

Universal Periodic Review of New Zealand

18th session of the Working Group on the UPR, January/February 2014

**Joint Stakeholders Report Coordinated by the Human Rights Foundation of
Aotearoa New Zealand**



Jointly submitted by: Equal Justice Project, Child Poverty Action Group, Combined Beneficiaries Union, Rotorua Peoples Union, East Coast Advocacy Service, Beneficiary Advisory Service Christchurch, Disability Law Centre, Human Rights Lawyers Association of Aotearoa New Zealand, Justspeak, New Zealand Council of Trade Unions, Child Poverty Action Group, Refugee Trauma Recovery, ChangeMakers Refugee Forum

and

Supported by: Action for Children and Youth Aotearoa (ACYA), Peace Movement Aotearoa, Public Health Association of New Zealand (PHANZ), Environment and Conservation Organisations of NZ Inc (ECO), Women's International League for Peace and Freedom (WILPF) Aotearoa, the New Zealand Centre for Human Rights Law, Policy and Practice, It's Our Future NZ, Auckland Disability Law, University of Canterbury UPR Submission Group

See Annex 1, p.16 for more details on those organisations.

Words count: 5618

A.BACKGROUND AND FRAMEWORK

I.Scope of international obligations

1. New Zealand has not ratified the following International Conventions: the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (CRMWF), the Convention against Enforced Disappearances (CED) and the Convention against Corruption (UNCAC). Nor has ILO Convention 87 (one of the 8 'fundamental' ILO conventions) been ratified – in fact, proposed amendments to labour legislation will weaken the right to collective bargaining even further.
2. Also, New Zealand has not ratified the Optional Protocols to the Convention on Economic, Social and Cultural Rights (OP-ICESCR), the Convention on the Rights of the Child (OP-CRC) and the Convention on the Rights of Persons with Disabilities (OP-CRPD).
3. Finally, the government has still not indicated its intention to make the optional declaration in Article 14 (individual complaint procedure) of the Convention on the Elimination of all Forms of Racial Discrimination (ICERD), despite the recommendation to do so by the Committee on the Elimination of all Forms of Racial Discrimination in August 2007.
4. **Recommendations:**
 - **Ratify the CRMWF, CED, CAC and ILO Convention 87.**
 - **Ratify the OP-ICESCR, OP-CRC, OP-CRPD**
 - **Make the optional declaration in Article 14 ICERD**

II.Constitutional and legislative framework

Economic, social and cultural rights and civil and political rights omitted from the NZBORA

5. Despite recommendations from the CESCR¹ and the first UPR,² New Zealand has not yet formally incorporated all economic, social and cultural rights into the domestic framework. It argues is that these rights are already protected by individual statutes. There are major advantages in a statement of commitment to ESC rights as on a par with civil and political rights and equally justiciable. And if these rights, as it is argued, are so well protected there can surely be no objection to their being incorporated directly into the NZ human rights framework.
6. The New Zealand Bill of Rights Act 1990 (NZBORA)³ includes most, but not all, those civil and political rights in the ICCPR. NZBORA should be amended to include esc rights, a right to privacy, a right to a remedy⁴ and a right to a sustainable and healthy environment⁵.

Constitutional supremacy of human rights legislation

7. The NZBORA can be subordinated to an ordinary statute.⁶ Parliament has at times exercised its supremacy to override NZBORA, contrary to its international obligations. For example, the New Zealand Public Health and Disability Amendment Bill (No 2) was passed under urgency,⁷ and contained a clause preventing review of the subject matter of the law by the Human Rights Review Tribunal, or by the Courts, for incompatibility with the NZBORA. Similarly, the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 enacted a blanket disenfranchisement of all prisoners,⁸ despite the Attorney General advising under section 7 that this was inconsistent with NZBORA.⁹ The NZBORA should be granted supreme status to over-ride rights-infringing legislation. Similarly the Human Rights Act 1993 (HRA) should be amended so that it over-rides a contrary statute.
8. The NZBORA should also be procedurally entrenched, for example by requiring a 2/3 majority in Parliament for amendment.
9. **Recommendations:**
 - **Incorporate all rights enshrined in international human rights instruments to which New Zealand is a party into domestic law to ensure these rights are enforceable in New Zealand courts**
 - **Establish the NZBORA as over-riding ordinary statutes**

¹ Committee on ECSCR, "Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant Concluding observations of the Committee on Economic, Social and Cultural Rights- New Zealand " dated 18 May 2012 on: <http://www.converge.org.nz/pma/E-C.12-NZL-CO-3.pdf>

² See UN General Assembly "Report of the Working Group on the Universal Periodic Review-New Zealand", dated 4 June 2009 on: http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/NZ/A_HRC_12_8%20New%20Zealand_e.pdf

³ New Zealand Bill of Rights Act 1990.

⁴ See the NZ Court of Appeal in *Baigent's* case – below note 10

⁵ See paragraphs 87-89 of this report

⁶ Even though, under s 6 of the NZBORA, it is preferred that other legislation be given a meaning consistent with the rights enshrined in the Act, s.4 allows an explicit over-riding by a contrary statute, regardless of its curtailment of fundamental rights.

⁷ The New Zealand Public Health and Disability Amendment Bill (No 2) 2013 (118-1).

⁸ Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010.

⁹ Christopher Finlayson *Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Electoral (Disqualification of Convicted Prisoners) Amendment Bill* (J4, published by Order of the House of Representatives, 2010).

- **Procedurally entrench the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993**

Right to a remedy

10. During New Zealand's UPR in 2009, the National Report stated, in relation to the right to a remedy for human rights violations, that "individuals who consider that any of their rights under the NZBORA have been infringed can bring an action against the Government. A number of remedies are available, including the ability to award damages or compensation and to exclude evidence obtained in breach of a right guaranteed by the BORA". At this time, the Government's Attorney General was arguing in the courts that this right to a remedy¹⁰ did not apply to breach of the NZBORA by the judiciary, a claim that was eventually upheld by the Supreme Court.¹¹

11. Recommendation

- **That the NZBORA be amended to provide an explicit right to a remedy for breach of the NZBORA, including by the judiciary.**

The Status of the Treaty of Waitangi 1840

12. There is considerable discussion about the place of the Treaty of Waitangi/Te Tiriti o Waitangi in New Zealand's constitutional framework, including in the current Constitutional Conversation. The Special Rapporteur has recommended that the Treaty of Waitangi be given a higher status in domestic law.¹²

13. Recommendation:

- **Appropriate constitutional or legislative recognition be given to the Treaty of Waitangi/Te Tiriti o Waitangi**

III. Institutional and human rights infrastructure and policy measures

Appointment of Human Rights Commissioners

14. Human Rights Commissioners are currently appointed by the Governor-General on the recommendation of the Minister of Justice. Recent appointments have been controversial, undermining both the ability of these Commissioners to fulfill their responsibilities and the credibility of the Commission itself. The appointment process for National Human Rights Institutions (NHRIs) like the Human Rights Commission should aim to appoint independent-minded Commissioners as the relevant international standards (the Paris Principles) make clear.¹³ There are some commendable features of the current process, including wide notification of vacancies and interviews by a panel of senior public servants who make a recommendation to the Minister for appointment – although the practice of having a representative of civil society on the three-person panel should be reinstated.

15. Appointments to the majority of NHRIs around the world and in the Asia Pacific region in particular involve not just the Executive but also Parliament, via a range of mechanisms. In the Maldives, for example, a Parliamentary Committee scrutinises proposals by the President and recommends appointments. In India and Bangladesh, an Appointments' Committee includes the Speaker and the Opposition. In Fiji, the President is required by law to consult with the Leader of the Opposition before making an appointment. All these processes contribute to more transparency and a broader scrutiny of the skills, qualifications and experience of the candidates. One option would be to involve the Human Rights Select Committee recommended below in the appointment.

16. Recommendation:

- **Establish a Human Rights Commissioner appointment process that provides for the involvement of Parliament, possibly as one responsibility of a Parliamentary Select Committee on Human Rights**

Establishment of a Parliamentary Human Rights Select Committee and other legislation and policy oversight mechanisms

17. Although New Zealand has a longstanding commitment to the development of international human rights standards, those international standards are generally not given consideration in public policy and legislative decision making.

18. New Zealand has no overarching cross government strategy to ensure that human rights are known, understood and taken into consideration by all policy makers.

19. Also, the New Zealand Cabinet Manual expressly requires Ministers to advise the Cabinet of any international human rights obligations affected by proposed legislation.¹⁴ However, this requirement is constantly overlooked.

20. Recommendations:

- **Establish a Parliamentary Select Committee for Human Rights**

¹⁰ The right to monetary compensation was established in *Simpson v Attorney General* [1994] 3 NZLR 667 (Baigent's Case).

¹¹ *Attorney General v Chapman* [2011] NZSC 110

¹² Special Rapporteur on the Rights of Indigenous Peoples, James Anaya *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. The situation of Māori People in New Zealand A/HRC/18/XX/Add.Y* (17 February 2011).

¹³ Paris Principles see United Nations General Assembly Resolution A/RES/48/134

¹⁴ Section 7.60 of the *Cabinet Manual*, Cabinet Office, 2008.

- In cooperation with civil society, establish mechanisms, including a Government National Human Rights Action Plan, to independently monitor, against robust human rights indicators, the government's implementation of ratified human rights treaties and UPR recommendations
- Develop, in consultation with civil society, agreed human rights indicators and an effective monitoring system
- Develop and implement a human rights education strategy as envisaged by the World Programme for Human Rights Education (2005), and as recommended in 2003 and 2011 by the Committee on the Rights of the Child, to ensure that young people and those responsible for supporting them, know their human rights, and that development of policy and legislation is informed by a human rights approach and decision making is consistent with New Zealand's human rights obligations

C. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Administration of justice, including impunity, and the rule of law

Age of criminal responsibility

21. New Zealand did not accept the recommendation from the first UPR that the age of criminal responsibility in New Zealand meet relevant international standards. This, despite the UN Committee on the Rights of the Child repeatedly recommending that New Zealand raise the minimum age of criminal responsibility to at least 12 years of age (the current age is 10 years), in line with the Committee's General Comments on the Convention.¹⁵
22. In its most recent Comments and Recommendations, the CRC Committee expressed disappointment with the 2010 amendments to section 272 of the Children, Young Persons, and Their Families Act¹⁶. The Committee also noted that whilst the youth justice system in New Zealand claims to implement a restorative justice approach, in practice the approach is a punitive one.¹⁷
23. **Recommendations:**
 - **Rise the minimum age of criminal responsibility to at least 12 years of age to meet international standards.**
 - **Amend relevant legislation to adopt an emphasis on restorative justice, rather than punitive measures, for youth offenders.**

Detention facilities for juvenile offenders

24. The New Zealand government conditionally accepted a recommendation during the first UPR to provide separate juvenile facilities for youth offenders, but has yet to establish these. Further, the adult detention age in New Zealand is set at 17 years of age which contravenes the UNCROC definition - 18 years.
25. **Recommendations:**
 - **Ensure separate detention facilities for all juvenile offenders;**
 - **Extend juvenile protection to young people 17 years of age, in accordance with UNCROC's definition of a child; and**
 - **Provide official information on the numbers, characteristics and experiences of children and young people across the range of places in which they may be detained**

Privatisation of prisons and treatment of prisoners in private prisons

26. Legislative authority for the private management of prisons was introduced through the Corrections (Contract Management of Prisons) Amendment Act 2009.¹⁸ New Zealand currently has one privately operated prison, Mt Eden Corrections Facility, run by the SecureFuture consortium (which includes the Serco Group).
27. Prisons whose management is contracted out to the private sector cannot be scrutinised through standard oversight mechanisms: parliamentary processes such as Select Committees, written and oral questions, and the Office of the Auditor-General or, to the same extent, by the courts.
28. The Human Rights Committee has expressed its concerns about whether prison privatisation "effectively meets the obligations of the State party under the Covenant and its own accountability for any violations".¹⁹
29. **Recommendations:**
 - **Put in place effective day-to-day reporting and accountability mechanisms for violations of human rights in privately-managed prisons;**

¹⁵ Human Rights Commission *Rights of Children and Young People: Human Rights in New Zealand 2010* (9 December 2010) at 247; *Committee on the Rights of the Child CRC/C/SR.1588 and 1589 LVI* (2011).

¹⁶ *Committee on the Rights of the Child CRC/C/SR.1588 and 1589 LVI* (2011).

¹⁷ *Idem*

¹⁸ Elizabeth Stanley *Human Rights and Prisons: A Review to the Human Rights Commission* (July 2011) at 20

¹⁹ Human Rights Committee *Concluding Observations of the Human Rights Committee: New Zealand* (United Nations Human Rights Committee, CCPR/CO/75/NZL, 7 August 2002) at [13].

- **Amend the Corrections Act 2004 to include a specific requirement that staff at contract prisons undergo training on human rights obligations; and**
- **Ensure that the NPMs make regular and formal inspections of contract prisons.**

Police powers

30. New Zealand is one of the few remaining countries where there is no general arming of the police. Following the controversial introduction of the Taser stun gun, the Police established a Community Tactical Options Reference Group to liaise over the complex issues relating to the use of force by the Police. The HRF firmly supports this initiative, which is now exploring how to deal with situations when police engage with someone who is distressed because of an active mental illness – a group greatly over-represented in Taser and firearm use statistics.

31. Recommendation

- **Encourage the Police to strengthen the mandate of the Police Community Tactical Options Reference Group and embed the consultations with this group in policy development in relation to the use of force Freedom of religion or belief, expression, association and peaceful assembly, and the right to participate in public and political life**

Protest at Sea

32. The passage of the Crown Minerals (Permitting and Crown Land) Bill²⁰ under urgency earlier in 2013 seriously restricted the right of New Zealanders to protest at sea. This is in breach not only of NZBORA but also of New Zealand's obligations under the ICCPR to protect freedom of expression (Article 19), the right to peaceful assembly (Article 21) and freedom of association (Article 22)²¹.

33. Recommendation:

- **Repeal the Crown Minerals (Permitting and Crown Land) Act that restricts the right of New Zealanders to protest at sea**

Prisoners' right to vote

34. The government introduced legislation in 2010 to prohibit any prisoners from voting in elections regardless of the seriousness of their offending or the length of their imprisonment. This is in breach of New Zealand's obligations under the ICCPR and NZBORA and was passed despite the Attorney-General's finding of inconsistency with NZBORA.²²

35. The UN Human Rights Committee has stated that, where the deprivation of a citizen's right to vote is based on the conviction for an offence, the period of deprivation should be "proportionate to the offence and the sentence".²³ The European Court of Human Rights have also held that a blanket ban on prisoners' voting rights is unlawful and inconsistent with international human rights standards.

36. Furthermore, the provision is arbitrary in its application: during an election period, prisoners sentenced for minor offences or for a short period of time may lose their voting rights, whereas a prisoner sentenced between elections even for a more serious crime may not lose these rights.²⁴

37. Recommendations:

- **Amend the law to ensure that restrictions on prisoners' right to vote are reasonable and proportionate, consistent with New Zealand's international human rights obligations.**

Human Rights and Counter-Terrorism

Terrorism Suppression Act 2002

38. New Zealand has agreed that judicial oversight and procedural guarantees are essential in counter-terrorism legislation²⁵. However, sections 22 and 38 of the Terrorism Suppression Act 2002 (TSA) respectively authorise the Prime Minister to designate a group as "terrorist" or "associated terrorist" using classified information in making the designation.

39. This breaches sections 17 and 18 of NZBORA that enshrine the right to freedom of association and movement and uphold every person's right to the observance of the principles of natural justice, and protection against unreasonable search and seizure.²⁶

²⁰ Crown Minerals (Permitting and Crown Land) Bill 2012 (70-2).

²¹ ICCPR, arts 19, 21, and 22.

²² Christopher Finlayson, above note 6

²³ Office of the High Commissioner for Human Rights General Comment No. 25: The Right to Participate In Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25) (12 July 1996) CCPR/C/21/Rev.1/Add.7 at [14].

²⁴ Christopher Finlayson, above note 6.

²⁵ *Human Rights Council* Response of the Government of New Zealand to Recommendations in the Report of 11 May 2009 of the Working Group on the Universal Periodic Review (A/HRC/12/8), A/HRC/12/8/Add.1 (2009) at [46]-[47]

²⁶ NZBORA, above n 1, ss 17 and 18

40. **Recommendations:**

- **Clarify the definition of “terrorist” and repeal section 22 of the Terrorism Suppression Act to ensure that those designated as “terrorists” are able to have that designation reviewed fully by the Courts.**
- **Amend section 38 to enable “classified security information” to be disclosed to defendants or their representatives or to special counsel designated for the purpose.**

Rights of migrants, refugees and asylum seekers

Immigration (Mass Arrivals) Amendment Act

41. The Immigration (Mass Arrivals) Amendment Act 2013 made radical changes in the name of “enhancing New Zealand's ability to deter people-smuggling to New Zealand” and to “enable the effective and efficient management of a mass arrival of illegal migrants”.²⁷ The Act establishes a definition of ‘mass arrival group of 30 people’²⁸ and imposes upon this group mandatory detention, a restriction on judicial review and a limitation on family reunification rights, among other human rights breaches.²⁹

42. New Zealand has voluntarily limited its right to control its border in recognising the liberty of the person as a fundamental right guaranteed to everybody under s.22 of NZBORA and by Article 9(1) of the ICCPR³⁰ which provides that “everyone has the right to liberty and security of person” and that “no one shall be subjected to arbitrary arrest or detention”.

43. The Human Rights Committee has previously noted that in order for detention to be lawful under Article 9(1), it must pursue a legitimate objective that is determined to be necessary.³¹ In the light of New Zealand's obligations under the Universal Declaration of Human Rights (UDHR) and the Refugee Convention, both of which guarantee a person's right to seek asylum,³² seeking to deter asylum seekers amounts to pursuing an unlawful objective.

44. **Recommendation:**

- **Repeal, the Immigration (Mass Arrivals) Amendment Act 2013**

Funding Cuts to the Auckland Refugee Council

45. Funding cuts to the Auckland Refugee Council, which provides Auckland's only asylum-seeker accommodation, will result in an \$80,000 deficit and mean that it will have to shut its hostel for asylum seekers unless a new source of funding is made available.³³ Asylum seekers would then be left without any housing as they are not eligible for Housing NZ accommodation nor can they afford to pay market rentals.

46. **Recommendation:**

- **Provide adequate funding or identify a reliable source of funding for the Auckland Refugee Council.**

Education Access for Children of Asylum seekers

47. Under paragraph U10-special categories of the Immigration New Zealand Operation Manual, student visas can only be granted to children of refugee or protection status claimants and child victims of people trafficking. No visa can be granted to children of overstayers.

48. According to the Operational Manual issued by Immigration New Zealand, children of asylum seekers (and those seeking complementary protection) have access to free primary and secondary school education.³⁴ This ensures compliance with the ICESCR. However, unlike quota refugees, tertiary students who are asylum seekers (or protection applicants) do not have access to subsidised fees until they become residents. As a result, these asylum seekers are disadvantaged in their efforts to receive a higher level education, owing to these high tuition fees, while their cases are being determined (this can be a lengthy process). Moreover, even after the grant of the refugee status, tertiary education cannot be accessed until residence is granted. This process can take a year or more.

49. **Recommendation:**

- **Include children of over-stayers with a visa process on its way as a third category of children who could obtain a visa.**
- **Facilitate access to higher level education similarly for children of asylum seekers**

Access to Health for non-resident children

50. Although New Zealand reported to the Committee on the Rights of the Child that it will withdraw its reservation to UNCROC about being able to “*distinguish as it considers appropriate in its law and practice between persons according*

²⁷ At s. 1.

²⁸ Each of whom must fall within one or more of the following classes of persons (as listed in s 115(1)(a)-(f) of the Immigration Act). See Immigration Amendment Act 2013 s 5.

²⁹ S.12.

³⁰ New Zealand is a party to the ICCPR.

³¹ *A v Australia* at [9.4]-[9.5].

³² See Article 14 of the Universal Declaration of Human Rights and Article 31(2) of the Refugee Convention.

³³ Simon Collins “Govt cuts hit refugees, budget help” *The New Zealand Herald* (online ed., Auckland 29 April 2013).

³⁴ *Immigration New Zealand Operational Manual*, above n 16, at [U10.1.1]

to the nature of their authority to be in New Zealand including but not limited to their entitlement to benefits and other protections described in the Convention" this has not happened³⁵.

51. There are concerns that non-resident children are missing out on important health care even though some limited free coverage is available³⁶.
52. New Zealand has agreed to ICESCR, CEDAW, CERD and CRPD which all include the right to health without such a reservation. So the rights that non-resident children enjoy under these treaties are being routinely violated.
53. **Recommendation:**
 - **Withdraw the reservation to UNCROC and do not distinguish between persons according to the nature of their authority to be in New Zealand**

Off-shore detention Centres

54. In February 2013, New Zealand made an arrangement with Australia by which New Zealand will resettle 150 of Australia's refugees per year, in exchange for the ability to process any mass arrivals to New Zealand in Australia's offshore processing centres. The 150 refugees will form part of the New Zealand UNHCR quota of 750.
55. The arrangement fails to meet New Zealand's international obligations under the 1951 Refugee Convention as it denies asylum seekers the right to claim protection in New Zealand and excludes them from New Zealand's justice system.
56. **Recommendation:**
 - **Not proceed with the arrangement made with Australia to resettle 150 of Australia refugees per year in exchange for the ability to process any arrivals to process any mass arrival to New Zealand in Australia's offshore detention centres**

Operation 8 - excessive use of police power against the Maori community and political activists

57. The Independent Police Conduct Authority (IPCA) investigated multiple complaints about the Police "Operation 8" which began in late 2005 and ended on 15 October 2007 with the coordinated execution of 41 search warrants throughout the country. Road blocks were established at Ruatoki and Taneatua in the heart of the indigenous Maori community and there were arrests and detentions mostly of Maori. Subsequently, most charges arising from Operation 8 were dismissed by the Courts with only 4 defendants out of 17 being convicted of lesser charges.
58. The nature of complaints received by the IPCA ranged from the impact on the community of Armed Offender Squad officers at a road block to ill-treatment by Police during the execution of search warrants at properties. The Authority investigated Police actions at 11 properties, found that Police actions were unlawful, unjustified and unreasonable and made a number of recommendations to the Police.³⁷
59. These events also raised justified concern about Police abuse of powers in general in our society³⁸.
60. **Recommendations:**
 - **Ensure that the NZ Police accept and implement all the recommendations³⁹ of the Independent Police Conduct Authority report on "Operation Eight".**
 - **Compensate adequately all those subjected to illegal conduct on the part of the Police during "Operation Eight".**

Equality and non discrimination

Domestic violence

61. Domestic violence remains a major impediment to women's equality in New Zealand, the first country to give women the right to vote (1893). Policies to address the issue have been ineffectual and sometimes counter-productive. New Zealand is yet to formally recognise violence against women as a gross breach of women's and children's human rights and that women and children have a right to safety and to be free from gender-based violence, coercive control, and exposure to domestic and sexual violence.
62. An evidence-based approach is required. All government agencies need to be involved in a fully-funded and comprehensive strategy that is developed in collaboration with domestic and sexual violence service providers and users and recognises the gendered nature of domestic violence. It should also ensure that all those who work with abused women and children are required to complete a certificated national training programme.
63. **Recommendation**

³⁵ NZ's third and fourth report to UNCRC at <http://www.msd.govt.nz/documents/what-we-can-do/children-and-young-people/uncroc-in-nz-3rd-and-4th-periodic-report-full-doc.pdf> especially para 1.6

³⁶ http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.NZL.CO.3-4_en.pdf - see Para 8 and 9

³⁷ The IPCA Report Operation 8 is available at:

<http://www.ipca.govt.nz/Site/media/2013/2013-May-22-Operation-Eight.aspx>

³⁸ References to "Operation 8" in other Human Rights Reports: CERD 20th Report Concluding Observations para 113; ICCPR 5TH Report Concluding Observations para 18, Follow Up Add1 para 46/49, Follow Up Add 2 para 14/18 CAT list of Issues 2012 para 7

³⁹ at paragraph 395

- **Develop, in collaboration with domestic and sexual violence service providers and users, an evidence based Action Plan to end gender-based violence against women and children**

Right to privacy, marriage and family life

Search and Surveillance Act 2012

64. The Act represents a considerable improvement on much previous legislation. But a number of provisions contravene Article 17 of the ICCPR⁴⁰ and section 21 of the NZBORA⁴¹. For example, the section on examination orders could result in innocent parties being forced to give information to the Police.

65. Recommendations:

- **Review the Search and Surveillance Act 2012 to ensure it complies with Article 17 of the ICCPR and section 21 of the NZBORA**

Government Communications Security Bureau and Related Legislation Bill 2013

66. The Government Communications Security Bureau (GCSB) is one of NZ's two major intelligence agencies. The GCSB Act 2003 makes it clear that the agency has a very specific objective – the monitoring of 'foreign communications' and 'foreign organisations and persons', in the interests of NZ's national security. Section 14 of that Act states that the GCSB is not to intercept the communications of a NZ citizen or permanent resident unless they are considered to be an agent or representative of a 'foreign person'.

67. Under the 2013 Bill, the agency is to be given the authority to access the 'information infrastructures (eg IT systems) and intercept the private communications of both NZ citizens and permanent residents in potentially a wide range of circumstances. The prohibition referred to above will apply only to the GCSB's 'foreign intelligence' function. This is of real concern to many civil society members who fear that the Bill will breach New Zealanders' right to privacy and their right not to be free from unwanted surveillance⁴².

68. Recommendations:

- **Implement a comprehensive, high-level, independent inquiry into the role, functions, powers, internal compliance procedures and effectiveness of external oversight mechanisms of all NZ intelligence agencies, in particular the GCSB and NZSIS**
- **Ensure that the GCSB is not authorised to spy on New Zealand citizens and permanent residents**

Right to social security and to an adequate standard of living

Child poverty

69. In New Zealand, 270,000 children and young people are affected by poverty. The human rights to health, education, social security and to a safe and secure upbringing for those children are seriously compromised. Despite the 2009 UPR recommendation⁽²⁶⁾ that New Zealand should "take targeted action to eliminate the socio-economic disparities that persist among its population"⁴³, child poverty in New Zealand has not been addressed adequately.

70. Through the In Work Tax Credit, 230,000 of the poorest children are discriminated against on the basis of their parents' work status. This In Work Tax Credit is the subject of a CPAG challenge in the Court of Appeal.

71. Recommendations:

- **Affirm the principle of equality of treatment of all low income children in the tax benefit system and extend the In Work Tax Credit to all low income families**
- **Immediately implement certain recommendations of the Experts Advisory Group's report on Solutions to Child Poverty⁴⁴.**
- **In particular, enact child poverty legislation to ensure the proper and regular measurement of child poverty, the periodic setting of government targets to reduce child poverty, the setting of child poverty-related indicators and targets for selected indicators and the annual reporting to Parliament of progress towards the achievement of the designated targets.**

⁴⁰ Right to be secure against unreasonable search and seizure

⁴¹ *Idem*

⁴² The individual's right to privacy is a fundamental human right recognised in the United Nations International Covenant on Civil and Political Rights 1966 (Article 17); which the NZ Government ratified in 1978. The High Court has recently held that the tort of intrusion upon seclusion is a part of NZ law (*C v Holland* [2012] NZHC 2155).

⁴³ General Assembly, Human Rights Council: *Report of the Working Group on the Universal Periodic Review New Zealand* dated 4 June 2009 at paragraph 61 on

http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/NZ/A_HRC_12_8%20New%20Zealand_e.pdf

⁴⁴ Office of the Children's Commissioner, Final Report: *Solutions to Child Poverty* on http://www.occ.org.nz/publications/child_poverty

72. New Zealand has been facing long standing problems in relation to the right to habitable and affordable housing.⁴⁵ The Canterbury earthquake recovery has recently highlighted those problems: now a significant proportion of people are struggling with unaffordable rent and house prices, un-repaired, damp and cold homes and over-crowded living conditions. In addition, eligibility for social housing has been restricted to those in greatest need which denies many vulnerable people their right to adequate housing, particularly people on low and fixed incomes.
73. New Zealand is also facing an affordable housing crisis on a number of fronts caused only partly by the Global Financial Crisis but in Christchurch exacerbated by the earthquake. In Auckland, house prices relative to household incomes are now back to the pre-GFC records where it takes almost ten years of the average wage/salary to pay for a median priced house⁴⁶.
74. Rural Maori housing remains in a poor state although there are no reliable figures on the extent of makeshift, poorly maintained and overcrowded housing in rural areas where many Maori reside. The Government's current flagship rural Maori housing programme the Kainga Whenua Loans programme has only been picked up by three households despite having run since 2010⁴⁷.
75. In 2010 the Government undertook a review of social housing provision. This review recommended changes to the way in which the State's public housing provider Housing New Zealand operated⁴⁸. In response, the Government required Housing New Zealand to adopt a more commercial focus and introduced limited and reviewable tenancies for state housing tenants⁴⁹. The consequences of these changes have included the culling of social housing waiting lists, declines in the numbers of households moving into social housing, a sell off of state owned social housing⁵⁰ and increasing vacancy rates in this stock⁵¹.
76. **Recommendations:**
- **Adopt an official definition of homelessness and guarantee NZ citizens and permanent residents a right of access to decent affordable housing**
 - **Develop a national housing plan which ensures that the national housing infrastructure is always adequate to meet the housing needs of all New Zealanders, including the most vulnerable groups.**
 - **Adopt a human rights approach to the Canterbury earthquake recovery ensuring appropriate consideration of availability, affordability and adequacy of housing including for temporary housing.**

Right to work and to just and favourable conditions of work

Paid Parental Leave

77. New Zealand provides 14 weeks paid parental leave to eligible parents up to a maximum payment of NZD 488.17 per week. Although available to either parent, in practice mostly mothers take up this leave. Research by the Families Commission⁵², a government-funded agency, demonstrates that New Zealand is in the least generous category (those with less than four months of earnings-related leave) of three possible categories of paid parental leave.
78. An opposition MP introduced a private members bill seeking to extend paid parental leave to 26 weeks⁵³. Submissions on this bill were heard in early 2013 but the National Party-led government has indicated it will not support the bill.
79. **Recommendation:**
- **Increase paid parental leave to eligible parents in accordance with the Paid Parental Leave Bill 2012**

Employment Law

80. The Employment Relations (Film Production Work) Amendment Act 2010 effectively changed the status of all film workers to independent contractors. This law, passed under urgency without public submissions, denies film workers the rights to collective bargaining and freedom of association recognised by the ILO Committee on Freedom of Association, Human Rights Committee and Committee on Economic, Social and Cultural Rights.
81. **Recommendation:**
- **Repeal the Employment Relations (Film Production Work) Act 2010**

⁴⁵See for example New Zealand Productivity Commission, *Housing affordability inquiry* (2012). http://www.productivity.govt.nz/sites/default/files/Final%20Housing%20Affordability%20Report_0_0.pdf.

⁴⁶ In March 2013 the average weekly wage/salary was \$1,058 (Statistics NZ Quarterly Employment Survey) while the median sale price for an Auckland dwelling for the March 2013 was \$540,000 (Real Estate Institute of NZ)

⁴⁷ See www.dbh.govt.nz/maori-housing-auditor-general-report

⁴⁸ See <http://www.dbh.govt.nz/UserFiles/File/....pdf/vision-for-social-housing-nz.pdf>

⁴⁹ See <http://www.mbie.govt.nz/what-we-do/housing/social-housing-reform>

⁵⁰ See Housing New Zealand's Annual reports at <http://www.hnzc.co.nz/about-us/our-publications/annual-report/2011-12-annual-report/>

⁵¹ For example see New Zealand Herald report of 30th August 2012 'Nuns: State leaves homes empty as hundreds wait'

⁵² "Paid Parental Leave – Issues for Today's Economic Times" (Issues Paper 04)

⁵³ The Parental Leave and Employment Protection (Six Months' Paid Leave) Amendment Bill.

Rights of Persons with disabilities

New Zealand Public Health and Disability Amendment Act (No 2)

82. The New Zealand Public Health and Disability Amendment Act No 2 (*“the Act”*) was passed under urgency in May 2013, without the opportunity for select committee discussion or submissions from the public.
83. The Act reaffirms that people will not generally be paid to provide health services or disability support services to their family members, and that family carers can only be paid around the minimum wage, which is lower than that non-family members are paid for the same work. Some family members will continue not to be paid, including spouses, and family members of children under 18. In addition to this financial discrimination, the Act does not acknowledge that many of the disabled people likely to be eligible to employ family members are also likely to have significant impairments that might prevent them from being able to communicate independently. It raises specific concerns relating to the ability of disabled people to report and be effectively protected from abuse.
84. The Act also contains an “ouster clause” indicating that when the legislation took effect “no complaint based in whole or in part on a specified allegation (that the policy unlawfully discriminates) may be made to the Human Rights Commission, and no proceedings based in whole or in part on a specified allegation (that the policy unlawfully discriminates) may be commenced or continued in any tribunal.” Such ouster clauses interfere with the courts’ constitutional role as interpreter of the law.
85. **Recommendations:**
- **Repeal the Public Health and Disability Amendment Act (No 2)**
 - **Engage in constructive dialogue with the disability community to find a solution to the issue of paying family carers which does not perpetuate discrimination in breach of NZBORA or risk putting disabled people into situations where they might be unable to escape from abusive carers.**
 - **Refrain from passing unconstitutional “ouster clauses” that interfere with the legal mandate of the courts.**

Right to development and environmental issues

Right to a healthy environment

86. The right to a healthy environment can be seen as a precondition upon which all other rights rest. A life of dignity cannot be enjoyed without the ecosystem services provided by the natural environment that we currently enjoy. This fundamental basis for life needs to be recognised by governments worldwide. The work undertaken by the UN in this regard is to be commended.
87. Of the 193 United Nations member states, 153 are legally obliged to uphold the right to a healthy environment, whether through their constitution, constitutional case law, domestic legislation, regional treaties and/or regional court decisions. If the other 25 UN member states which have signed the non-binding Male Declaration are included, there are 178 states or 92% of United Nations members who recognise the right to a healthy environment. (See David Boyd, *The Environmental Rights Revolution*, 2012, at page 92.) Unfortunately, New Zealand is in the minority of 15 states which does not in any way recognise a human right to a healthy environment.
88. **Recommendation:**
- **Legally recognise the right to a healthy environment, for example in the NZBORA**

Climate change

89. In 2012 New Zealand withdrew from the Second Commitment Period of the Kyoto Protocol, its only binding commitment commitments for the reduction of climate gas emissions. The current government has also effectively suspended aspects of its domestic emissions trading scheme yet NZ has no other programme for emissions reduction. NZ’s emissions of climate gases are at its highest levels and emissions are still increasing. Further, the current government still subsidises the oil industry in NZ and plans to increase fossil fuel extraction, thus contributing to increased future global emissions;
90. The human rights of future generations and some of those alive today depend on New Zealand doing its fair share.
91. **Recommendations:**
- **Adopt a rights-based approach to climate change policy at home and abroad, including by reducing greenhouse gas emissions to safe levels that are consistent with the full enjoyment of human rights and setting a binding emissions reduction target**
 - **Return New Zealand’s emissions trading scheme to its previous “cap and trade” model**
 - **Re-enter the Second Commitment Period of the Kyoto Protocol**
 - **Eliminate fossil fuel subsidies within New Zealand**
 - **Explore sustainable alternatives to oil and dirty fuel extraction**

Right to Water

92. In recent years the right to water has been increasingly recognised in international fora and instruments, for example by the CESCR in General Comment 15 (2003). In 2010 the United Nations General Assembly adopted an important statement on the human right to water and sanitation but New Zealand abstained from the statement.
93. The quality and quantity of New Zealand's freshwater has declined over the reporting period while its population has increased. The government's lack of action to address the violation of the rights to health and/or to life of current and future populations, and the rights in relation to the loss of biodiversity put its citizens in potential future jeopardy.
94. **Recommendations:**
- **Adopt the UN General Assembly statement on the human right to water**
 - **Legally recognise the right to water as a human right and take action to protect it**

ANNEX 1: LIST OF ORGANISATIONS

Action for Children and Youth Aotearoa

ACYA is a coalition of non-governmental organisations, families and individuals promoting the rights and wellbeing of our children and youth through education and advocacy based on evidence and Aotearoa New Zealand's human rights commitments. ACYA was founded in 1996. ACYA's principal work is the production and publication of Aotearoa New Zealand's Alternative NGO (non-governmental organization) Report to the UNCROC Committee on Aotearoa's implementation of UNCROC.

Auckland Disability Law

Auckland Disability Law is a free community legal service in the Auckland region. It aims to help disabled people access legal services, and to increase awareness of disability law. It works with Community Law services, other legal professionals, and community organisations to get the best outcome for disabled people. It is funded by the Ministry of Justice and is a member of the Coalition of Community Law Centres and CLCA.

Change Makers Refugee Forum

ChangeMakers is a rights-based, research, advocacy, and community development organisation that was set up and is governed by people from refugee backgrounds. The organisation represents over 14 refugee-background communities in Wellington. ChangeMakers is a non government organisation and a registered charity.

Child Poverty Action Group (CPAG)

Child Poverty Action Group (CPAG) is an independent charity working to eliminate child poverty in New Zealand through research, education and advocacy. In a country like New Zealand, with ample resources, child poverty could be eliminated completely. It's all about Choice. Everyone agrees children need the right conditions to grow into healthy adults. Children thrive when they have the basics: nutritious food; a warm, safe home; medical attention if they are sick and a good education. Sadly, too many children in New Zealand don't have the basics. CPAG speaks out on behalf of the 270,000 children in New Zealand whose meagre standard of living compromises their health, education and well-being. CPAG works to protect children from needless poverty, because a child's potential is a terrible thing to waste.

Environment and Conservation Organisations of NZ Inc (ECO)

ECO is an umbrella for New Zealand organisations with a shared concern for the environment and conservation. ECO membership includes New Zealand branches of large international groups such as Greenpeace and Friends of the Earth, national groups including National Council of Women, as well as small local groups such as Kapiti Environmental Action and Save the Otago Peninsula, and issue oriented groups like the Yellow-eyed Penguin Trust.

For over forty years ECO has campaigned at domestic and international levels to protect habitats and species, including native forests, lakes and rivers and marine areas and other ecosystems. We have also championed sustainable energy policies and are active in opposition to climate damaging policies.

Equal Justice Project

The Equal Justice Project (EJP) is a youth-led pro bono initiative empowering communities to seek equal access to justice through education, service, and advocacy. It is entirely run and led by students from the University of Auckland, Faculty of Law. EJP compiles regular submissions to national and international committees, as well as completes research for appellate court cases and conducts independent case studies. Our volunteers are generally final and penultimate year law students who have demonstrated a capacity for high quality legal research and a dedication to protecting human rights. EJP's goals are to promote equality, inclusivity, and respect for human dignity.

Human Rights Foundation (HRF)

The HRF is a non-governmental organisation, established in December 2001, to promote and defend human rights through research-based education and advocacy. We have made submissions on new laws with human rights implications. We also monitor compliance and implementation of New Zealand's international obligations in accordance with the requirements of the international conventions New Zealand has signed, and have prepared parallel reports for relevant United Nations treaty bodies to be considered alongside official reports. Though the primary focus of the Foundation is on human rights in New Zealand, we recognise the universality of human rights and have an interest in human rights in the Pacific and beyond.

It's Our Future NZ

It's Our Future is a network to promote critical education, information exchange and activism on the potential impact of the Trans-Pacific Partnership agreement on a wide range of human rights, including public health and access to medicines, public services, culture, environment, the Treaty of Waitangi, workers rights and employment and democratic participation in decision making. It works with similar networks and organisations from the other eleven countries participating in the TPPA negotiations.

New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU)

The New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU) is a member of the International Trade Union Confederation. The CTU represent 350,000 members in 37 affiliated unions and one of the largest democratic organisations in New Zealand. The objective of the CTU is to unite democratic trade unions to enable them to work together to ensure all workers enjoy employment rights and equal opportunity in workplaces, in trade unions, and in society at large. The CTU works to ensure the upholding of employment rights which are recognised in international declarations.

The New Zealand Centre for Human Rights Law, Policy and Practice

The New Zealand Centre for Human Rights Law, Policy and Practice was established as of 1 January 2012 by the Dean of the Faculty of Law at the University of Auckland. It is a Centre of the Department of Law, with initial funding from the Faculty of Law and the University of Auckland. However, as the name indicates, we aim to be a resource for the country as a whole (and indeed the wider Asia Pacific region) and also to be multi-disciplinary: the legal framework for human rights law is only one aspect, and developing effective policies and encouraging human-rights compliant practices is also of central importance. The establishment of the Centre is intended to provide a focal point for research, education, community-service, and a range of human rights activities in New Zealand and the wider Asia Pacific region. The Centre is composed of academic members from various universities in New Zealand (both in law faculties and in other disciplines) and others involved in human rights research and activities.

Peace Movement Aotearoa (PMA)

PMA is the national networking peace organisation in Aotearoa New Zealand, an NGO registered as an Incorporated Society in 1982. As the realisation of human rights is integral to the creation and maintenance of peaceful societies, promoting respect for them is a key aspect of our work. We have provided NGO reports to: the Special Rapporteur on Indigenous Peoples' Rights in 2005; the Committee on the Elimination of Racial Discrimination in 2007 and 2013; jointly with the Aotearoa Indigenous Rights Trust and others, to the Human Rights Council for New Zealand's Universal Periodic Review in 2008 and 2009; the Human Rights Committee in 2009 and 2010; the Committee on the Rights of the Child in 2010 and 2011; and the Committee on Economic, Social and Cultural Rights in 2011 and 2012.

The Public Health Association of New Zealand (PHANZ)

The Public Health Association of New Zealand is an umbrella voluntary organisation for the wide range of professional disciplines working in the field of public health to promote informed public debate on health and health services and to support informed and coordinated action on public health issues.

Quake Outcasts

In the aftermath of a series of earthquakes in Canterbury, New Zealand, Quake Outcasts was created first as a support group for aggrieved residents harmed by government's quake policy. Later it gradually evolved into a more advocacy organisation aimed to protect the rights of residents. Quake Outcasts is a non-partisan organisation composed of only affected residents.

Refugee Trauma Recovery

Refugee Trauma Recovery is a registered Charitable Trust established 1997. Vision: Refugees who have experienced torture and trauma and their families, settle successfully in Aotearoa New Zealand. Staff: multi discipline psychotherapists, clinical psychologist, counsellor, psychiatrist and cross cultural advocates. Core service: therapeutic for adults, children and youth and advocacy. Other services: Group programmes for children, youth, families as whole communities (including Massage, Capoeira, Creative Writing, Home safety, Art project, parenting); Capacity building provision of culturally and linguistically diverse training for health and social service professional throughout the lower North Island.

University of Canterbury UPR Submission Group

This Group, comprising one academic and six students from the School of Law, was formed in December 2012 in order to coordinate a stakeholder submission for New Zealand's UPR focussing specifically on the human rights impacts of the earthquakes in Canterbury. It has worked with over 20 organisations in the greater Christchurch area to coordinate a joint submission focusing on the major human rights impacts of the 2010-2011 earthquakes.

Women's International League for Peace and Freedom (WILPF) Aotearoa

WILPF Aotearoa is the national Section of WILPF, an international non-governmental organisation with Sections in 40 countries, covering all continents. WILPF Aotearoa has two members on the International WILPF Board. WILPF has Consultative Status with ECOSOC, UNESCO and UNCTAD; and special relations with the ILO, FAO, UNICEF, and other UN organisations and agencies. Since its establishment in 1915, WILPF has brought together women from around the world who are united in working for peace by non-violent means, promoting political, economic and social justice for all.