

# 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 CESCR<sup>1</sup> and the first UPR,<sup>2</sup> 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)<sup>3</sup> 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 remedy<sup>4</sup> and a right to a sustainable and healthy environment<sup>5</sup>.

#### *Constitutional supremacy of human rights legislation*

7. The NZBORA can be subordinated to an ordinary statute.<sup>6</sup> 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,<sup>7</sup> 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,<sup>8</sup> despite the Attorney General advising under section 7 that this was inconsistent with NZBORA.<sup>9</sup> 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**

<sup>1</sup> 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>

<sup>2</sup> 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](http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/NZ/A_HRC_12_8%20New%20Zealand_e.pdf)

<sup>3</sup> New Zealand Bill of Rights Act 1990.

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

<sup>5</sup> See paragraphs 87-89 of this report

<sup>6</sup> 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.

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

<sup>8</sup> Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010.

<sup>9</sup> 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 remedy<sup>10</sup> did not apply to breach of the NZBORA by the judiciary, a claim that was eventually upheld by the Supreme Court.<sup>11</sup>
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.<sup>12</sup>
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.<sup>13</sup> 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.<sup>14</sup> However, this requirement is constantly overlooked.
20. **Recommendations:**
  - **Establish a Parliamentary Select Committee for Human Rights**

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

<sup>11</sup> *Attorney General v Chapman* [2011] NZSC 110

<sup>12</sup> 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).

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

<sup>14</sup> 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.<sup>15</sup>
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 Act<sup>16</sup>. 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.<sup>17</sup>
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.<sup>18</sup> 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".<sup>19</sup>
29. **Recommendations:**
  - **Put in place effective day-to-day reporting and accountability mechanisms for violations of human rights in privately-managed prisons;**

<sup>15</sup> 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).

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

<sup>17</sup> *Idem*

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

<sup>19</sup> 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) Bill<sup>20</sup> 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)<sup>21</sup>.

#### 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.<sup>22</sup>

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".<sup>23</sup> 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.<sup>24</sup>

#### 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 legislation<sup>25</sup>. 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.<sup>26</sup>

<sup>20</sup> Crown Minerals (Permitting and Crown Land) Bill 2012 (70-2).

<sup>21</sup> ICCPR, arts 19, 21, and 22.

<sup>22</sup> Christopher Finlayson, above note 6

<sup>23</sup> 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].

<sup>24</sup> Christopher Finlayson, above note 6.

<sup>25</sup> *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]

<sup>26</sup> 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”.<sup>27</sup> The Act establishes a definition of ‘mass arrival group of 30 people’<sup>28</sup> and imposes upon this group mandatory detention, a restriction on judicial review and a limitation on family reunification rights, among other human rights breaches.<sup>29</sup>
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 ICCPR<sup>30</sup> 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.<sup>31</sup> 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,<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup> 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

<sup>27</sup> At s. 1.

<sup>28</sup> 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.

<sup>29</sup> S.12.

<sup>30</sup> New Zealand is a party to the ICCPR.

<sup>31</sup> *A v Australia* at [9.4]-[9.5].

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

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

<sup>34</sup> *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 happened<sup>35</sup>.

51. There are concerns that non-resident children are missing out on important health care even though some limited free coverage is available<sup>36</sup>.
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.<sup>37</sup>
59. These events also raised justified concern about Police abuse of powers in general in our society<sup>38</sup>.
60. **Recommendations:**
  - **Ensure that the NZ Police accept and implement all the recommendations<sup>39</sup> 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**

<sup>35</sup> 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

<sup>36</sup> [http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.NZL.CO.3-4\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.NZL.CO.3-4_en.pdf) - see Para 8 and 9

<sup>37</sup> The IPCA Report Operation 8 is available at:

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

<sup>38</sup> References to "Operation 8" in other Human Rights Reports: CERD 20<sup>th</sup> Report Concluding Observations para 113; ICCPR 5<sup>TH</sup> 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

<sup>39</sup> 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 ICCPR<sup>40</sup> and section 21 of the NZBORA<sup>41</sup>. 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 surveillance<sup>42</sup>.

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"<sup>43</sup>, 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 Poverty<sup>44</sup>.**
- **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.**

<sup>40</sup> Right to be secure against unreasonable search and seizure

<sup>41</sup> *Idem*

<sup>42</sup> 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).

<sup>43</sup> 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](http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/NZ/A_HRC_12_8%20New%20Zealand_e.pdf)

<sup>44</sup> Office of the Children's Commissioner, Final Report: *Solutions to Child Poverty* on [http://www.occ.org.nz/publications/child\\_poverty](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.<sup>45</sup> 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 house<sup>46</sup>.
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 2010<sup>47</sup>.
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 operated<sup>48</sup>. In response, the Government required Housing New Zealand to adopt a more commercial focus and introduced limited and reviewable tenancies for state housing tenants<sup>49</sup>. 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 housing<sup>50</sup> and increasing vacancy rates in this stock<sup>51</sup>.
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 Commission<sup>52</sup>, 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 weeks<sup>53</sup>. 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**

<sup>45</sup>See 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](http://www.productivity.govt.nz/sites/default/files/Final%20Housing%20Affordability%20Report_0_0.pdf).

<sup>46</sup> 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)

<sup>47</sup> See [www.dbh.govt.nz/maori-housing-auditor-general-report](http://www.dbh.govt.nz/maori-housing-auditor-general-report)

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

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

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

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

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

<sup>53</sup> 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**

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**