Peace Movement Aotearoa

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NGO information for the Human Rights Committee 116th Session: New Zealand

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Overview

1. This 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 Civil and Political Rights (the Covenant, ICCPR) to assist the Human Rights Committee (the Committee) with its consideration of New Zealand's sixth Periodic Report[1] (the Periodic Report). There are six main sections below:

A. Information on Peace Movement Aotearoa

B. The constitutional and legal framework: lack of protection for Covenant rights (Article 2)

C. Indigenous Peoples' Rights (Articles 1, 2, 26 and 27)

- **i**. Overview,
- **ii**. Issues around the Trans-Pacific Partnership Agreement**,**
- **iii**. Consultation process: Te Ture Whenua Maori Act reform,
- **iv**. Removal of Treaty of Waitangi reference: Judicature Modernisation Bill, and
- **v**. Local government, the Treaty of Waitangi and indigenous peoples' rights

D. Privatisation of prisons (Articles 2 and 10)

E. Right to life (Article 6)

- **i**. Support for, and complicity in, extrajudicial executions, and
- **ii.** Public spending priorities

F. Electro-muscular disruption devices / tasers (Articles 6 and 7)

2. For information on the following issues, please refer to our 2014 Report[2]: foreshore and seabed legislation, deep sea oil exploration and drilling, hydraulic fracturing (fracking) and mining, and fresh water and the privatisation of state-owned assets (in Section C. Indigenous Peoples' Rights); rights of the child: Child Poverty Action Group case (Section D); the state party's social welfare reform agenda (in Section E); developments in immigration policy and legislation (in Section H); and electronic mass surveillance and expansion of state surveillance (in Section I).

3. Updated information on the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 (Section F of our 2014 Report) is provided in Section B, under the heading 'NZBORA Declaration of Inconsistency'.

A. Information on Peace Movement Aotearoa

4. 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.

5. 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 (the Treaty), 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.

6. We have previously provided NGO information to the Committee in 2009, 2010, 2012 and 2014, to other human rights treaty monitoring bodies, and to Special Procedures and mechanisms of the Human Rights Council, as listed below[3].

7. Our Report covers issues that are currently, or have been in the past, a specific focus of our work. With regard to the section on indigenous peoples' rights, 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.

8. Thank you for this opportunity to contribute to your consideration of the state party's Periodic Report. We are not in a position to send a representative to the 116th Session, but are happy to brief the Committee via Skype - please do not hesitate to contact us if you require any clarification of any points in this report, or further information on any of the issues covered.

B. The constitutional and legal framework: lack of protection for Covenant rights (Article 2, and others)

9. Since the Committee last considered the state party's constitutional and legal framework, there has been no improvement in the constitutional arrangements nor any progress towards better implementation of Covenant rights.

10. Instead, as we and the Law Society detailed in our respective 2014 Reports, the situation can be said to have worsened because the state party has been implementing its particular political agenda by proposing and then enacting legislation in short time frames under urgency, with little or no time for public consideration or submissions; it has introduced major changes with human rights implications to legislation at the final reading stage by way of Supplementary Order Papers; the minimal protection provided by the New Zealand Bill of Rights Act 1990 (NZBORA)[4] has been eroded; and the state party has enacted legislation that removes the possibility of scrutiny or judicial review by the courts for those affected by discriminatory

policy and practice, and that removes the possibility of complaints relating to discrimination being made to the Human Rights Commission.

11. As the Committee is aware, while the NZBORA includes some, but not all, of the rights elaborated in the Covenant, because parliament is able to enact legislation that violates even those human rights that are included in the NZBORA, there is essentially no possibility of any effective remedy for any violation of any human rights by the state party as required Article 2.3.

12. **NZBORA Declaration of Inconsistency**: The point above was illustrated most recently in the state party's response last year to the first NZBORA Declaration of Inconsistency issued by a New Zealand Court[5]. In brief, the Declaration of Inconsistency was a result of legal proceedings taken in relation to the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010[6], 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 legislation[7].

13. **New Zealand Public Health and Disability Amendment Act 2013**: 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 2013[8] - 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.

14. The Act 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 NZBORA[9] - a determination subsequently upheld by the High Court in December 2010[10] and by the Court of Appeal in May 2012[11].

15. 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]

16. 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]

17. 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]

18. The Attorney-General's Report on the consistency of the New Zealand Public Health and Disability Amendment Bill (no 2) with the NZBORA[15] (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.

19. 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.

20. 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]

21. 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, not economic policy.

22. The New Zealand Public Health and Disability Amendment Act is not the only recent legislation that removes the possibility of scrutiny or judicial review by the courts; in its submission for New Zealand's second Universal Periodic Review, the Law Society provided further examples.[20]

23. It should also be noted that the state party enacted legislation in 2013 that removes the right of a party to be legally represented in the initial stages of proceedings before the Family Court - the Family Court Proceedings Reform Bill 2012[21]. The imposition of significant fees and costs for Family Dispute Resolution has been highlighted by the Law Society as another aspect of the new legislation which is of particular concern[22].

24. **Countering Terrorist Fighters Legislation Bill**: The Countering Terrorist Fighters Legislation Bill is another example of legislation that has serious implications for Covenant rights, and that was introduced and enacted under urgency. It was introduced in November 2014, as omnibus legislation *"to introduce measures to monitor "foreign terrorist fighters" and to place restrictions on their travel."*[23]

25. Among other things, the Bill:

- *"allows the NZ Security Intelligence Service (SIS) to conduct surveillance activities without a warrant in situations of emergency or urgency;*
- *allows the NZSIS, under warrant, to undertake visual surveillance in a private setting or that would involve trespass onto private property (both with or without a visual surveillance device);*
- *allows the Director of Security (or person acting as the Director) to authorise surveillance activities to be undertaken in situations of emergency or urgency;*
- *amends the Customs and Excise Act 1996 to clarify that direct access to Customs databases can be provided to the NZSIS and Police for counter-terrorism purposes;*
- *amends the Passports Act 1992 in relation to the power of the Minister of Internal Affairs to cancel or refuse to issue a New Zealand passport or other travel document if the Minister believes on reasonable grounds that a person is a danger to the security of New Zealand;*
- *allows the Minister to set a passport cancellation period of up to three years if the Minister is satisfied that the person would continue to pose a danger to New Zealand or any other country;*
- *allows the Minister to suspend a person's passport or other travel document for no more than 10 working days if the Minister is satisfied that a briefing recommending cancellation is being prepared and the person is likely to travel within the period of temporary suspension;*

- *amends the Passports Act so that the special provisions that apply to proceedings where national security is involved also apply to judicial reviews and any other litigation to challenge the Minister's decisions that involve national security;*
- *exempts the Crown from liability for loss and damages caused through the cancellation of travel except where those actions are grossly negligent or shown to be in bad faith;*
- *provides that cancellation or refusal to issue a travel document can be on the grounds that a person is a danger to any other country, in addition to New Zealand, because the person intends to engage in or facilitate a terrorist act or the proliferation of weapons of mass destruction; and*
- *provides that a person's travel document may be cancelled when they are outside New Zealand."*[24]

26. The Countering Terrorist Fighters legislation was introduced to parliament and had its first reading on 25 November 2014, when it was referred to the Foreign Affairs, Defence and Trade Select Committee with a reporting back deadline of 2 December. On 26 November, public submissions were invited on the Bill with a deadline of the following day, 27 November. The Select Committee reported back to parliament on 2 December, and the legislation was enacted as the Passports Amendment Act 2014, Customs and Excise Amendment Act 2014, and New Zealand Security Intelligence Service Amendment Act 2014 on 9 December 2014 - 11 working days after it was first introduced to parliament.

27. **Consideration of constitutional issues**: We provided information about the state party's process of consideration of constitutional issues in our 2014 Report, including its statement in New Zealand's second Universal Periodic Review national report: "*Advancing the Consideration of Constitutional Issues process is a key priority for the Government*"[25]. As we pointed out in 2014, there is no evidence to support that assertion - indeed, when announcing the release of the Constitutional Advisory Panel's report, the Deputy Prime Minister stated *"there is no sense of an urgent or widespread desire for change"*[26].

28. The extent of the state party's failure to ensure proper protection of the human rights articulated in the international instruments, including the Covenant, in the Treaty, and in domestic human rights legislation - as well as the lack of effective remedies for human rights and Treaty violations - would clearly suggest otherwise. Updated information on the consideration of constitutional issues, in relation to the Treaty, is provided in Section C.i. below.

29. **National Human Rights Institution**: The final point in this section relates to the functional independence of New Zealand's National Human Rights Institution (NHRI), the Human Rights Commission (the Commission). In October 2011, the state party introduced the Human Rights Amendment Bill[27] to make changes to the role and structure of the Commission. The legislation had its first reading in November 2013 and was referred to the Justice and Electoral Select Committee, which reported back to parliament in April 2014. The second reading of the Human Rights Amendment Bill was in May 2015, and we have heard that it is likely to be enacted soon.

30. While there are several areas of concern about the legislation, the most critical relates to the functional independence of the Commission, because two sections extend the involvement of the Minister of Justice (the Minister) in setting the work priorities and the activities undertaken by the Commission. The relevant sections are:

"6. Membership of Commission: Section 8 is amended by repealing subsection (1) and substituting the following subsections: ... "(1B) A Commissioner must lead the work of the Commission in any other priority area that is designated by the Chief Commissioner, and the Chief Commissioner may designate an area of work as a priority area ***only after consultation with the Minister*** *and the other Commissioners."* [our emphasis], and

"11. 15. Functions of Chief Commissioner: The Chief Commissioner has the following functions: ... (e) to allocate spheres of responsibility among the Commissioners, and to determine the extent to which Commissioners engage in activities undertaken in the performance of the Commission's functions (except for those stated in section 76), but ***in each case only after consultation with the Minister****,"* [our emphasis][28]

31. Extending the involvement of the Minister in the setting of work priorities and the activities undertaken by the Commission comprises undue state interference, and if enacted, will not meet the minimum requirements of real and perceived independence for an NHRI as defined by the Paris Principles[29] and by the General Observations of the International Coordinating Committee of National Human Rights Institutions' Sub-Committee on Accreditation[30] - both repeatedly stress that the essential minimum standards for an NHRI include independence and autonomy for its activities, and the ability to exercise its mandate in an unfettered manner.

C. Indigenous Peoples' Rights (Articles 1, 2, 26 and 27)

i. Overview

32. As outlined in the information provided to the Committee in 2009, 2010, 2012 and 2014 by Peace Movement Aotearoa and the Aotearoa Indigenous Rights Trust in 2010, 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.

33. 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.

34. 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.

35. 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"*.

36. 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.

37. 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.

38. 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.

39. There has been no progress with regard to better protection of Covenant rights for Maori - all of the issues raised by Peace Movement Aotearoa and others in NGO reports to the Committee since 2009 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 - information about the settlement process is provided in the Monitoring Mechanism of the National Iwi Chairs Forum's report to the Committee.

40. 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'[31] 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).

41. During 2012 and 2013, the state party ran a nation-wide 'constitutional conversation' led by the Constitutional Advisory Panel (the Panel)[32]. 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.[33]

42. 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".*[34]

43. Incidentally, the Panel also made several recommendations about the NZBORA, including the entrenchment of economic, social and cultural rights.[35]

44. 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.

45. Furthermore, the 2014 Report of the Waitangi Tribunal's enquiry into the 1835 Declaration of Independence and the Treaty (WAI 1040)[36] 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."*[37]

46. ii) Issues around the Trans-Pacific Partnership Agreement

47. The Trans-Pacific Partnership Agreement (TPPA, TPP), which was 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 took repressive steps to ensure the signing went ahead as planned, including mass riot training for police officers[38] and police visits to the homes of "known activists" around the country[39] in the previous two weeks.

48. As the Committee will be aware, the process of negotiating the TPPA breached several Covenant rights - the text was kept secret throughout the negotiations (an unverified text was released in November 2015, and the full text only in January 2016). The state party refused to release any of the text to the Waitangi Tribunal's initial hearing in July 2015, even the so-called 'Treaty exception' clause[40], even though the terms of the TPPA confidentiality agreement allow for the provision of documents and information to persons outside government[41].

49. Furthermore, in October 2015 the High Court quashed the Minister of Trade's refusal to release documents relating to the TPPA under the Official Information Act (OIA)[42] and directed him to reconsider the OIA requests 'in a way that is consistent with his obligations under the Act"[43] - after reconsideration, the Minister extended the deadline to provide some of the documents until 5 February 2016 (the day after the TPPA was to be signed) and refused to provide any of the other requested documents.[44]

50. Since the TPPA was signed, the secrecy has continued with the state party's chief negotiator David Walker refusing to tell the Foreign Affairs, Defence, and Trade Select Committee on 11

February 2016 whether or not New Zealand had asked for the ability to stop overseas buyers from purchasing residential houses to be included in the text.[45]

51. The state party is now claiming on the Ministry of Foreign Affairs and Trade (MFAT) TPPA site that there were "extensive public consultations carried out during TPP negotiations"[46] which is simply untrue - aside from anything else, how could there possibly have been "extensive public consultations" on a secret text?

52. On 11 February 2016, the Foreign Affairs, Defence, and Trade Select Committee invited public submissions on the TPPA, with a deadline of 11 March 2016[47] - it is difficult to view this as anything other than a charade and pretence of democratic input of epic proportions, because the state party is clearly intending to go ahead regardless of public opinion: it has, for example, said repeatedly since the TPPA was signed that the purpose of the MFAT TPPA roadshow being held in four cities in March 2016 is "to help businesses prepare to take advantage of new opportunities presented by TPP's entry into force"[48].

53. The Committee will be aware of the general concerns about the TPPA's likely impact on Covenant rights (the right to life and associated rights, 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 it does enter 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[49]. These factors are likely to make the state party even less inclined to implement Covenant rights and those protections than it is now.

54. 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."*[50]

55. 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, 2 and 27 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, the right to an effective remedy for Covenant violations, and cultural rights (including protection of intellectual property), which are also articulated in a range of Articles in the UN Declaration.

56. As the Waitangi Tribunal stated in WAI 262 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."*[51]

57. 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 had meaningfully engaged with Maori about its provisions.

58. 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.*[52]

59. 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:*
>
> *whether or not the Treaty of Waitangi exception clause is indeed the effective protection of Maori interests it is said to be; and*
>
> *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).”*[53]

60. For information about the issues around 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'[54].

61. Following the state party's release of the final text of the TPPA on 26 January 2016, the Waitangi Tribunal hearing was scheduled to take place in Wellington from 14 to 18 March 2016. It should be noted that MFAT's Wellington roadshow was subsequently scheduled to take place during the Tribunal hearings, on 18 March 2016[55], and the closing date for public submissions to the Foreign Affairs, Defence and Trade Select Committee is 11 March 2016 - further indications, if any were needed, of the state party's disinterest in the rights of Maori, and the Tribunal's consideration of whether those rights are being adequately protected.

iii. Consultation process: Te Ture Whenua Maori Act reform

62. We have included an outline of the Te Ture Whenua Maori Act reform process in this section because it also highlights the state party's approach to consultation with Maori - a specific issue raised in the LOIPR by the Committee.[56]

63. Te Ture Whenua Maori Act 1993 (the Act) is the central piece of legislation governing Maori land, and has been the subject of a major review since 2012 when the Associate Minister of Maori Affairs announced the formation of a Panel to review the Act *"with a view to unlocking the economic potential of Maori land for its beneficiaries, while preserving its cultural significance for future generations"*.[57] The Panel produced a discussion document in March 2013[58] and a final report in March 2014[59]. This was followed by the appointment of a Ministerial Advisory Group to progress the introduction of new legislation[60], and in May 2015, a draft bill was released, which was later amended.[61] A range of substantive concerns were raised by submitters on Te Ture Whenua Maori Bill, who included the Judges of the Maori Land Court.[62]

64. Concerns were also raised about the consultation process, as outlined by, for example, Dr Carwyn Jones:

> *"First, the consultation document that was released with the draft bill is pure PR spin. It is not at all helpful in understanding how the bill will change the legislation governing Maori land. In fact, I would go so far as to say that reading the consultation document is actually an obstacle to understanding those changes. Also, it is difficult to see how any useful feedback on a bill that is the size and complexity of this one could be gleaned from consultation hui that took place largely before Maori communities had an opportunity to get to grips with the detail of the bill and have internal discussions about the implications of the proposed changes."*[63]

65. Three claims were lodged with the Waitangi Tribunal for urgent hearings into Te Ture Whenua Maori Bill[64], which were held in November and December 2015. Ignoring the Waitangi Tribunal urgent hearings, the state party proceeded with further "consultation" (this time around, not asking for submissions)[65] on its proposed legislative changes[66].

66. On 4 February 2016, iwi leaders called for the state party to wait for the Waitangi Tribunal's report before making any changes to the Act,[67] which - at that stage - were to be discussed with the Prime Minister during the Iwi Chairs' forum at Waitangi the next day, except he did not go to it.

67. On 5 February 2016, the Waitangi Tribunal released 'Initiation, Consultation, and Consent', the draft chapter 3 of the Report into Claims Concerning Reforms to Te Ture Whenua Maori Act 1993, because they were concerned at the state party's intention to proceed with a series of "informational" hui (meetings) about the reforms from 9 February 2016, and wished to ensure that interested parties had accurate information to hand.[68]

68. The Tribunal found that:

> *"the Crown will be in breach of Treaty principles if it does not ensure that there is properly informed, broad-based support for the Te Ture Whenua Maori Bill to proceed. Maori landowners, and Maori whanau, hapu, and iwi generally, will be prejudiced if the 1993 Act is repealed against their wishes, and without ensuring adequate and appropriate arrangements for all the matters governed by that Act, and without ensuring adequate and appropriate arrangements for all the matters governed by that Act."*[69]

69. The Tribunal also said:

> *"This brings us to the Crown's arguments that it is entitled to initiate and lead a reform of legislation, that it is obliged to consult Maori in certain circumstances, but that the Treaty principles do not unreasonably restrict an elected Government from following its chosen policy. In this particular case, our finding is that the Maori interest in their taonga tuku iho, Maori land, is so central to the Maori Treaty partner that the Crown is restricted (and not unreasonably so) from simply following whatever policy it chooses."*[70]

70. The Tribunal recommended:

> *"that the Crown avoids prejudice to Maori by further engagement nationally with Maori landowners, through a process of hui and written submissions, after reasonable steps have been taken to ensure that Maori landowners are properly informed by the necessary empirical research, funded by the Crown.*[71]

71. The Minister of Treaty Negotiations (who is also the Attorney-General) dismissed the Tribunal's draft Report as "bizarre"[72], rejected the idea of further consultation with Maori[73], and it seems that the Bill will be introduced to parliament next month as planned[74].

72. In response to the Minister's comments, the Maori Women's Welfare League (and others) described the reality of how the state party "consults"; Prue Kapua, Maori Women's Welfare League President, said the review process had been rushed, and:

> *"The League had three hui that, rather than consultation, consisted of officials giving PowerPoint presentations.*
>
> *The TPK [Te Puni Kokiri] or the government think that's consultation, they need to go back and read a whole lot of cases about what constitutes consultation, and that's been the criticism. You know these presentation hui are a nonsense."*

Ms Kapua said officials had interpreted feedback to suit their agenda: to hurry the Te Ture Whenua Maori Bill through, and to make money from commercialising Maori land when not all tangata whenua wanted that.

"The Tribunal report is clear in terms of you can't just have a situation where you set up meetings, you people the meeting with a mixture of officials and advisory group people who've been appointed by the minister, and they sit there and they do a PowerPoint display about what position they're up to and call that 'consultation'."[75]

iv. Removal of Treaty of Waitangi reference: Judicature Modernisation Bill

73. In November 2013, the state party introduced the Judicature Modernisation Bill[76] with the intention of creating new legislation, the Senior Courts Act, to provide a single statute for the High Court, the Court of Appeal, and the Supreme Court. The Bill had its first reading in December 2013, and was referred to the Justice and Electoral Committee which subsequently called for submissions on its content.

74. The Supreme Court, Court of Appeal and High Court made a submission on the Bill which expressed concern about the deletion of the Treaty reference currently in Section 3 of the Supreme Court Act 2003[77], as well as a range of concerns about the Bill's effect on the independence and functionality of the judiciary.[78] It should be noted that submissions were also made by Chief Judge Wilson Isaac, on behalf of the Maori Land Court bench, by the judges of the Employment Court, and by the judges of the Environment Court, who were concerned about changes - whether unintended or intended - to the jurisdiction of their respective courts.[79]

75. The Bill was reported back to parliament in June 2014, and while the Select Committee report included the Labour Party minority view (the Labour Party is currently the largest opposition party) also expressing concern about the deletion of the Treaty reference, it was not put into the legislation.

76. In a letter in May 2015, the Minister of Justice seemed to be saying that the deletion of the Treaty reference was because that reference is only in the Supreme Court Act, whereas the Bill covers the Supreme Court, Court of Appeal and High Court - that does not really explain the deletion because there are different sections relating to each court, so something along the lines of Section 3 of the Supreme Court could easily remain. Even better, a substantive Treaty reference could be included for all three courts.

77. The Minister of Justice also said:

"I would emphasise that the Bill does retain a very important reference to the Treaty of Waitangi in clause 74. This clause makes it clear that an appeal containing ***a significant issue relating to the Treaty of Waitangi*** *is a matter of general or public importance. This, in turn, directly impacts on whether the Supreme Court must consider the appeal. This clause is, therefore, pivotal in its recognition of the status of the Treaty of Waitangi."*[80][our emphasis]

78. We do not consider this provides sufficient protection for the Treaty in the light of the state party's inclination towards challenging Court proceedings and Waitangi Tribunal findings that it does not agree with - Crown lawyers may challenge future proceedings of the Supreme Court by arguing the matter before the Court is not "a significant issue".

79. The second reading of the Bill was in February 2015, and it has not yet been enacted.

v. Local government, the Treaty of Waitangi and indigenous peoples' rights

80. Firstly, with regard to the state party's response to the LOIPR in relation to the representation of Maori in local government[81], we note that the New Plymouth District Mayor, Andrew Judd, has provided information to the Committee illustrating that the legislation does not operate in the way the Periodic Report describes, and has highlighted its discriminatory aspects.

81. We would also like to highlight an inaccurate statement in that section of the Periodic Report: "The Government did not establish Maori seats on the Auckland Council because of the Council's existing power to establish Maori wards under the Local Electoral Act 2001."[82]

82. As documented in our 2014 Report[83], although the Royal Commission on Auckland Governance had recommended that there be three seats for Maori on the unitary authority:

> *"on 24 August 2009, the Prime Minister announced there would be no Maori seats on the authority, even though the Select Committee considering the options was not due to report back until 4 September 2009 - a premature, politically expedient decision that was widely condemned".*[84]

83. That pre-emptive announcement was based on the state party's attempt to ensure the continued support of one of its support parties, ACT New Zealand[85], not on the provisions of the Local Electoral Act - if the decisions had been based on the latter, the Select Committee would have simply included a statement to that effect in its report to parliament.

84. Secondly, in our 2014 Report we provided information on the 2012 Treaty Audit, undertaken by PricewaterhouseCoopers on behalf of the Independent Maori Statutory Board (IMSB), to assess Auckland Council's performance in accordance with statutory references to the Treaty and its statutory responsibilities to Maori.

85. The Audit provided a rating in ten areas: 1. Knowledge of obligations; 2. Policies; 3. Processes, Systems and Data; 4. Roles and Responsibilities; 5. Decision Making; 6. Consultation and Engagement; 7. Capacity; 8. Training and Awareness; 9. Communication; and 10. Monitoring. In four of those areas (knowledge of obligations; policies; consultation and engagement; and capacity), the Audit found significant weaknesses or gaps which are almost certain to compromise Maori legislative rights; and in the other six, found serious weaknesses or gaps which are likely to compromise Maori legislative rights. As we pointed out in 2014:

> *"this raises obvious questions about the state party's own performance in relation to its statutory responsibilities to Maori (we suspect a national audit would reveal similar deficiencies), and also around how it is communicating these responsibilities to local authorities."*[86]

86. In May 2015, the second Treaty Audit undertaken by PricewaterhouseCoopers was released with disappointing results.[87] The Audit revealed that there had been an improvement in the level of awareness of legislative and Treaty obligations to Maori and a number of instances where

good practice is occurring. However, of the 42 (out of 67) recommendations from the first Audit that were sampled in the second, only three had been completed.[88]

D. Privatisation of prisons (Articles 2 and 10)

87. As the Committee is aware, in December 2010 the state party awarded the British based corporation, Serco, the contract to manage the Mt Eden Correctional Facility (MECF)[89], and Serco began managing it in August 2011. MECF holds up to 966 male prisoners, most of whom are on remand because it is the main reception prison for newly remanded male prisoners in the Auckland region. MECF is one of the two private prisons run by Serco - the other is the Auckland South Corrections Facility (ASCF, also known as the Wiri Prison), managed by Serco via a sub-contracting arrangement.[90]

88. As documented in our 2014 Report, there were indications by then of issues with Serco's management of MECF prison[91], and reports that the prison was seriously under-staffed[92].

89. Under the terms of the state party's contract with Serco, the company self-reports on its performance in managing MECF - not only is it responsible for reporting to the Department of Corrections how many violent or self-harm incidents occur in MECF, but Serco is also responsible for assessing its own performance and advising the Department of Corrections about any reduction in bonus payments if it is failing to meet the contract standards (any deductions for failure to meet contracted standards are taken from Serco's bonus payments, not from the $30 million base contract).[93]

90. Unsurprisingly, Serco rated itself as having the highest levels of inmate safety, and - according to figures published by the Department of Corrections as Serco's 'Key Performance Indicators' - reported it had exceeded its target levels in every area. As a consequence, Serco was paid $8 million in bonuses between 2011 and 2014.[94] This self-reporting was a startling and harmful lack of oversight by the state party as the events from mid-July 2015 - outlined in brief below - illustrate.

91. On 15 July 2015, video footage of "fight clubs" operating in MECF surfaced on YouTube, drawing public - and finally, the state party's - attention to what was happening inside the prison. On 19 July, an enquiry by the Chief Inspector of Corrections was announced[95] to investigate the circumstances of prisoner on prisoner fighting at MECF; to ascertain if Serco management and staff had knowledge of, or any involvement in, any 'fight club'; to ascertain whether incidents of prisoner on prisoner violence were being under-reported; and to look into prisoner access to contraband, including mobile phones.[96] The following day, 20 July, Serco admitted that it had received reports of organised "fight clubs" in its prisons two months previously, which had not been investigated.

92. On 24 July 2015, after taking legal advice, the state party invoked the 'Step In' clause in the contract with Serco, and the Department of Corrections put a Prison Director and management team into the prison to oversee its day-to-day running, although Serco's staff remained on site.[97]

93. Also on 24 July 2015, it was reported that the level of violence at MECF had eclipsed every other prison in the country, "*with rates of one prisoner being assaulted nearly every three days*".[98]

94. In August 2015, the Terms of Reference of the Chief Inspector of Corrections' enquiry were expanded to include investigation of prisoner safety and welfare at MECF; to review complaints from prisoners and their families; to investigate and report on the extent to which the standards, procedures, operational systems, work practices and internal controls for the proper management of prisoners were in place and being complied with; to review the Department of Corrections prison monitoring arrangements at MECF; and to provide recommendations on these and other matters.[99]

95. In September 2015, the New Zealand Qualification Authority (NZQA) assessed the standard of training provided by Serco New Zealand Training Limited (Serco Training) which provides Serco, its only client, with prison officers to staff the MECF and ASCF. The NZQA stated that is "not yet confident" in the educational performance of Serco New Zealand Training Limited or in its capability in self-assessment, and among other things, found:

> *"Qualification completion rates are weak (see Findings 1.1). This is largely due to flaws in programme design – where the assessment methodology is impractical and unrealistic (see Findings 1.3) – as well as a lack of capacity in Serco Training to support trainees through workplace training, and deficiencies in its system to track trainee progress and identify trainees who have stalled in progression towards the qualification (see Findings 1.5 and 1.6)", and*
>
> *"Direction from governance was overly focused on ensuring sufficient supply of prison officers. Because Serco Training was not adequately resourced, this emphasis led to a sacrifice in qualification completion, putting Serco employees at risk of not refining their skills while operating in a complex and high-risk prison environment (see Findings 1.2 and 1.6)."*[100]

96. On 2 December 2015, it was reported that the Department of Corrections' prison performance tables for the 12 months to June 2015, placed MECF at the bottom of rankings for all prisons, in the "needs improvement" category - rather a contrast to its "exceptional" ranking in the five previous performance tables over two years.[101]

97. On 9 December 2015, the Department of Corrections announced that the Chief Inspector of Corrections had completed his investigation and provided the Chief Executive with a report - which, due to legal action taken by Serco he could not comment on - and that Serco's contract would not be renewed after March 2017.[102] The Minister of Corrections subsequently announced support for the Department's decision not to renew the contract.[103]

98. Currently Serco is continuing its legal action to stop the release of the Chief Inspector of Prison's report, saying - among other things - that the report relies on anonymous allegations, and it has asked for the identities of some of the prisoners interviewed by the Chief Inspector.[104] The Department of Corrections will continue to manage MECF for the foreseeable future, while Serco provides the staff for its day-to-day running.

99. This sad and sorry saga has not deterred the state party from its prison privatisation agenda, and the Prime Minister has said on a number of occasions that Serco can re-bid for the MECF contract when its contract is not renewed in March 2017.[105]

100. According to the Prime Minister (John Key), who is apparently unaware of the state party's obligations under the Covenant and other international human rights instruments:

"We have the advantage through a privately run prison, something we actually don't have in a publicly run prison and that is, we have a contract."[106], and

"Mr Key rejected the suggestion that the government's privatisation programme had failed."In a funny kind of way it showed it worked because we got a contract and the contract allowed us to do something that you could never actually do with a government department and that is to say 'we're not going to renew that contract, certainly not under the conditions they were negotiated' ". "[107]

E. Right to life (Article 6)

i. Support for, and complicity in, extrajudicial executions

101. We to draw the Committee's attention to the state party's support for, and complicity in, extrajudicial executions carried out by way of United States' Unmanned Aerial Vehicle (UAV) strikes - a breach not only of the state party's obligations under Article 6 of the Covenant, but also Articles 2 and 14[108] and, arguably, of its obligations under the Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty to which it is a party.

102. In April 2014, *The Australian* reported the name of a New Zealander had been killed by a UAV strike in Yemen in November 2013[109] as Daryl Jones, the first known killing of a New Zealand citizen in a United States' UAV strike. Instead of condemning the extrajudicial execution of a New Zealand citizen, the Prime Minister said it was a "*legitimate*" drone strike[110], *"there are sometimes New Zealanders who put themselves in harm's way"*[111], and *"the killing was justified because Mr Jones was linked with al-Qaeda and had attended a terrorist training camp"*.[112]

103. Although the Prime Minister would not initially confirm whether or not the Government Communications and Security Bureau (GCSB) - which, among other things, operates the Waihopai satellite communications interception facility as part of the United States National Security Agency network - had provided information used in United States' UAV strikes, he subsequently admitted it had, and said he was *"totally comfortable"* with the GCSB passing on intelligence which led to drone attacks on foreign soil because it was in the pursuit of *"very bad people"*.[113]

104. The following day, the Prime Minister said that *"Drone strikes are justified - even if innocent civilians are mistakenly killed"*[114], and:

""For the most part drone strikes have been an effective way of prosecuting people that are legitimate targets," he said this morning."But there are examples of where things have gone wrong and there are always examples, sadly where things go terribly wrong and where civilians are killed."

He shrugged off responsibility for New Zealand's role in the programme. "That is a matter for others because we are not the individuals that are conducting those drone strikes ... maybe, in the odd instance we might be [supplying intelligence] or we might not be, it depends on the circumstance.""[115]

105. In another interview, the Prime Minister said:

> *"There are environments like Afghanistan where our people have gathered information, and that's information on people of interest to our ISAF partners, and we've passed that information onto ISAF partners - and one of those is the United States - and ISAF have passed that information on. What happened next, I can't be 100 percent sure but almost certainly that's been used as the Americans and others have targeted those individuals."*
>
> *... "Despite not officially being a part of the programme, Mr Key says New Zealand benefits from the use of drones – so he's comfortable with it, despite its failings.*
>
> *"I don't want to sound cold and calculating about these things but these are people that are al-Qaida operatives, they're Taliban operatives, they set bombs, they deliberately go out to kill our people and others."There's been situations where drone attacks have backfired and have gone after the wrong target. No one's arguing that they're absolutely failsafe, but they've been a way of prosecuting those targets with less risk to our people.""*[116]

106. As with the Prime Minister's comments about the "advantages" of privatised prisons in Section D above, these comments indicate a level of ignorance about, and lack of commitment to, the state party's legally binding obligations under the Covenant and other human rights instruments that are deeply disturbing.

ii. Public spending priorities

107. We have noted with interest the development of the Committee on the Rights of the Child's draft General General Comment on Article 4 of the Convention on the Rights of the Child: Public Spending[117], 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 Article 6. 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 spending decisions.

108. 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 future[118], 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 equipment[119]. The $3,454,706,000 is the identifiable amount of military spending from three 'Votes'[120] 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.

109. There is a clear need for increased social expenditure in Aotearoa New Zealand, and given the lack of necessity for the state party to maintain expensive combat capability when there are cheaper alternatives available[121], not only could the overall level of military expenditure be

reduced to meet that need, but there are also specific comparisons that can be made to illustrate the state party's public spending priorities in relation to Article 6..

110. The first example is 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 million[122] - that is precisely half the amount needed to refurbish all state houses to provide safe and healthy homes for state housing tenants. It should be noted in this regard that 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, and the state party is instead demolishing and selling off social housing.[123]

111. The condition of state housing is clearly a matter for concern in relation to Article 6 - for example, in June 2015, the Findings of a Coronial Enquiry into the death of a two year old girl in August 2014[124] 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.[125] 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.[126]

112. The second example relates to the release of information on 16 February 2016, that due to the requirement for District Health Boards to reduce spending by $138 million by the end of the current financial year (30 June 2016), patient safety in hospitals is being put at risk[127] - also a matter for concern in relation to Article 6. Yet the state party is currently proceeding to spend $440 million on a combat systems upgrade for the navy's two frigates.[128]

F. Electro-muscular disruption devices / tasers (Articles 6 and 7)

113. In July 2015, the Police Commissioner announced that all frontline police officers would soon be routinely carrying tasers, and an additional 400 to 600 additional tasers would be purchased for that purpose.[129] This was followed on the same day by a statement from the Minister of Police welcoming the decision.[130]

114. When asked why the Police Commissioner (the Chief Executive of the police force) rather than a government Minister had made the decision to arm all frontline police officers with tasers, the Minister of Police stated: *"it is an operational matter for the Police Commissioner [as to] where and when his officers carry Tasers"*.[131] It has subsequently been reported that any future decision about police officers carrying firearms will be made by the Police Commissioner.[132]

115. Thank you for your consideration of the points raised in our Report.

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