

Joint UPR Submission from Quake Outcasts New Zealand Human Rights Council, and WeCan, June 2013

To the Human Rights Council for consideration at 18th Session (Jan/Feb 2014)

Jointed Submitted by:

Quake Outcasts New Zealand

In the aftermath of a series of earthquakes in Canterbury, New Zealand, Quake Outcasts was created in September 2011 first as a support group for aggrieved residents harmed by government's quake policy. Later it gradually evolved into a advocacy organisation aimed to protect the rights of residents affected by government policies. Quake Outcasts is a non-partisan organisation composed of only affected residents. (www.SaveMyHomeNZ.org)

Human Rights Council Inc. New Zealand

Established in 2001 the Human Rights Council is an incorporated society in New Zealand promoting civil, political, economic, social and cultural rights. It promotes an ethical, bottom-up approach to human rights. (www.hrc2001.org.nz)

Wider Earthquake Communities Action Network (WeCan)

WeCan started in September, 2011. A network of individuals and community groups that aim to: publicly highlight injustices and issues affecting residents following the Canterbury earthquakes. It openly challenges decisions, policies and practices that disadvantage a community or a resident's recovery from the earthquakes. It actively promotes and supports equitable, just and visionary solutions for all. (www.wecan-nz.com)

Supported by:

New Zealand Council for Civil Liberties

Executive Summary:

In 2010 and 2011 two major earthquakes struck Canterbury, New Zealand. In the aftermath the New Zealand government implemented a range of policies which are detrimental to a large number of quake-affected residents, despite its well-sounding intentions. A Residential Red Zone (RRZ) was created under a set of technical and economic criteria. It was made known that the residents lived in the RRZ will have to vacate and seek accommodation elsewhere. A buy back scheme was implemented in a technically voluntary, but effectively compulsory manner. Compensation, under the name of voluntary buy back, was not universal. Several groups of residents would receive substantially less compensation than would otherwise. The buy back policy was implemented in the backdrop of ongoing announcements of uncertainty of future land use in the RRZ, and the withdrawal of essential services such as water, power, sewer, and roading. Though not specifically prohibited, remaining in the RRZ is effectively not an option in the long term for residents. A "Ghetto" has been created out of derelict houses now owned by the government and deteriorating infrastructure. Residents who remain, either out of choice or forced by necessity, face continuing threats of escalating crime rates, broken infrastructure, and loss of all rights normally accompany home ownership. Open market for RRZ homes is non-existent, and there are no prospects of utilizing any equity in the homes simply because banks place zero value on RRZ homes.

In both legal theory and in practice, the situation in Canterbury is one which demonstrates significant departure by the New Zealand State from its international treaty obligations and domestic legal convention.

Background

While no decisions have been made on the ultimate future of the land in the residential red zones, CERA does have powers under the Canterbury Earthquake Recovery Act 2011 to require you to sell your property to CERA for its market value at that time. If a decision is made in the future to use these powers to acquire your property, the market value could be substantially lower than the amount that you would receive under the Crown's offer.

1. The above is a paragraph from the New Zealand government's buy out offer supporting document (*see Annex A- a section from page 5 of the Purchase Offer Support Information booklet from the Canterbury Earthquake Recovery Authority*) to residents in areas of Canterbury red-zoned by authorities following the devastating February 22, 2011 earthquake. The government proclaimed that, due to economic and geotechnical reasons, such areas "must be cleared of residential occupation" and no rebuild would be allowed to occur. (*see Annex B- Canterbury Earthquake Recovery Authority news release 17-Dec-2012*)
2. New Zealand has a unique situation in that it is one of the most heavily-insured country in the world. (about 90% of all homeowners hold house insurance) On top of that, the government holds a stake in all private home insurance policies through the state-owned insurer, EQC. EQC cover is automatic with purchase of a private insurance policy paid through a levy built in all private insurance policies sold.
3. The government hence has a dual role- one as the State, the other as the owner of an insurance company.
4. The government made a compensation offer to red-zoned homeowners in the form of a voluntary buy out offer, basing the purchase price at ratings valuation (RV) which was set for property tax purposes and not an accurate market valuation. Eligibility criteria are solely based on insurance status. Fully insured homeowners got offered 100% of RV, under-insured got discounted offers, and uninsured got 50% of land-only RV (*see Annex C- Canterbury Earthquake Recovery Authority Fact Sheet - Crown offer to uninsured improved properties in the flat land residential red zones, Sept 2012*), the value of buildings is not considered.
5. It is relevant to consider that the separation of roles is difficult, if not impossible altogether.
6. While some homeowners welcomed the government offer, others were uninterested in the offer.
7. The way the government offer was presented, as evidenced in the excerpt from an actual offer document, it is fair to say there was an element of coercion to accept the offer. (*See Annex D- Excerpt from the web site of Canterbury Earthquake Recovery Authority FAQ as at 14 Feb, 2012*)
8. Almost all homes in the red-zoned area are safe to occupy. A separate mechanism to check structural soundness and safety of buildings was already in place. There were only a handful of buildings that were too damaged to safely occupy and were "red-stickered". This is not to be confused with "red-zoned" homes.
9. Quake Outcasts has since its inception actively sought out affected residents to educate them of their rights and assist with many on the group

issues, and has been engaging with media to raise public awareness of human rights implications.

10. Quake Outcasts is working closely with the national human rights institution, The New Zealand Human Rights Commission to advocate for the human rights of affected residents.

Discrimination Using Insurance Status as a Criterion for Compensation

11. When the government declared vast areas in Christchurch as the residential red zone (RRZ), it effectively removed the open market and any market value of all homes in the zone.

12. The underlying reasons for the creation of the RRZ is beyond the scope of this paper, however, one needs to examine the effects to see that the principles of human rights and civil liberties are in peril.

13. Simultaneously (to the RRZ creation) the government announced an offer to buy select homes using private insurance as the only eligibility criterion. If a resident holds no private insurance for the home then s/he is not eligible.

14. The government later (after 15 months) declared the offer was extended to initially ineligible residents, but at a significantly reduced price.

15. Under the Universal Declaration of Human Rights 1948 Article 17(b) "no one shall be arbitrarily deprived of his property." The government has in effect, arbitrarily deprived uninsured residents by action of the creation of the RRZ, and subsequently by making a unfairly low offer in the absence of an open market.

16. The buy back offer regime discriminates against residents who held no private insurance. Through Cabinet Papers and official communications, the government has attempted to justify this discrimination by portraying these residents as irresponsible and not deserving of just compensation.

Offer Scheme Compels People Out of Their Homes, Downgrade of Living Standards

1. The State is obligated to recognise the rights stated in Article 11 of the ICESCR, particularly adequate housing and the continuous improvement of living conditions. By denying equal compensation to uninsured RRZ residents, the State induces lowering of living conditions and exacerbates the housing shortage following the earthquakes. Strong arguments against the New Zealand State's action which weaken social and economic rights are outlined in *Annex G - Supporting Essay from Anthony Ravlich, Author and Chairperson of the New Zealand Human Rights Council.*

17.

18. Most residents who hold no private insurance are the most vulnerable- the elderly, retired people, young families, and people under financial stress. In all cases their home is the single largest asset they own. The home provides

security of housing for the most vulnerable. After decades of hard work paying off mortgages, it is the only certainty in their maintaining adequate living standards.

19. The government "offer" of half of the land only government valuation presents a certainty of lowering of living standards. The compensation falls far short of what is required to replace the home taken, and to maintain the same living standards.

20. A census taken of among Quake Outcasts members shows the government compensation to be between one-seventh to one-third of the open market value of their homes.

Removal of Freedom to Choose Residence and Not Be Interfered in One's Home

21. According to the government, the creation of the RRZ was partially based on scientific data. However, there is no evidence of any health risk or life-threat to residents in the RRZ, immediate or in future. Thus the implied "unsuitability" for residential occupation amounts to violation to Article 12(1) of the ICCPR.

22. Therefore, the government has removed people's freedom to choose their residence.

23. The government has used coercive language consistently. It stated life-supporting infrastructure will not be maintained and eventually removed in the RRZ. *(See Annex E- Transcript of the Prime Minister's comments on 3 News at Six, 2-April-2013)* The ongoing threat of the removal of basic services further reinforces the un-saleability of RRZ homes in the open market. By interfering with the normal essential services associated with a metropolitan home, the government violates Article 17(1) of the ICCPR.

24. As a consequence of the red-zoning, Habitat for Humanity was discouraged from assisting vulnerable residents in the red zone. *(See Annex F - Letter from Habitat for Humanity International in response to inquiry)*

25. If the government makes good on its threat, this action will violate numerous treaties and covenants, domestic and international law.

26. In its Cabinet Papers, official announcements, and comments the government made it clear that it has a clearance objective for the RRZ and eventual removal of essential services. The actual condition of the home is not a consideration.

Quake Legislation Inconsistent with Human Rights Obligations

27. The Canterbury Earthquake Recovery Act 2011 gives extraordinarily powers to the Minister and to the CEO of Canterbury Earthquake Recovery Authority (CERA). The powers to take one's land and home by compulsory means are inconsistent with New Zealand's human rights obligations, especially in the time following a major natural disaster.

28. The CER Act 2011 deviates from normal compensation principles established by legislation and common law by allowing a single person, the CEO of CERA, to purchase personal property in the name of the Crown (s.53); allowing compensation to be determined at a date after the natural disaster and RRZ declaration, to the Minister's choosing (s.62); and allowing

no right of appeal against the Minister or CEO of CERA to take personal property (s.68).

Conclusion

29. The combination of the State's RRZ declaration, RRZ Offer, and the CER Act 2011 creates an environment which culminates in breaches of the obligations listed above.

Recommendations

30. Recommendations 15(Jordan), 16(Czech Republic), 17(South Africa), 18(Algeria), 19(Netherlands), 20(Pakistan) of the 2009 review were not observed, at least with respect to legislation and policies implemented following the Canterbury earthquakes.

1. The New Zealand government refrain from exercising powers in the CER Act 2011 to compulsorily acquire personal properties in the RRZ.
2. The New Zealand government guarantee continuation of essential services in the RRZ so long as people live there.
3. The New Zealand government provide timely and universal non-discriminatory compensation to all RRZ residents who are compelled to give up his home.

The New Zealand government facilitate the elevation of the NZBORA and NZHRA to supreme law status, and to include in these Acts sections necessary to prevent future violations as set out in this submission, and to include all Covenant rights not already included.