



Peace Movement Aotearoa

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NGO information for the 57th session of the Committee on Economic, Social and Cultural Rights, February 2016

List of Issues Prior to Reporting: New Zealand

Overview

1. This preliminary report provides an outline of some issues of concern with regard to the state party's compliance with the provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR, the Covenant). Its purpose is to assist the Committee on Economic, Social and Cultural Rights (the Committee) with its preparation of the List of Issues Prior to Reporting (LOIPR) in advance of New Zealand's Fourth Periodic Report (the Periodic Report).

2. There are five main sections below:

A. Information on Peace Movement Aotearoa

B. Constitutional and legal framework

C. Indigenous Peoples' Rights (Articles 1, 2 and 15)

- i) Overview,
- ii) Trans-Pacific Partnership Agreement, and
- iii) Impact of the activities of New Zealand companies on indigenous communities overseas.

D. Socio-economic conditions (Articles 2, 3, 7, 9 11, and others)

- i) Increasing levels of child poverty,
- ii) Right to an adequate standard of living: social welfare / paid employment,
- iii) Housing crisis,
- iv) Allocation of public spending

E. The Optional Protocol to the Covenant

3. More detailed information will be provided on these and other issues in parallel reports from Peace Movement Aotearoa and other NGOs following the state party's submission of the Periodic Report next year. Due to time constraints, we have not covered as many issues in this report as we would have liked to, and we therefore refer the Committee to the Human Rights Foundation's report which covers a range of concerns that we share.

4. We appreciate this opportunity to provide information to the Committee, thank you.

A. Information on Peace Movement Aotearoa

5. Peace Movement Aotearoa is the national networking peace organisation, registered as an incorporated society in 1982. Our purpose is networking and providing information and resources on peace, social justice and human rights issues. Our membership and networks mainly comprise Pakeha (non-indigenous) organisations and individuals; and our national mailing lists currently include representatives of one hundred and sixty national or local peace, human rights, social justice, faith-based and community organisations.

6. Promoting the realisation of human rights is an essential aspect of our work because of the crucial role this has in creating and maintaining peaceful societies. In the context of Aotearoa New Zealand, one of our main focuses in this regard is on support for indigenous peoples' rights - in part as a matter of basic justice, as the rights of indigenous peoples are particularly vulnerable where they are outnumbered by a majority and often ill-informed non-indigenous population as in Aotearoa New Zealand, and because this is a crucial area where the performance of successive governments has been, and continues to be, particularly flawed. Thus the Treaty of Waitangi, domestic human rights legislation, and the international human rights treaties to which New Zealand is a state party, and the linkages among these, are important to our work; and any breach or violation of them is of particular concern to us. We wish to emphasise that the comments which follow are from our perspective and observations as a Pakeha organisation; we do not, nor would we, purport to be speaking for Maori in any sense.

7. We have previously provided NGO information to the Committee in 2011 and 2012, and to other human rights treaty monitoring bodies, and to Special Procedures and mechanisms of the Human Rights Council, as listed below¹.

8. We are not in a position to send a representative to the 57th Session, but are happy to clarify any information in this report by email or via Skype if that would be helpful to Committee members.

B. Constitutional and legal framework

9. Since the Committee last considered the state party, there have been a number of developments that are cause for considerable concern in relation to the state party's compliance with the Covenant. Rather than fulfilling its obligation to progressively realise Covenant rights, the state party has instead implemented a number of legislative and policy measures that have regressively eroded economic and social rights for a substantial proportion of the population.

10. Underlying these developments is the overall lack of protection for economic, social and cultural (as well as civil and political) rights in relation to Acts of Parliament and actions of the Executive. The notion of parliamentary supremacy has led to unusual constitutional arrangements whereby parliament can enact legislation that breaches the provisions of the Treaty of Waitangi, of domestic human rights legislation, and of the international human rights instruments that New Zealand is a state party to.

11. The state party itself describes this regrettable situation thus:

*“As Parliament is supreme, the Bill of Rights Act, other human rights instruments and the Courts cannot directly limit Parliament’s legislative powers. There is no supreme written law in New Zealand. However, the Courts must interpret enacted legislation, so far as possible, consistently with affirmed rights.”*²

12. As the Committee is aware, while the New Zealand Bill of Rights Act 1990³ (NZBORA) includes some, but not all, of the rights elaborated in the International Covenant on Civil and Political Rights (ICCPR), it does not include economic or social rights (although the right of minorities to enjoy their own culture, Article 27 of the ICCPR, is at Section 20).

13. In any event, because parliament is able to enact legislation that violates even those human rights that are included in the Bill of Rights Act, there is essentially no possibility of effective remedy for any violation of any human rights by the state party as required under the Covenant.⁴

14. This point was illustrated most recently in the state party’s response last year to the first ever NZBORA Declaration of Inconsistency issued by a New Zealand Court⁵. In brief, the Declaration of Inconsistency was a result of legal proceedings taken in relation to the 2010 amendment of Section 80(1)(d) of the Electoral Act 1993, which prohibited all prisoners incarcerated as a result of a sentence imposed after 16 December 2010 from voting in a General Election - an unjustifiable limitation of the right to vote as guaranteed in Section 12(a) of the NZBORA. In response, the Minister of Justice said that parliament had considered possible inconsistencies with the NZBORA during the debate on the legislation and had chosen to enact it regardless; and that the Declaration of Inconsistency would have no impact on the legislation⁶.

15. Furthermore, on a recent occasion when the state party did decide to legislate as a result of Court criticism of discriminatory policy and practice, it enacted legislation - the New Zealand Public Health and Disability Amendment Act 2013⁷ - that not only set discrimination into law, but also removed the possibility of scrutiny or judicial review by the Courts, and the possibility of any complaints regarding discrimination being made to the Human Rights Commission. We have provided some detail on this unfortunate behaviour below because it illustrates a range of issues with regard to the justiciability of Covenant rights, including the lengthy and expensive process, the state party’s determination to prolong proceedings by appealing any decisions it does not like, and the inappropriateness of a government politician being responsible for NZBORA assessments and advice to parliament.

16. The New Zealand Public Health and Disability Amendment Act 2013⁸ was the state party’s response to the ‘Family Carers’ case (Atkinson & Others v Ministry of Health) regarding the discriminatory policy and practice of the Ministry of Health funded home and community support services. Parents and resident family members who provide these services to their adult disabled family members were not paid - solely on the basis that they are related to the person requiring support - whereas the same support provided by a non-family carer is paid. The complaint of discrimination was laid with the Human Rights Commission in 2001; and in January 2010, the Human Rights Review Tribunal (HRRT)

determined that the policy was unjustified discrimination on the ground of family status under the NZBORA⁹ - a determination subsequently upheld by the High Court in December 2010¹⁰ and by the Court of Appeal in May 2012¹¹.

17. The New Zealand Public Health and Disability Amendment Bill (no 2) 2013 was introduced to parliament, read and enacted as the New Zealand Public Health and Disability Amendment Act 2013 all within one day - 16 May 2013 - with no reason given for such extreme urgency. The legislation sets in law discrimination against family members providing care for relatives who require full or part time care, as is evident from its Overview:

*“reaffirms that **people will not generally be paid** to provide health services or disability support services to their family members: confirms that the Crown and DHBs [District Health Boards] may operate, and always have been authorised to operate, policies in respect of family carers that allow payment in certain limited circumstances, or **allow for payment at a lower rate than that for carers who are not family members**” [our emphasis]¹²*

18. Furthermore, the legislation takes away the possibility of any remedy for complaints and civil proceedings alleging unlawful discrimination in respect of policies on payment for providing health and disability support services to family members. It:

“stops claims of unlawful discrimination being made concerning any care policy, except for any claim that arises out of a complaint that was lodged with the Human Rights Commission before 16 May 2013. A claim that arises out of such a complaint may proceed, but the remedy that may be granted is restricted to a declaration that the policy is inconsistent with NZBORA”¹³

19. Section 70E ‘Claims of unlawful discrimination in respect of this Act or family care policy precluded’ states that any ‘specified allegation’ that the right to freedom from discrimination under the Human Rights Act and NZBoRA has been breached by the Act, or

“(b) by a family care policy; or (c) by anything done or omitted to be done in compliance, or intended compliance, with this Part or in compliance, or intended compliance, with a family care policy” cannot be the basis of a complaint to the Human Rights Commission, and “no proceedings based in whole or in part on a specified allegation may be commenced or continued in any court or tribunal.”¹⁴

20. The Attorney-General’s Report on the consistency of the New Zealand Public Health and Disability Amendment Bill (no 2) with the NZBORA¹⁵ (presented on the same day the legislation was introduced then enacted) provides an excellent illustration of the hazards of having a government politician, rather than an independent body, responsible for assessing the human rights implications of proposed legislation. While the Report does conclude that the limitation on the right to judicial review is an unjustified limitation because the legislation prevents any challenge on the lawfulness of a decision under the NZBORA, the Attorney-General then voted in favour of enacting the Bill.

21. Rather than focusing on the human rights implications of the Bill, and the human rights and care needs of those with disabilities, the Report talks of “*the right of the Crown to set funding policy for disabled carers*”¹⁶ and seeks to justify the legislation in terms of the financial cost. It includes the assertion that the cost of extending eligibility for payment in a non-discriminatory manner would be too expensive, but does not supply any information about what the cost might be or any analysis as to why that cost should not be incurred.

22. Even more concerning, the Attorney-General states “*I do not consider [the] courts sufficiently deferred to the Crown’s view*”¹⁷ and “*I do not agree the prohibition at issue in the Family Carers case was discriminatory*”¹⁸. Furthermore, the Attorney-General appears to be saying it is not the role of courts to scrutinise legislation that has cost implications:

*“Decisions about how scarce resources are to be allocated must reside with the Crown. By their nature, courts must decide each case on the individual facts in front of them. With respect, they lack the institutional competence to consider the range of competing claims on public funds which government must contend with every day, and which cannot be approved or dismissed in isolation. The enactment of the Bill of Rights Act was not intended to alter that.”*¹⁹

23. This is an extraordinary statement given that most, if not all, legislation and government policy and practice has cost implications. In any event, the HRRT and courts were ruling on the matter of unjustified discrimination in relation to the care of persons with disabilities, not economic policy.

24. **Suggested questions for the LOIPR:** As well as asking the state party to provide general information on the constitutional and legal framework, we suggest the Committee asks the state party to explain: the lack of constitutional protection for Covenant rights; the lack of effective remedies for violations of such rights arising from Acts of Parliament and actions of the Executive, as well as from policy and practices of government agencies; the lack of independent scrutiny of proposed legislation to ensure it is fully compliant with Covenant rights; and why it has enacted legislation, such as the New Zealand Public Health and Disability Amendment Act 2013, which breaches Covenant rights.

25. It would also be useful to ask the state party to explain what training in Covenant rights is provided to Members of Parliament, and to the staff of government agencies responsible for drafting legislation and policy.

C. Indigenous Peoples’ Rights (Articles 1, 2 and 15)

i) Overview

26. The current constitutional arrangements are especially problematic for Maori because their collective and individual rights remain unprotected from Acts of parliament and actions of the Executive. The rights of Maori are particularly vulnerable as hapu and iwi are minority populations within a non-indigenous majority, and as the Committee is aware, there has been a persistent pattern of state party actions, policies and practices which

discriminate against Maori (collectively and individually), both historically and in the present day.

27. Underlying this persistent pattern of discrimination has been the denial of the inherent and inalienable right of self-determination. Tino rangatiratanga (somewhat analogous to self-determination) was exercised by Maori hapu and iwi prior to the arrival of non-Maori, was proclaimed internationally in the 1835 Declaration of Independence, and its continuance was guaranteed in the 1840 Treaty of Waitangi (the Treaty). In more recent years, self-determination was confirmed as a right for all peoples, particularly in the shared Article 1 of the two International Covenants, as the Committee is of course aware, and in the United Nations Declaration on the Rights of Indigenous Peoples (the UN Declaration) where it is explicitly re-affirmed as a right for all indigenous peoples.

28. The effects of the denial of the right of self-determination by the state party is clearly evident in the issues currently facing hapu and iwi in relation to their economic, social and cultural rights - one such issue is the Trans-Pacific Partnership Agreement, which is outlined in the section below.

29. Allied to the right of self-determination is the right of indigenous peoples to own, develop, control and use their communal lands, territories and resources, as indicated by the shared Article 1 and articulated in the UN Declaration.

30. In addition, the UN Declaration includes the requirement that no decisions affecting the rights and interests of indigenous peoples are to be taken without their free, prior and informed consent - a minimum standard that the state party has yet to meet. Furthermore, Article 32 of the UN Declaration, for example, specifies that such consent should be obtained via indigenous peoples own representative institutions, and that indigenous peoples: *“have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources”*.

31. It should be noted that while the state party regularly refers to the Treaty as the founding document of the nation, there is no reference to the Treaty in the Constitution Act 1986 nor is it a formal part of domestic law.

32. The Treaty is not legally enforceable against the legislature, and requires legislative incorporation to be enforced generally. Even where the Treaty is incorporated into legislation, this does not guarantee protection for the rights of Maori - in part because of the state party's tendency to minimise or ignore such provisions for political purposes, and in part because the rights and interests of other New Zealanders are generally given priority over those of Maori.

33. Furthermore, the Waitangi Tribunal's recommendations are not binding on the Executive or the legislature, and are frequently ignored by the government of the day. The courts have generally refused to review the fairness of settlements of historic breaches of the Treaty between iwi and hapu and the Crown on the basis that they are political matters; and the processes and substance of settlements, policy and practice cannot be legally challenged.

34. In its most recent Concluding Observations, the Committee called on the state party to:

*"ensure that the inalienable rights of Maori to their lands, territories, waters and marine areas and other resources as well as the respect of the free, prior and informed consent of Maori on any decisions affecting their use are firmly incorporated in the State party's legislation and duly implemented"*²⁰;

*"take the necessary measures to guarantee Maori right to redress for violations of these rights, including through the implementation of the recommendations of Waitangi Tribunal's proceedings, and to ensure that Maori receive proper compensation and enjoy tangible benefits from the exploitation of their resources"*²¹;
and

*"bear in mind its obligation to protect the cultural rights of Maori. These include, among others, Maori's right to conserve, promote and develop their own culture, language and cultural heritage, traditional knowledge and traditional cultural expressions, and the manifestations of their sciences and cultures."*²²

35. There has been no progress with regard to the Committee's recommendations - all of the issues raised by Peace Movement Aotearoa and others in NGO reports to the Committee in 2011 and 2012 remain the same: the state party has continued its deep sea oil exploration and drilling, and land-based oil exploration, drilling and fracking programmes, regardless of the opposition of hapu and iwi who do not wish such activities to take place in their territories; the Marine and Coastal Area (Takutai Moana) Act has not been repealed nor amended to remove its discriminatory practices; there has been no resolution of the rights of Maori with regard to freshwater; and the privatisation of state assets has continued. While a number of settlements of historic breaches of the Treaty have been negotiated, the flaws in the state party's settlement process remain unchanged.

36. There has been no coherent attempt to implement some of the key recommendations of the Waitangi Tribunal, for example, in the 2011 WAI 262 Report 'Ko Aotearoa Tenei: Report into Claims Concerning New Zealand Law and Policy Affecting Maori Culture and Identity'²³ which relates to the protection of indigenous knowledge and intellectual property, indigenous flora and fauna, genetic and biological resources, resource management, conservation, Maori language, traditional Maori healing, and the state party's responsibilities to actively protect Maori rights and interests, and to inform and consult with Maori when it is developing New Zealand's position on and negotiating international instruments (both binding and non-binding).

37. During 2012 and 2013, the state party ran a nation-wide 'constitutional conversation' led by the Constitutional Advisory Panel (the Panel)²⁴. This process was used by the state party to defer questions about the lack of constitutional protection for the Treaty and related matters when it was considered by the Committee on the Elimination of Racial Discrimination (CERD) in February 2013, and is noted in CERD's Concluding Observations.²⁵

38. The Panel's Report was released in December 2013, and made a number of recommendations with regard to the Treaty, including the recommendation that the state party:

*“sets up a process to develop a range of options for the future role of Treaty, including options within existing constitutional arrangements and arrangements in which the Treaty is the foundation”.*²⁶

39. Incidentally, the Panel also made several recommendations about the NZBORA, including the entrenchment of economic, social and cultural rights.²⁷

40. There has been no action on the Panel’s recommendations since the Report was released, and recent correspondence with the responsible Ministers indicate that the state party is not intending to act on the recommendations in the foreseeable future.

41. Furthermore, the 2014 Report of the Waitangi Tribunal’s enquiry into the 1835 Declaration of Independence and the Treaty (WAI 1040)²⁸ confirmed what hapu and iwi have always said - they did not cede sovereignty to the British Crown when signing the Treaty in 1840. Although the findings of the Waitangi Tribunal raise fundamental questions about the assumption of sovereignty on which government in New Zealand has been based, the state party has not provided a response to the Report other than a brief public statement by the Attorney-General: *“There is no question that the Crown has sovereignty in New Zealand. This report doesn't change that fact.”*²⁹

42. **Suggested questions for the LOIPR:** In addition to asking the state party for information about what it has done about the Committee’s recommendations in relation to paragraphs 11 and 26 in particular (inalienable rights of Maori to their lands, territories, waters and marine areas and other resources, respect of the free, prior and informed consent of Maori, guaranteed Maori right to redress for violations of these rights, proper compensation and tangible benefits from the exploitation of their resources, and the obligation to protect the cultural rights of Maori), we suggest the Committee ask what the state party has done: to implement the recommendations in the Waitangi Tribunal’s WAI 262 Report; to implement the recommendations of the Constitutional Advisory Panel; and how and when it will respond to the Waitangi Tribunal’s WAI 1040 Report.

ii) Trans-Pacific Partnership Agreement

43. The Trans-Pacific Partnership Agreement (TPPA, TPP), which will be signed by the state party and representatives of other states here on 4 February 2016 (just 9 days after the state party released the final text of the agreement), is an issue of particular concern to Maori, as well as to many other New Zealanders. Indeed, the level of public opposition to the TPPA is such that the state party has taken highly repressive steps to ensure the signing goes ahead as planned, including mass riot training for police officers³⁰ and police visits to the homes of “known activists” around the country³¹ in the past two weeks.

44. The Committee will be aware of the general concerns about the TPPA’s likely impact on Covenant rights (including the rights to health, to education, to just and favourable conditions of work, and to protection of culture and intellectual property, among others) and the reduced ability of state parties to meet their obligations under the Covenant, and to protect the environment and biodiversity, if the TPPA enters into force. Furthermore, there are particular problems posed by the Investor-State Dispute Settlement (ISDS) provisions

which may be used by foreign investors, corporations or other states to challenge any advances in the implementation of Covenant rights, or increased protection of the environment and biodiversity. These factors are likely to make the current and future New Zealand governments even less inclined to implement Covenant rights and those protections than they are now.

45. It should be noted that there are only three specific references to human rights in the state party's TPPA National Interest Analysis:

"TPP would have no effect on human rights in New Zealand."

"TPP would have no effect on human rights in New Zealand." and

*"TPP includes no inconsistencies with the Human Rights Act 1993 and New Zealand Bill of Rights Act 1990. Its implementation would have no effect on human rights in New Zealand."*³²

46. As well as the issues outlined above, the TPPA poses particular challenges for Maori in relation to the Treaty, and that are directly related to Articles 1 and 15 of the Covenant with regard to the right of self determination, the right to control their own resources, the right of free, prior and informed consent, and cultural rights (including protection of intellectual property), which are also articulated in a range of Articles in the UN Declaration.

47. As the Waitangi Tribunal stated in 2011:

*"with each instrument that it signs up to, the Crown has less freedom in how it can provide for and protect Maori, their tino rangatiratanga, and their interests in such diverse areas as culture, economic development, and the environment."*³³

48. In June and July 2015, five major claims from iwi and Maori organisations were lodged with the Waitangi Tribunal (WAI 2522, WAI 2523, WAI 2530, WAI 2531 and WAI 2532, with a further ten groupings of interested parties joining the proceedings) seeking urgent hearings on the TPPA, and a recommendation that the Crown immediately halt progress towards signing the TPPA until it has meaningfully engaged with Maori about its provisions.

49. We provide here the summary list in respect of WAI 2522 as an example of the types of Treaty breaches covered in the claims before the Waitangi Tribunal:

8.a) The Crown has undermined its Treaty partner by failing to provide information and failing to actively consult with Maori in good faith over the TPPA;

b) The Crown has failed to actively engage with Maori in decisions that impact on their rights under te Tiriti [the Treaty] and at international law notably the United Nations Declaration on the Rights of Indigenous Peoples;

c) The Crown will empower foreign states and foreign investors to exert influence over and challenge decisions of the New Zealand government for implementing policies aimed at meeting te Tiriti obligations and addressing inequities and improving social outcomes for Maori;

- d) *Maori will lose intellectual property rights;*
- e) *Settlement of grievances will be prejudiced (past and future);*
- f) *The TPPA, by allowing investor-state dispute settlement (ISDS), will have a chilling effect on Crown policies such as the Smokefree 2025 goal and access to affordable medicine;*
- g) *Maori kaitiakitanga will be prejudiced by the TPPA, including the protection of coastal areas from oil exploration;*
- h) *The TPPA will have a prejudicial impact on Maori rights regarding forestry including the Tribunal's ability to make binding recommendations. This will prejudice existing and prospective settlements; and*
- i) *The TPPA will require the Crown to sign up to the International Union for the Protection of New Varieties of Plants (UPOV) and take other action contrary to the findings of the Wai 262 Tribunal. The Crown has also ignored the Wai 262 Tribunal recommendations on engagement when seeking to sign international agreements.*³⁴

50. The Waitangi Tribunal decision on the request for urgent hearings was released on 3 August 2015; the Tribunal pointed out that "*an assessment of prejudice is inherently difficult given the secrecy of the TPP negotiations*" and while declining to agree to an urgent hearing at that time, stated:

"we are satisfied that there is a good case for the Tribunal to grant urgency or priority to the hearing of these claims once the text of the TPPA is available. The issues for urgent inquiry being:

- (a) whether or not the Treaty of Waitangi exception clause is indeed the effective protection of Maori interests it is said to be; and*
- (b) what Maori engagement and input is now required over steps needed to ratify the TPPA (including by way of legislation and/or changes to Government policies that may affect Maori).*"³⁵

51. The state party released the final text of the TPPA on 26 January 2016, and the Waitangi Tribunal hearing is likely to take place within the next few months.

52. For information about the Treaty exception clause in the TPPA text, we refer the Committee to the analysis in 'Expert Paper #3: Maori Rights, Te Tiriti o Waitangi and the Trans-Pacific Partnership Agreement'³⁶.

53. Maori concern about the TPPA has been illustrated again this week by seven iwi in the Auckland region taking the highly unusual step of publicly refusing to take part in the official powhiri (welcome) for the TPPA signing³⁷.

54. **Suggested questions for the LOIPR:** In addition to asking the state party to provide an assessment of the TPPA in relation to its obligations to ensure the progressive realisation of Covenant rights and its ability to provide an effective remedy for any breaches of those rights, we suggest the Committee asks for information on how the state party fulfilled its specific Article 1 and Article 15 obligations with regard to Maori during the TPPA

negotiations, and how it intends to fulfil those obligations in the post-signing phase, and when or if the TPPA enters into force.

iii) Impact of the activities of New Zealand companies on indigenous communities overseas

55. We have not had sufficient time to update the information we provided to the Committee in 2011 and 2012 on the negative impact of the activities New Zealand companies on indigenous communities overseas for this report, but so far as we are aware the state party does not monitor those activities or their impact.

56. **Suggested questions for the LOIPR:** We suggest the Committee asks for information about how the state party monitors the impact of the activities of New Zealand companies on the enjoyment of Covenant rights by indigenous communities in other parts of the world.

D. Socio-economic conditions (Articles 2, 3, 7, 9 11)

57. As mentioned in Section B above, since the Committee last considered the state party, there have been a number of developments that are cause for considerable concern in relation to the state party's compliance with the Covenant. Rather than fulfilling its obligation to progressively realise Covenant rights, the state party has instead implemented a number of legislative and policy measures that have regressively eroded economic and social rights for a substantial proportion of the population. A brief outline of some of those developments is provided below.

i) Increasing levels of child poverty

58. One of the most shocking developments has been the recent substantial increase in child poverty. The Child Poverty Monitor reported last year that 29% of children are now living in families with incomes below the poverty line (measured as less than 60% of the median income after housing costs are taken into consideration) - that is a 5% increase over the previous year's figures. A further 14% of children live in conditions of material hardship, defined as a lack of income that affects the ability to keep the house warm in winter, to afford meat and fresh fruit and vegetables, to replace worn out shoes and clothing, visit the doctor, have broken appliances fixed and cope with unexpected demands on the household budget.³⁸

59. It should be noted that 63% of families with incomes below the poverty line are reliant on social security, and 37% are in paid employment.³⁹

60. The overall increase in poverty was particularly evident towards the end of last year with food banks in Auckland, for example, reporting a substantial increase in families requiring their assistance for basic necessities in the weeks before Christmas, and in Christchurch, a 7% increase in demand from families in need of welfare support during 2015.⁴⁰

61. Furthermore, as the new school year begins, it has been reported that many families are struggling to afford the rising cost of back-to-school requirements, with poorer families delaying sending their children to school because of financial pressures⁴¹.

ii) Right to an adequate standard of living: Social welfare and paid employment

62. As noted above, while almost two-thirds of families with incomes below the poverty line are reliant on social welfare, more than one-third are in paid employment, and this section provides an overview of some issues around both.

63. Firstly, with regard to social welfare, even the state party has finally realised that social welfare provision is insufficient to provide a reasonable standard of living, and in the 2015 Budget, announced a \$25 per week increase in social welfare payments, which will take effect in April 2016. However, as UNICEF and others have pointed out, that is insufficient to lift the most vulnerable families out of poverty, and some families may lose other entitlements as a result of the increase which means there may be very little actual increase in their weekly income.⁴²

64. As the Committee is aware, at the time it last considered New Zealand, the state party had begun implementing its agenda of welfare 'reform', and in particular, the imposition of sanctions on those reliant on social welfare. In July 2015, it was reported more than 43,000 sanctions had been issued against social welfare recipients with children over the previous two years, with some having their payments cut by as much as 50%. The figures showed that 20,363 main benefits involving children were cut in the year to July 2014, and another 23,066 the following year.⁴³

65. In October 2015, it was reported that around 2,000 children on any one day are living in households where their parents have lost up to half their benefits because, in most cases, they have failed to turn up to an appointment.⁴⁴ The Social Development Ministry said it could not report the total number of children in families dependent on social welfare who were punished annually because its system was unable to calculate that.⁴⁵

66. Incidentally, it was revealed in March 2013 that the Ministry of Health repeatedly warned Ministers that benefit sanctions would have "substantial negative impacts" on families, but the state party went ahead and implemented it regardless⁴⁶ - perhaps that explains why the Social Development Ministry does not collect the figures referred to in the paragraph above.

67. In addition to the issues with the sanctions regime, it appears that many of those in need of social welfare are not receiving it at all - research published in July 2015 indicated that a total of 35,128 applications for 'working age benefits' were declined for the period July 2013 to September 2014.⁴⁷

68. The state party's punitive approach to social welfare can also be illustrated by its reaction to the recent discovery that for the past 17 years it had underpaid social welfare recipients - it enacted legislation under urgency to retrospectively validate thousands of underpayments.⁴⁸

69. Secondly, with regard to paid employment, given that 37% of families with incomes below the poverty line are in paid employment, the level of the minimum wage is clearly inadequate to meet their needs. The current minimum wage rate for employees aged 16 or over is \$14.75 an hour (before tax); and there is a lesser rate for “starting-out workers, and employees on the training minimum wage” which is \$11.80 an hour (before tax).⁴⁹

70. The 2015 Living Wage rate 2015 has been calculated to be \$19.25 an hour, 30% more than the minimum wage set by the state party.⁵⁰

iii) Housing crisis

71. There are two key issues in relation to housing: the rising cost of rental property which is no longer affordable for many families; and the condition of state (social) housing and the state party’s privatisation agenda.

72. The rising cost of housing, and associated increase in rental costs, has been most acute in Auckland, where house prices rose by 52% in the last four years compared with 11% in other parts of the country⁵¹ (it should be noted that wages for the majority of workers, and certainly social welfare income levels, have not risen by anything near 11% over the past four years). Rental prices in some of the poorest areas of Auckland (Manukau-Manurewa) have risen by 22% in the past four years.⁵² The rising cost of housing, together with comparatively low social welfare and wages, has resulted in a situation where increasing numbers of families are living in overcrowded conditions, garages, holiday parks or unsafe boarding houses with shared bathroom facilities.⁵³ There has also been a reported rise in sex-for-rent deals.⁵⁴

73. Secondly, with regard to state housing, a considerable proportion of the housing stock is unsafe for tenants because of damp and mouldy conditions, which are worse during winter because of the inability of tenants to afford heating - maintenance and repair on such houses has generally been deferred.⁵⁵

74. In June 2015, the Findings of a Coronial Enquiry into the death of a two year old girl in August 2014⁵⁶ were released, which included a number of comments about the cold, damp and leaky conditions of the state house in which the girl and her family were living during the winter months, the provision of a heater by Housing New Zealand that the family could not afford to run despite their need for warmth, and their request for a transfer to a better house, which had not at the time been addressed. Among other things, the Coroner concluded: “*It is entirely possible the condition of the house contributed to the pneumonia-like illness that Emma-Lite was suffering at the time of her death*”, and that the cold living conditions of the house “*cannot be excluded*” as a contributing factor to the circumstances of her death.⁵⁷ The following week, the death of a 37 year old man (also in August 2014) who had heart and lung problems, as well as pneumonia, was linked to the damp conditions of the state house he and his family were living in, and the failure of Housing New Zealand to move them despite his doctors and the District Health Board making numerous requests to that effect.⁵⁸

75. Instead of ensuring that all state housing is in a safe and healthy condition, the state party has begun a programme of demolishing state houses and of selling them off.⁵⁹

76. Furthermore, the state party has now implemented sanctions with regard to state housing whereby tenants who turn down the offer of a state house “without good reason” (which may in fact be because of the condition of the housing, because it is in an unsafe area, or because they do not wish to move out of the area in which they are currently located because of family, work or lack of transport) will be taken off the state housing list for three months.⁶⁰

77. One of the “solutions” the state party is proposing to resolve the housing crisis in Auckland is to pay state house tenants \$3,000 in cash to move to another part of the country - the Social Housing Minister apparently considers that “*Pacific Island tenants could be prime candidates for such a move*”, saying:

“For example, there is such a strong Pacific Island community in South Auckland,” Ms Bennett said. However, there is a strong Samoan community in Ashburton. There is a huge Tongan community in Oamaru, and I don't think we emphasise that enough and let people know that Auckland is not the only place that they can reside.”⁶¹

78. “Pacific Island tenants” are concerned that they have been singled out by the Minister as “prime candidates” to be moved out of the city, and have pointed out that they already have families, homes and employment in Auckland and a single cash payment would not compensate for moving to areas where there may be few employment prospects and no family links.

iv) Allocation of public spending

79. We have noted with interest the development of the Committee on the Rights of the Child’s draft General Comment on Article 4 of the Convention on the Rights of the Child: Public Spending⁶², and consider it would be useful for the state party (and others) to be encouraged to assess its decisions on public spending in relation to its obligations under the Covenant. So far as we are aware, the state party’s obligations under the Covenant (and the other human rights instruments to which it is a party) are not considered at all when it is allocating public spending, yet if it were to do so, we anticipate it would make better decisions around social spending.

80. We are particularly concerned about the allocation of public funding for military purposes which, in our view, could be better used by the state party to meet its obligations under the Covenant. Although the level of military expenditure in New Zealand, which successive governments have said for many years does not face any immediate military threat nor is likely to in the foreseeable future⁶³, is comparatively low when compared with other states, New Zealand maintains combat ready armed forces at a cost this year of \$3,454,706,000, plus the cost of any new overseas deployments. It will spend a forecast \$16 billion over the next 15 years on new military equipment⁶⁴. The \$3,454,706,000 is the identifiable amount of military spending from three ‘Votes’⁶⁵ in the 2015 Budget - Vote Defence, Vote Defence Force, and Vote Education (\$981,000) - but there may be additional military expenditure concealed in other Votes.

81. Given the evident need for increased social expenditure, and the lack of necessity for the state party to maintain expensive combat capability when there are cheaper alternatives available⁶⁶, not only could the overall level of military expenditure be reduced, but there are also specific comparisons that can be made to illustrate the state party's public spending priorities.

82. The first example relates to the "centrepiece" of the 2014 Budget, which was described as a \$493 million package - over the next four years - aimed at families⁶⁷, which among other things extended paid parental leave and an increased tax credit when "low and middle-income working families who are not on a benefit, and who don't receive paid parental leave, have a new child".⁶⁸ By way of contrast, the 2014 Budget also included expenditure of \$446 million on a combat systems upgrade for the navy's two frigates.⁶⁹ If the latter had not been seen as a spending priority by the state party, the families package could have been almost doubled, and the tax credit and other initiatives could have been extended to families in receipt of social welfare ("on a benefit") with a beneficial impact on the most vulnerable children.

83. The second example is related to the state party's announcement in April 2015 that it is seeking two C-17 Globemaster aircraft for the air force at a minimum cost of \$600 million⁷⁰ - that is precisely half the amount needed to refurbish all state houses to provide safe and healthy homes for state housing tenants.

84. **Suggested questions for the LOIPR:** In addition to asking the state party to provide general information about trends in socio-economic conditions since its Third Periodic Report, we suggest that the Committee ask for specific information on: the increase in child poverty and how the state party intends to ensure a decent standard of living for all New Zealand children; the increase in the number of families using food banks to meet their basic needs; the costs of 'free' education for parents; the effect of the social welfare reform agenda and the impact of sanctions; how the minimum wage is calculated, and why the rates are different for youth workers; how it intends to ensure that all New Zealanders have access to decent affordable housing; and what mechanism/s it uses to assess the allocation of public spending in relation to its Covenant obligations.

E. The Optional Protocol to the Covenant

85. The state party has not signed or ratified the Optional Protocol, and has not given any indication that it is intending to do so. During New Zealand's second Universal Periodic Review, it rejected the recommendations that it ratify the Optional Protocol, and stated: "*New Zealand is not considering ratification of the OP-ICESCR at this stage*"⁷¹.

86. **Suggested questions for the LOIPR:** We suggest that the Committee asks the state party to explain why it has not yet signed and ratified the Optional Protocol.

87. Thank you for this opportunity to provide information to the Committee.

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