promote other rights. Disabled people's participation is a key element of this section of the Action Plan. Strengthening advocacy by and for disabled people is an important way of increasing participation and monitoring and addressing the full range of human rights. Disabled people and their organisations are co-operating with agencies such as the Health and Disability Commissioner and the Office of Disability Issues to begin making improvements in this area.

Priorities for action:

- Strengthen advocacy by and for disabled people by providing the necessary knowledge, skills, support and resources to enable more disabled people to become advocates and self-advocates
- Include in contracts with residential service providers a requirement to:
 - have at least two residents or resident-selected advocates on their governing body;
 - provide governance training; and
 - report on resident satisfaction with this process of representation.

3.4 Safety / Te Marutau

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu reported concerns about the safety and autonomy of disabled people, particularly in situations where assistance is needed with daily activities. Priorities for action to improve the safety of disabled children and young people are included in the children and young people section of this Action Plan. Priorities for action to address safety issues for disabled people more generally are included in the civil and political rights section. Proposed research on the families of disabled people (see the special feature on families in the children and young people section) will address safety within the family, amongst other issues. The safety of disabled people would also be strengthened by implementation of the actions to increase participation in decision making, set out above.

3.5 Disabled people in compulsory treatment and places of detention / Te hunga hauā i roto i ngā whare matua oranga, me ngā waahi mauhere

Outcome: Where disabled people are lawfully detained, they are safe and their human rights are respected.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu identified significant gaps in data about disabled people who are detained. The lack of reliable data prevents accurate assessment of the adequacy of current levels of service provision. A small number of prisoners requiring urgent treatment for mental illness remain in prison while they wait for an available bed in a forensic mental health facility.

The status report noted the benefits of the new Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, which provides a separate legal framework for the detention of people with an intellectual disability. However, some concerns were raised about the impact of the new legislation, and careful monitoring of its implementation was recommended.

Priorities for action:

- Collect and publish data on disabled people in prison
- Monitor the implementation of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 and the provision of appropriate rehabilitation programmes
- Improve the provision of mental health services for people in prison, including by increasing the number of secure forensic beds in the community that are available to prisoners in need of specialised forensic treatment.

3.6 Mental health services / Rātonga oranga hinengaro

Outcome: Where people use mental health services, they are safe and their human rights are respected.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu identified two critical human rights issues in mental health clinical practice:

- ❖ The inappropriate use of seclusion and
- ❖ The tension between compulsory treatment and the rights to refuse treatment, to make an informed choice and to give informed consent.

Improvement in mental health service infrastructure and clinical practice are key to minimising the use of seclusion and addressing issues of competency and capacity. The priorities for action emphasise infrastructure, practice guidelines, collaboration and greater accountability and transparency in monitoring practice.

Priorities for action:

- Ensure early implementation of the Mental Health Commission's *Blueprint for Mental Health Services* which will develop mental health service infrastructure
- Ensure that any practice that involves confinement, isolation and reduction of sensory input is acknowledged as seclusion in guideline documents
- Initiate a collaborative project to clarify human rights issues around the use of seclusion
- Require District Health Boards (DHBs) to report the extent of the use of seclusion in service profiles
- Investigate the concept of capacity as an additional criterion for use in compulsory interventions
- Strengthen the formal recognition of advance directives to enable people to make decisions about their treatment before becoming unwell
- Investigate the effectiveness of legal protections for service users under the Mental Health (Compulsory Assessment and Treatment) Act 1992 and the length of Community Treatment Orders.

3.7 Elimination of poverty / Te whakakāhore i ngā tikanga rawakore

Outcome: Every disabled person in New Zealand has an adequate standard of living.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu identified disability-related expenses and barriers to and in employment as key contributors to the significant disadvantage experienced by disabled people in terms of living standards. Policies and practices to improve these standards need to take into account the extent and nature of the additional costs of disability to individuals and their families, but up-to-date information is not available.

Disabled people face major barriers in accessing and retaining work, gaining promotion, and achieving an adequate income. These barriers could be addressed by strengthening the international and national legislative framework, and improving attitudes towards disabled people at all levels. Continued public sector leadership and achievement of the existing equal employment opportunities targets is also required.

Priorities for action:

- Undertake research to identify the cost of disability to disabled people, their families and the disability community
- Develop and implement a campaign to overcome negative attitudes against disabled people seeking employment and in employment
- Minimise segregated employment for disabled people and remove exemptions from the minimum wage
- Achieve disability-related EEO objectives in public service departments and ministries and improve accountability for results
- Ratify ILO Convention 159 on Vocational Rehabilitation and Employment (Disabled Persons).

3.8 Access to and provision of quality services / Te whakarato tonu me te wātea ki ngā tikanga kairangi

Outcome: Every disabled person in New Zealand has access to quality services.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu concluded that disabled people lack authentic involvement in decision-making and policy development in relation to health, education, and other types of services. Disabled people face barriers to services and information, and to many places, including buildings and transport. While the Building Act 2004 includes an access standard for built environments, there is a need to review this on a more regular basis.

Government agencies are focusing on a more co-ordinated approach to service development. For example, the Ministry of Health and the Departments of Corrections and of Child, Youth and Family Services are co-operating across sectors to deliver more client-centred services. A review of support services as a whole is now needed to inform future developments.

Local authorities have a significant role in ensuring the accessibility of services. The Auckland City Council and the Manukau City Council have recently launched programmes to ensure the improved accessibility of their cities.

The Mental Health Commission has reported that access to child and youth mental health services and funding for community support services for people with experience of mental illness do not meet the guidelines set out in *Blueprint for Mental Health Services: How Things Need to Be*.

Priorities for action:

- Conduct a review of systems for providing support to disabled people (including home-based support, equipment, housing/vehicle modifications, rehabilitation, disability information and advisory services) with a focus on improving personal autonomy, flexibility, accessibility, equity, consistency, co-ordination and accountability to disabled people
- Ensure implementation of the *Blueprint for Mental Health Services* guidelines for child and youth mental health services
- Encourage the development of community-based services provided by people with experience of mental illness for people with experience of mental illness
- Improve disabled people's access to information and communications technology
- Review NZ Standard 4121:2001 (access standard in the built environment) every 5-10 years to reflect developments in best practice in building accessibility
- Make public transport more accessible to disabled people by implementing recommendations of the Human Rights Commission Inquiry into Accessible Public Land Transport.

(Further priorities for action for education, health and housing services are outlined in the sections on children and young people, and on economic, social and cultural rights.)

3.9 Bioethics / Tikanga rangahau rongoa koiora

Outcome: There is effective participation of disabled people in all bioethical debates and decision-making bodies.

There is concern among disabled people in New Zealand about the possible implications of rapid advances in biotechnological knowledge. These include concerns that developments in biotechnology (such as genetic screening) can be used as a means to discriminate or to devalue the lives of disabled people. There is no evidence in the New Zealand Disability Strategy progress reports of appointment of disabled people to ethics committees, and disabled people's perspectives are lacking in ethical and bioethical debates.

Priorities for action:

- Ensure effective representation of disabled people on national bodies such as the Bioethics Council, the Advisory Committee on Assisted Reproductive Procedures and Human Reproductive Research, National Ethics Committee on Assisted Human Reproduction, and ethics committees at research centres and universities
- Examine the human rights implications for disabled people of biotechnology/genetic technologies
- Train researchers, bioethicists, members of ethics committees, legal and medical professionals, and health and disability service providers in a human rights approach to bioethical issues, and in particular on the equal value and human rights of all children, young people and adults regardless of their level of impairment
- Review legislative protection against discrimination on the basis of genetic information (including collection and use of genetic information in areas such as employment and insurance).

4. Getting it Right in Race Relations Kia tika mo ngā mahi whakawhanunga ā iwi

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

Article 2, Universal Declaration of Human Rights

States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races

*Article 2, International Convention on the Elimination of
All Forms of Racial Discrimination*

4.1 Introduction / Timatatanga

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu highlighted the persistence of structural disadvantage and discrimination, a failure to wholeheartedly accept difference and diversity, and the challenge of agreeing on the place of the Treaty of Waitangi in New Zealand's present and future.

Harmonious race relations are dependent on the achievement of civil, political, economic, social and cultural rights, including the right to freedom from discrimination, but they also require communication and dialogue between different peoples.

4.2 Social and economic equality / Te orite i te ahua noho me te whai putea

Outcome: Social and economic inequalities arising from racial and ethnic discrimination are eliminated.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu identified persistent inequalities in the realisation of economic, social and cultural rights as a result of discrimination on the basis of ethnicity. Priority actions addressing social and economic inequality are contained in the economic, social and cultural rights section of this plan. The priorities for action under this outcome focus on the legitimacy of special measures which aim to achieve equality.

Priorities for action:

- Promote public understanding of the legitimacy of special measures to achieve equality under international and domestic law
- Regularly review all special measures to achieve equality to ensure they are meeting their objectives.

4.3 Rights of indigenous peoples / Ngā tika o te tangata whenua

Outcome: The particular rights of Maori as the indigenous people of New Zealand are respected and valued alongside the rights of all New Zealanders.

The recognition of indigenous rights has been the subject of considerable public debate both in New Zealand and internationally. There is developing jurisprudence both in New Zealand and in other countries in relation to self determination, customary rights, culture, language and the relationship between individual and collective rights. The Human Rights Commission's programme of community dialogue on human rights and the Treaty of Waitangi has indicated the need for continued discussion of these issues, and of how the Treaty of Waitangi encompasses both the indigenous rights of Maori and the rights of all New Zealanders. Three particular challenges were identified:

- ❖ To recognise and respect the customary rights of tangata whenua in a way that is fair to all citizens and values the contribution that tikanga Māori makes to the New Zealand identity
- ❖ To ensure the rights of Maori to live as Maori and also to participate fully in New Zealand society
- ❖ To affirm for all New Zealanders the right to belong.

New Zealand's experience domestically provides a basis to contribute internationally to the completion of a declaration on the rights of indigenous peoples.

Priorities for action:

- Promote public understanding of the rights of indigenous peoples and extend community dialogue on human rights and the Treaty of Waitangi
- Contribute actively, with the participation of Maori, to the development of international human rights law relating to the rights of indigenous people.

4.4 Language / Te Reo

Outcome: By the bicentenary of the signing of the Treaty of Waitangi in 2040, New Zealand is well established as a bilingual nation, and communities are supported in the use of other languages.

Language is a critical issue for race relations, both in affirming identity and in fostering understanding of different cultures. New Zealand has a particular responsibility to ensure the protection and use of te reo Māori as an indigenous language, and also to ensure the survival of a number of Pacific languages, because of the special relationship with some Pacific Island countries and the high proportion of their populations that now live here. English language acquisition is also vital to the successful settlement and integration of migrants and refugees.

Priorities for action:

- Progressively provide opportunities for all New Zealanders to develop knowledge of tikanga Māori and the ability to communicate competently in both English and te reo Māori

- Include te reo and tikanga Māori in teacher education and professional development to ensure their effective use in teaching
- Ensure the continued survival and use of the Cook Island Maori, Niuean and Tokelauan languages in New Zealand, and foster the retention and use of other Pacific languages
- Develop a languages policy that encourages the learning of a range of languages and supports community efforts to teach their heritage languages
- Ensure that all new migrants and refugees have access to appropriate English language tuition
- Extend the availability of the *Language Line* interpreter service to all public agencies.

4.5 Migrants, asylum seekers and refugees / Te hunga heke mai, te hunga whai whakarurutanga, me te hunga manene

Outcome: The human rights of migrants, asylum seekers and refugees are protected at all stages of the migration process.

The human rights of migrants, asylum seekers and refugees, as set out in international conventions, should be protected at all stages of the migration process.

Priorities for action:

- Repeal Section 149D of the Immigration Act 1987 which excludes the Act from the jurisdiction of the Human Rights Commission
- Work towards ratification of ILO Convention 143 on Migrant Workers (Supplementary Provisions)
- Work towards the ratification of the UN Convention on the Rights of All Migrant Workers and their Families.

Outcome: Migrants and refugees are welcomed by their host communities and given the necessary assistance to settle and integrate in New Zealand.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu identified the particular health and welfare needs of migrants, including the accessibility of services to people of different cultures. It also highlighted the importance for new migrants of access to English language training and information about New Zealand society and their rights, including learning about the Treaty of Waitangi. At present volunteers working through the Refugee and Migrant Service, churches and other community groups make the most significant contribution to successful settlement of newcomers to New Zealand. They are not sufficiently resourced to meet the complex needs of refugees. The Government is currently in the process of developing a New Zealand Settlement Strategy and local authorities are at various stages of completing their own settlement plans.

Priorities for action:

- Further develop and resource the New Zealand Settlement Strategy for migrants and refugees

- Develop migrant and refugee settlement plans for each local authority area
- Increase resources for non-governmental and community groups to support settlement of newcomers to New Zealand.

4.6 Cultural diversity / Te rerekētanga o ngā tikanga ā iwi

Outcome: New Zealanders value and celebrate their cultural diversity.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu identified the persistence of racism, racial discrimination, harassment and abuse in New Zealand. Incidents of such harassment and abuse prompted Parliament in 2004 to unanimously condemn all forms of racial discrimination, and a subsequent forum of community leaders at Parliament, called to discuss the way forward for racial harmony, adopted the New Zealand Diversity Action Programme. The main points in this programme, which are consistent with the findings of the status report, are reflected below, and elsewhere in relation to the place of the Treaty of Waitangi and migrant settlement strategies.

Priorities for action:

- Strengthen the networks of people and organisations that contribute to harmonious race relations and cultural diversity
- Establish a cultural diversity website and portal that provides access to information on New Zealand's diverse communities, and facilitate communities to develop their own websites and information resources
- Establish a diversity centre that is able to lead research, inform debate, and connect researchers in different institutions and organisations
- Improve the reflection and promotion of cultural diversity in the media and communication industry through communication and journalism education and on the job training, and by increasing the diversity of the communications and journalism workforce
- Provide increased central and local government support for the celebration of cultural diversity through the arts and through religious, cultural and national festivals and events
- Support the participation of ethnic communities in historic, cultural and environmental conservation
- Foster community dialogue between people of different views, cultures and faiths.

5. Civil and Political Rights Nga tika ā iwi me ngā tika tōrangapu

In accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

The individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.

Preamble, International Covenant on Civil and Political Rights

5.1 Introduction / Timatatanga

Many of the challenges identified in *Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu* relating to civil and political rights have been addressed in the preceding sections on children, disabled people and race relations. Further priority actions relate to democratic rights and responsibilities, the right to justice, safety and security of person, and the rights of people who are detained.

5.2 Right to freedom from discrimination / Te tika kia wātea mai i ngā mahi whakaparahako

Outcome: All people in New Zealand respect the rights of others and have their rights respected without discrimination.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu concluded that New Zealanders value fairness and that New Zealand law generally meets international standards for protecting the right to freedom from discrimination. Specific concerns about legislative protection against discrimination are addressed in the section of this plan on the legal framework.

Better data collection is needed to measure accurately the extent of discrimination. However, there is evidence that people who experience mental illness, transgender people, and intersex people are three groups who face discrimination in New Zealand. This section focuses on improving the human rights of these specific groups.

(The framework section of this plan proposes some priorities for action to improve data collection about discrimination generally, and the race relations section proposes priorities for action to address discrimination on the basis of ethnicity or race.)

Priorities for action:

- Intensify inter-agency cooperation to address discrimination against those who experience mental illness
- Inquire into discrimination experienced by transgender and intersex people.

5.3 Democratic rights and responsibilities / Ngā tika me ngā kawenga manapori

Outcome: Democratic participation is increased.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu found that while New Zealand generally complies with the international standards for democratic rights, there appears to be a risk that confidence in the benefits of democratic participation is waning. In particular, the declining rate of voter turnout in parliamentary and local authority elections was identified as a significant concern. The status report also found disparities in democratic participation levels between different sectors of New Zealand society. Addressing disparities in participation is as important as increasing participation levels overall, because political equality is a cornerstone of democracy.

None of the three bodies that make up New Zealand's electoral administration currently have a specific responsibility or mandate to promote and encourage voting in elections. More generally, the report showed significant gaps in public awareness and understanding about constitutional structures and democratic rights and responsibilities.

(An action to increase education about democratic rights and responsibilities in schools is included in the section on children and young people.)

Priority for action:

- Include a specific responsibility in the mandate of the institutions of electoral administration in New Zealand to promote and encourage participation by all sectors of New Zealand society in elections.

5.4 Safety for all / Te whakatupatoranga mo te katoa

Outcome: Every person in New Zealand is safe and violence is not tolerated.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu identified the presence and tolerance of violence and racial harassment in too many of New Zealand's homes and communities as a key human rights concern. Some outcomes and priorities for action to reduce violence affecting children and disabled people are contained in the respective sections of this plan. All forms of family violence, including partner and elder abuse, were identified in the report as a priority for improvement. The status report also found that ethnic minorities experience harassment and bullying. Gay, lesbian and transgender people are also at risk of high rates of bullying, violence and suicide.

In the strategic framework *Opportunities for All New Zealanders*, the Government has identified family violence and the abuse and neglect of children and older persons as a critical issue to be addressed through improved inter-agency collaboration, building on existing work and developing new ways to work together. Existing Government strategies and work programmes include *Te Rito – New Zealand Family Violence Prevention Strategy*, and the *Action Plan for Community and Sexual Violence*, which includes a proposed nationwide public education programme. The Government's *Elder Abuse and Neglect Prevention Programme* was reviewed in 2004 and recommendations were made to strengthen it. There is an urgent need to progress implementation of these strategies and programmes.

Priorities for action:

- Prevent family violence and abuse by expanding community-based initiatives that demonstrate best practice and promote and protect human rights
- Strengthen programmes to prevent abuse and neglect of disabled and older people
- Incorporate a human rights approach into the development of a nationwide public education programme to reduce violence
- Take action to reduce deliberate harassment of ethnic and religious groups and gay, lesbian and transgender people, including stronger enforcement of criminal sanctions, public education, and closer police liaison with communities
- Promote respect for human rights through human rights education for police management, staff, and anyone acting on behalf of the NZ Police.

5.5 Justice / Te tika o te ture

Outcome: All people in New Zealand have equal access to justice.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu highlighted that people often experience barriers to equal participation in the justice system. These barriers include processes that are costly and difficult for many people on low incomes. The recent Law Commission report *Delivering Justice for All: A Vision for New Zealand Courts and Tribunals*, published in March 2004, noted that access to justice results from the satisfactory balance of a number of contributing factors, including legal information and advice, representation, cost, and acknowledgement of diversity.

Restorative justice has the potential to address a wide range of the issues identified in the status report, including access to justice, victims' rights and their involvement in justice processes, high rates of re-offending and dislocation of offenders from their communities and families. The Ministry of Justice and community restorative justice providers are working collaboratively towards the continued development of restorative justice in New Zealand.

Priorities for action:

- Reduce civil court fees
- Improve access (including the removal of physical, cultural, behavioural and electronic barriers) to courts, the justice sector and legal information
- Ensure that victims of crime have the opportunity to be heard and that due weight is given to their views in court proceedings
- Extend the availability of restorative justice in its various forms
- Evaluate the use of family group conferencing in youth justice.

5.6 Places of detention / Ngā whare herehere

Outcome: Where people are lawfully detained, they are safe and their human rights are respected.

Detention raises fundamental human rights issues. *Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu* emphasised the importance of independent review of the use of non-voluntary segregation and lock-down in particular, and the health and safety of prisoners more generally. The detention of asylum seekers was identified as an issue requiring particular attention. The status report also noted that there is currently no external monitoring of detention by the Defence Forces.

The New Zealand Government has signed the Optional Protocol to the Convention Against Torture (OPCAT) and has taken steps to establish the Human Rights Commission as the central national preventive mechanism under the protocol, so that the OPCAT can then be ratified.

Priorities for action:

- Review the use of non-voluntary segregation, periods of lock-down and other health and safety issues in prisons, including the experiences of asylum seekers in prison
- Provide for external monitoring of detention in military facilities
- Promote respect for human rights through human rights education for management and staff of prisons and all other places of detention
- Implement the Optional Protocol to the Convention Against Torture (OPCAT).

5.7 Human rights and terrorism / Ngā tika tangata me mahi kōhuru whakatumatuma

Outcome: Security protection measures are consistent with the principles of transparency, proportionality, and fundamental human rights.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu identified the potential for subordinating human rights in the interests of national security as an area of concern. It is in the interests of national security to ensure that measures to prevent terrorism comply with New Zealand's human rights obligations. The Asia Pacific Forum of National Human Rights Institutions Advisory Council of Jurists made specific observations and recommendations on this subject in its 2004 Reference on

the Rule of Law in Combating Terrorism. The following priorities for action are drawn from those observations and recommendations.

Priorities for action:

- Make the safeguards in the Children, Young Persons and Their Families Act 1989 available for all children and young people aged 18 and under who are charged with terrorism offences
- Review legislative measures introduced and designed to deal with terrorism for consistency with human rights standards
- Implement the Law Commission's recommendation to repeal the International Terrorism (Emergency Powers) Act 1987
- Review the security risk certificate provisions in the Immigration Act 1987, including the human rights implications of the legislation.

6. Economic, Social and Cultural Rights Ngā tika ōhanga, nohonga tangata, tikanga tangata

In accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights

The individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant

Preamble, International Covenant on Economic, Social and Cultural Rights

6.1 Introduction / Timatatanga

States have a duty to realise the economic, social and cultural rights embodied in the international agreements they have ratified. These rights are to be progressively achieved, not simply aspired to.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu and many other recent studies provide compelling evidence of the persistent inequalities in people's experience of economic, social and cultural rights. They also highlight the extent to which realisation of one right is dependent on the realisation of others. For example, attainment of the highest standard of health is related to educational achievement, healthy housing, and income sufficient for an adequate standard of living, which in turn requires access to decent work.

Although economic, social and cultural rights are addressed in many government strategies, policies and programmes, they do not generally have the same level of legislative protection as civil and political rights.

This section focuses on poverty reduction, housing, health, employment and adult literacy. Education is specifically addressed more in the sections on children, disabled people and race relations, and migrant workers' rights are addressed in the section on race relations.

6.2 Poverty reduction / Te whakaiti i ngā tikanga rawakore

Outcome: Poverty is reduced in New Zealand.

A pervasive theme in *Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu* is the extent to which poverty undermines the realisation of the most basic human rights, in particular health and education. The Government's Budget 2004 focused on the reduction of child poverty and ensuring that people are better off from working through the *Working for Families* package. Housing, education and work are all crucial to poverty reduction, and priorities for action in each of these areas are included in this Action Plan.

A key step towards greater accountability for poverty reduction would be the development of an official poverty measure, as recommended by the Public Health Advisory Committee. More generally, international recognition of the importance and benefits of integrating human rights into all poverty reduction strategies has resulted in the development of United Nations guidelines. A human rights approach would complement and enhance the current approach to poverty in government policy and programme development.

Priorities for action:

- Develop an official poverty measure, set targets for the reduction of poverty, and monitor progress towards meeting those targets
- Develop an integrated cross-sectoral programme for the reduction of poverty in New Zealand, applying the UN guidelines for a human rights approach to poverty reduction.

6.3 Housing / Tikanga whare

Outcome: Housing is accessible and affordable for all.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu identified affordability and accessibility as barriers to the full realisation of the right to housing. The proposed New Zealand Housing Strategy could make positive contributions towards this outcome.

In particular, the status report identified disadvantaged groups with particular housing needs that are not being met. The proposed New Zealand Housing Strategy has identified and recognised the need to address the diverse housing needs of different population groups.

The status report also found that homelessness exists in New Zealand, and that strategies to address homelessness are required. Some territorial authorities, including the Wellington City Council, have already begun work on such strategies. It is important that these strategies are developed to be consistent with the relevant human rights standards.

Priorities for action:

- Implement initiatives to make housing more affordable and accessible for low-income households, with priority to very low income households with children
- Contribute to further innovative initiatives to increase the supply of social housing and diversify social housing options
- Increase access to home ownership
- Implement measures to address the diverse housing needs of disabled people, Maori, Pacific peoples, older people and refugees
- Develop national and local strategies to reduce homelessness.

Outcome: Urgent habitability problems are addressed by ensuring a strong regulatory framework to provide for quality standard dwellings.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu identified weaknesses in the regulatory framework that have a negative impact on housing rights, particularly those of homeowners. The status report also identified specific habitability issues that require urgent action, because they impact adversely on the right to housing as well as on the right to health. The proposed New Zealand Housing Strategy has identified both strengthening the regulatory framework and improving housing quality as areas for action.

Priorities for action:

- Implement programmes to systematically address and eradicate dampness, cold and crowding in New Zealand homes
- Implement the Building Act 2004 and review the New Zealand Building Code
- Develop a database for recording the incidence of substandard housing.

6.4 Health / Tikanga Hauora

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu concluded that achieving the highest attainable standard of health for all people in New Zealand depends first and foremost on environmental factors (clean air, clean water and waste disposal) and on socio-economic determinants, as well as access to appropriate health services, especially primary care. A human rights-based approach to health emphasises equality and non-discrimination in accessibility of health services, especially for the most vulnerable and marginalised sections of the population. Some groups for whom there are serious barriers to health services, and for whom health outcomes are significantly poorer than for the rest of the population, were also identified.

Outcome: Adverse environmental impacts on health are addressed.

In a report to the Minister of Health in 2002, the Public Health Advisory Committee identified obstacles to addressing environmental impacts on health effectively. The Government has since launched a programme of Action for Sustainable Development, addressing water quality and allocation, energy, sustainable cities and child and youth development as priorities. This initiative needs to be strengthened and extended to address other environmental issues. The recent first report of the National Occupational Health and Safety Advisory Committee showed that occupational diseases are killing and harming more New Zealanders each year than occupational injuries are.

Priorities for action:

- Strengthen and extend a whole of government approach (including territorial authorities) to protection and improvement of environmental health determinants, including air quality, water quality and allocation, the built environment and workplaces
- Include a focus on non-injury health issues in occupational safety and health programmes.

Outcome: The socio-economic determinants of health are addressed.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu drew attention to international evidence that housing, education and employment are major contributors to people's health status. In order to improve health outcomes for all, a major improvement in the equity of outcomes in those areas is required.

(Priorities for action related to employment, housing and education are set out in other sections of this plan.)

The New Zealand Health Strategy points out that "The health sector can encourage and support action in other sectors, including identifying and advising on the health impact of policies and trends occurring there" (NZHS 2000:5). Since the greatest disparities in health disproportionately affect Maori and Pacific peoples, it is also important to address those factors where the evidence indicates that improvements are likely to have the most impact on health outcomes for these populations.

Priorities for action:

- Focus on building the capacity of whanau/families to provide for the health of their members
- Initiate discussion of the intersection between health impact assessments (HIA) and human rights, and the potential of HIA to contribute to improvement of health outcomes
- Develop the capacity for health impact assessments to ensure that the effects on health of central and local government policy are considered during the process of policy formation.

Outcome: The Primary Health Care Strategy is strengthened in order to ensure that quality primary health services are available, accessible and appropriate for all on a non-discriminatory basis, especially for vulnerable or marginalised groups.

While "the highest attainable standard of health" takes into account the individual's biological preconditions, social and economic circumstances and the State's resource constraints, it also clearly implies that governments must take steps to progressively improve availability, accessibility and quality of primary care, including equal access to timely, quality health care. The priorities recommended address the need to continuously improve primary care services, especially for the most disadvantaged and marginalised population groups.

Priorities for action:

- Address persistent obstacles to child and maternal primary care, especially immunisation, essential medicines and well-child care, for families on low incomes
- Strengthen community involvement and accountability in Primary Health Organisation governance and management.

Outcome: Develop a human rights approach to address barriers in access to health care for all New Zealanders.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu identified that many New Zealanders have concerns about access to healthcare in times of need. The Committee on Economic, Social and Cultural Rights' General Comment on the right to health (E/C. 12/2000/4) defines access as including not only physical accessibility and affordability, but also non-discrimination, and the right to appropriate information about health. There is evidence that some New Zealanders, particularly Maori, Pacific, refugees and disabled people, transgender and intersex people, encounter various barriers to timely, appropriate health services, both for prevention and for treatment.

Priorities for action:

- Initiate a structured public discussion about a human rights approach to health
- Review available evidence on accessibility to health care, especially for the most disadvantaged and marginalised population groups
- Consider whether the Code of Health and Disability Services Consumers' Rights should incorporate specific reference to access to services
- Incorporate mātauranga hauora (concepts of Maori health) in delivery of mainstream health services
- Include human rights and mātauranga hauora concepts in the education of health practitioners
- Invest in significant improvement to interpreter services available at primary, secondary and tertiary health services
- Improve access to appropriate health services for transgender people
- Inquire into medical practice in New Zealand regarding the assignment of gender to intersex infants and their ongoing health care.

6.5 Education / Tikanga Mātauranga

*Outcome: All adult New Zealanders are literate.*³

Lack of literacy prevents an individual's full participation in society. Literate adults are more able to support their children's education, undertake tertiary study and enhance their employment prospects. The 1996 International Adult Literacy Survey (IALS) found that one in five New Zealanders had poor literacy skills. It confirmed that while age, ethnicity and gender were linked with literacy levels, literacy and income levels were also significantly correlated. Access to basic education for those adults who may not have successfully completed school is a core element of the right to education.

Literacy services are offered in New Zealand by government, non-government agencies and civil society. In response to the IALS, the Government

³ In this context, literacy includes listening, speaking, reading, writing, numeracy, information technology skills and critical thinking. It is fundamentally connected with knowledge of social and cultural practices.

established an Adult Literacy Strategy which, through the Tertiary Education Commission, aims to support literacy provision through workplaces, community-based education providers and tertiary institutions. Although organisations such as Literacy Aotearoa, Workbase Literacy and Koia Koia: Adult and Community Education provide extensive programmes, free literacy education is still not available to all adults.

Priority for action:

- Accessible, appropriate and quality literacy services are available to all adults in New Zealand.

6.6 Employment / Tikanga Mahi

Outcome: All men and women have the opportunity to obtain decent and productive work in workplaces where the human rights of all are recognised and respected.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu reported ongoing structural disadvantages in the New Zealand labour market. In particular, it noted higher unemployment rates for Māori and Pacific peoples, difficulties faced by migrants in accessing appropriate employment, prejudice affecting the employment and retention of older workers, difficulties faced by men and women returning to the workforce after family responsibilities, stigma and discrimination against disabled people, and difficulties faced by young people entering the labour market.

The status report also found that the status of unpaid workers is not well recognised, that the rights of low paid workers and young people are not well protected, and that women earn 87.1% of men's average hourly earnings across the labour market, falling to only 64% in the health sector.

New Zealand has not ratified two of the eight core international labour conventions and does not fully comply with a number of those it has ratified.

Priorities for action:

- Address barriers to employment and challenge stereotypes in relation to disabled workers, older workers, migrants, refugees, Maori and Pacific workers, and men and women returning to the workforce after family responsibilities
- Increase diversity in participation in the Modern Apprenticeship Scheme
- Address bullying, harassment and discrimination in the workplace
- Connect sectors and coordinate EEO activities among practitioners, academics, employers and trade unions
- Improve the protection of rights for low paid and unpaid workers
- Adequately resource pay and employment equity in health, education and the public service to achieve compliance with ILO Convention 100 (Equal Remuneration Convention)
- Encourage the implementation of pay and employment equity in the private sector to achieve compliance with ILO Convention 100 (Equal Remuneration Convention)

- Ratify ILO Convention 183 on Maternity Protection
- Ratify ILO Convention 138 on the Minimum Age for Admission to Employment
- Ratify ILO Convention 87 on Freedom of Association and Protection of the Right to Organise
- Ratify ILO Convention 159 on Vocational Rehabilitation and Employment (Disabled Persons).

Outcome: The capacity and capability of the home care and personal support workforce is increased.

The terms “home care” and “personal support” are used to describe a wide range of work which enables various groups of people, such as disabled and older people, to live as independently as possible. *Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu* identified a number of human rights issues both for people who rely on home care and personal support workers, and for those workers themselves. The priorities for action below focus on better outcomes for this workforce, which should in turn contribute to better human rights outcomes for those who rely on them, by providing greater autonomy and more choice about forms of support and place of residence. The Ministry of Health-led *Quality and Safety Project*, completed in December 2004, identified these as priorities for home care and personal support workers.

Priorities for action:

- Improve training and career development opportunities for the home care and personal support workforce
- Improve the status and remuneration of home care and personal support workers.

7. Getting the Framework Right Kia tika te hanga

It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

Preamble, Universal Declaration of Human Rights

7.1 Introduction / Timatatanga

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu showed that New Zealand has most of the elements essential for the effective promotion, protection and fulfilment of human rights. They are:

- ❖ democracy: democratic institutions and processes that enable participation
- ❖ the rule of law: including the incorporation of international human rights standards in the national constitution and laws
- ❖ an independent and corruption-free judiciary that applies international human rights standards and jurisprudence
- ❖ good governance: effective structures of government at central, regional and local levels that recognise, respect and apply human rights standards
- ❖ specialised human rights institutions and formal procedures for accountability
- ❖ human rights information and education
- ❖ an active civil society: citizens who engage, organise and participate
- ❖ a focus on the most vulnerable parts of the population.

However, some weaknesses in our human rights framework were identified, along with a limited number of specific areas for improvement. Some of these have been addressed in other sections of the Action Plan. For example, the section on civil and political rights addresses democracy and the justice system.

This section focuses on the remaining features of a robust human rights framework as they apply in the context of New Zealand, including the place of the Treaty of Waitangi; legal recognition and entrenchment of the full range of human rights; good governance through considering human rights in the legislative and policy development process; human rights education; and development of systems and frameworks to monitor the realisation of human rights in New Zealand.

7.2 The place of the Treaty of Waitangi / Te turanga o te Tiriti o Waitangi

Outcome: The significance and place of the Treaty of Waitangi in New Zealand is fully recognised.

The place of the Treaty of Waitangi in New Zealand today has profound significance for human rights and for harmonious race relations. *Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu* reported insufficient public information, education and, most of all, dialogue and

exchange on the contemporary place of the Treaty of Waitangi. The recently announced Government promotion of a public conversation on the place of the Treaty of Waitangi and the creation of a Parliamentary Select Committee to address some constitutional issues will be positive developments if appropriate processes and substantive approaches are adopted.

Priorities for action:

- Promote and support increased public discussion of the place of the Treaty of Waitangi today and in the future
- Ensure that all New Zealanders have the opportunity to participate in public discussion on the place of the Treaty of Waitangi and in any public consideration of issues relevant to the constitutional framework for human rights in New Zealand
- Ensure that the status of the Treaty of Waitangi is part of any consideration of New Zealand's constitutional arrangements.

7.3 The rule of law – the legal framework for human rights in New Zealand / Te ritenga o te ture – te anga o te ture tika tangata ki Aotearoa

Outcome: New Zealand's legal framework fully protects human rights.

New Zealand's approach to human rights generally has been pragmatic and practical rather than legalistic. Human rights, particularly economic, social and cultural rights, are currently provided for largely through policy and practice rather than through legislation upheld by the courts. *Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu* reflected on both the strengths and the weaknesses of this pragmatic approach, and noted the possible fragility of New Zealand's human rights protections in the absence of more comprehensive constitutional and legal provisions. The New Zealand Bill of Rights Act 1990, for example, can be repealed by a simple Act of Parliament. The report asked whether this approach is still sufficient to provide every New Zealander with a sense of dignity, equality and security and with recognition of their responsibilities to each other. Answering that question will require discussion and input from many New Zealanders.

The status report also identified specific aspects of New Zealand's human rights legislation which need to be reviewed. There are some possible gaps in the existing grounds of discrimination prohibited in the Human Rights Act 1993; for example, children under 16 years of age are not protected from age discrimination. There has also been a call for some new grounds of discrimination to be added, such as body size, gender identity, language and trade union membership. There are a number of exceptions in the Human Rights Act 1993 allowing discrimination in certain situations. An example is where employers may not be obliged to make changes necessary to enable a disabled person to do a job if those changes involve unreasonable demands on the employer. This exception has been challenged by disabled people.

Priorities for action:

- Promote discussion on the legislative status of economic, social and cultural rights as well as civil and political rights

- Promote discussion on the merits of entrenching fundamental human rights in New Zealand's constitutional framework
- Review the grounds on which discrimination is prohibited in the Human Rights Act 1993 and the exceptions in Part 2 of the Human Rights Act 1993.

7.4 Good governance – applying human rights in the development of policy and legislation / Kāwanatanga pai – te hāngai ki ngā tika tangata i roto i ngā whakaritenga ture, kaupapa whakahaere

Outcome: There is a comprehensive process to ensure that legislation and policy are developed in accordance with all human rights standards, and that human rights are respected and protected in practice.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu concluded that the relationship between New Zealand's international human rights obligations and the development of policy is not well understood. It noted that there is room for improvement in the ways in which government agencies incorporate human rights standards into daily practice.

Priorities for action:

- Adopt a key government goal that affirms the centrality of human rights to good governance
- Develop tools and processes for parliamentary and executive branches of government to achieve a stronger human rights framework for legislation and policy and practice, including strategic planning, policy development, and legislative scrutiny, for example:
 - Conducting practical case studies with central and local government applying a human rights approach to new and existing policies and legislation
 - Creating human rights analysis tools for the public sector to employ when developing policy, legislation, and/or practices
 - Including human rights statements in local government Long Term Council Community Plans and District Plans
 - Assessing how Select Committees can best take into account New Zealand's human rights obligations when considering legislation
 - Strengthening requirements for noting human rights compliance of papers for Cabinet Committees and of Bills by requiring reference to the full range of New Zealand's human rights obligations
 - Providing for periodic monitoring and evaluation of human rights scrutiny processes.

7.5 Human rights education / Mātauranga tika tangata

Outcome: There is a nationally coordinated and effective strategic approach to human rights education in New Zealand.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu noted that human rights education is a means to achieving the protection of human rights, as well as a right in itself. Human rights education is also an essential

tool for meeting the State's international obligation to recognise, protect, promote and fulfil human rights in this country. Current human rights education in New Zealand tends to be on an ad hoc basis in response to problems, rather than being based on a nationally coordinated and strategic approach. The report also found that there is limited evaluation of the impact of human rights education, especially the measurement of its long-term outcomes.

Priorities for action:

- Develop a nation-wide strategic approach to human rights education in collaboration with government and non-government agencies and organisations
- Develop a framework to assess human rights education best practice and outcomes.

7.6 Accountability – monitoring human rights / Whakatau tika – te rārangi, tātari i ngā tika tangata

Reliable and robust information on the extent and nature of human rights problems is required to address them. Research, including data collection, is necessary to show what and where the problems are, to inform the development of effective solutions, and to measure progress. Regular reporting and independent monitoring is also essential, whether by international treaty bodies, national human rights institutions or non-governmental organisations. Effective data collection and use provide the basis for effective reporting.

Outcome: Consistent, comprehensive data are collected and used for human rights reporting, problem identification, policy development and monitoring.

New Zealand's periodic reports to the United Nations human rights treaty bodies are a useful mechanism for monitoring human rights. To be effective these require quality information and public awareness of the reporting process and its outcomes. The Committee on Economic, Social and Cultural Rights has requested that States establish indicators and benchmarks against which their performance on economic, social and cultural rights can be measured.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu was the first comprehensive attempt to measure the status of human rights in New Zealand. In the process, the report identified significant gaps and limitations in existing data collection by government agencies and other statutory bodies. Even where data is collected, it is not always used or made publicly available.

Priorities for action:

- Ensure that all government agencies gather, report and use human rights data, including data that can be disaggregated in accordance with the reporting requirements under international human rights obligations, by age, gender, disability, sexual orientation and ethnicity, in particular:

- Develop an integrated dataset to record the numbers, characteristics and experiences of people in residential care facilities
- Include sexual orientation in the 2011 Census, the National Survey of Crime Victims and crime reporting processes
- Develop a database for recording the incidence of substandard housing
- Develop an effective nationwide data collection system to monitor early childhood education and school enrolment, attendance, participation, achievement, suspensions, exclusions, expulsions and transience
- Develop mechanisms for better collection and coordination of data on complaints of discrimination
- Make the recommendations of United Nations human rights treaty bodies widely known.

Outcome: Comprehensive disaggregated data are collected about conditions of detention of disabled people and children and young people.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu highlighted particular concerns about gaps in data about disabled people and children and young people who are detained.

Priorities for action:

- Establish consistent collection and publication of data on disabled people in prison
- Establish consistent collection and publication of data on people detained under the Mental Health (Compulsory Assessment and Treatment) Act 1992 and the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003
- Develop an integrated dataset to record the numbers, characteristics and experiences of children and young people in institutional care.

7.7 New Zealand acting internationally / Te tu taiao o Aotearoa

Outcome: New Zealand promotes human rights globally by ensuring that its own foreign policy, trade and overseas development policies reflect the human rights values of New Zealanders and promote international acceptance of universal human rights.

New Zealand's obligations to reflect human rights standards in government policy and practice apply to its international actions, including foreign policy, trade and development assistance.

In considering New Zealand's human rights obligations in its international activities, a range of agencies and organisations are affected. The New Zealand government is represented in the international sphere primarily by the Ministry of Foreign Affairs and Trade and NZAID, although the responsibilities of other agencies extend beyond our borders. Other relevant groups and organisations include business and trade union organisations and NGOs.

Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu did not focus specifically on international actions. Similarly, this Action Plan is primarily concerned with improving the promotion and protection of human rights in New Zealand.

However, the division between domestic and international issues and actions is not absolute. What happens elsewhere in the world has an impact on New Zealand domestically, and New Zealand's actions internationally may have direct and indirect effects not only on human rights in other countries, but also, both intentionally and unintentionally, on human rights in this country.

Because of this interdependence, the Human Rights Commission has identified that further work should be undertaken to assess the extent to which New Zealand's international policy and practice are currently consistent with its human rights obligations.

Certain distinctions would need to be drawn in doing this. Where the New Zealand government is acting internationally, those actions may be explicitly directed to promotion of human rights internationally (human rights diplomacy), or they may be explicitly directed to other objectives, such as trade, foreign policy or development, all of which may have both direct and indirect impacts on human rights.

New Zealand's foreign policies and practices should not only comply with our human rights obligations, but should adequately reflect the human rights values accepted by New Zealand society.

Human rights diplomacy

Human rights diplomacy work is currently coordinated by the Human Rights Division of the Ministry of Foreign Affairs and Trade. The priorities for this work are identified in response to both domestic and international concerns and the work has potential benefits domestically as well as internationally (e.g. elaboration of human rights instruments to protect vulnerable groups). This reciprocity is illustrated in the extent to which current priorities in New Zealand's human rights diplomacy work align with the domestic priorities identified in *Human Rights in New Zealand Today / Ngā Tika Tangata O Te Motu*. These include children, disabled people, women, indigenous people, violence against women and children, and particular civil rights issues, including torture and counter terrorism. Other priorities in New Zealand's human rights diplomacy are to some degree directed by international concerns, i.e. the death penalty, extra-judicial executions and enforced disappearances.

Priority for action:

- Take a leadership role internationally in the completion of the Draft Declaration on the Rights of Indigenous People and the Convention on the Rights of Disabled People, and in providing protection from discrimination on the grounds of sexual orientation.

Mainstreaming human rights

Where human rights is not the explicit objective of international activity, there may still be an impact on human rights. The need to mainstream a human rights analysis throughout all international policy and practice mirrors the recommendations in this plan for mainstreaming human rights in domestic legislation, policy and practice. It is important that all foreign policy and practice reflects the human rights values accepted by New Zealand society. Significant progress has already been made in some areas, notably development assistance. However, there is further progress to be made. The next challenge may be to ensure an integrated and coherent approach to mainstreaming human rights in international activity, not only across all agencies of government, but also through the involvement of the private sector and NGOs in this work.

Suggested priority:

- Carry out further work to "map" and then promote discussion about New Zealand's human rights obligations in the areas of foreign policy, trade and development.

Human rights in our region

New Zealand has special interests and obligations in the Asia-Pacific region and in the Pacific Islands in particular. Promotion and better protection of human rights in the Pacific region will not only promote justice and democracy for the people living there, but will also serve New Zealand's domestic and international interests. One regional issue of particular human rights concern is the impact of environmental change on the populations of small Pacific Islands.

Priorities for action:

- Support the protection and promotion of human rights in New Zealand's neighbouring Pacific region both nationally and regionally, including advice and assistance in relation to human rights and other institutions, support and cooperation with civil society
- Support further research into the human rights elements of the specific concerns posed by impending environmental changes in the Pacific region.