Peace Movement Aotearoa

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NGO information for the 48th session of the Committee on Economic, Social and Cultural Rights, 5 April 2012

Third Periodic Report of New Zealand under the International Covenant on Economic, Social and Cultural Rights

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

A. Information on Peace Movement Aotearoa

1. Peace Movement Aotearoa is the national networking peace organisation, registered as an incorporated society in 1982. Our purpose is networking and providing information and resources on peace, social justice and human rights issues. Our membership and networks mainly comprise Pakeha (non-indigenous) organisations and individuals; and we currently have more than two thousand people (including representatives of ninety-five peace, social justice, church, community, and human rights organisations) on our national mailing list.

2. Promoting the realisation of human rights is an essential aspect of our work because of the crucial role this has in creating and maintaining peaceful societies. In the context of Aotearoa New Zealand, our main focus in this regard is on support for indigenous peoples' rights - in part as a matter of basic justice, as the rights of indigenous peoples are particularly vulnerable where they are outnumbered by a majority and often ill-informed non-indigenous population as in Aotearoa New Zealand, and because this is a crucial area where the performance of successive governments has been, and continues to be, particularly flawed. Thus the Treaty of Waitangi, domestic human rights legislation, and the international human rights treaties to which New Zealand is a state party, and the linkages among these, are important to our work; and any breach or violation of them is of particular concern to us.

3. We have previously provided NGO parallel reports to treaty monitoring bodies and Special Procedures as follows: to the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People in 2005[2]; to the Committee on the Elimination of Racial Discrimination in 2007[3]; jointly with the Aotearoa Indigenous Rights Trust and others, to the Human Rights Council for the Universal Periodic Review of New Zealand in 2008[4] and 2009[5]; to the Human Rights Committee in 2009[6] and 2010[7]; to the Committee on the Rights of the Child in 2010[8] and 2011[9]; and to the 46th Pre-Sessional Working Group of the Committee on Economic, Social and Cultural Rights (CESCR, the Committee) in 2011[10].

4. We are not in a position to send a representative to the 48th Session, but are happy to clarify any information in this report if that would be helpful to the Committee.

B. Overview

5. This follow-up report provides an outline of some issues of concern with regard to the state party's compliance with the provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR, the Covenant). Its purpose is to assist the Committee with its consideration of New Zealand's Third Periodic Report[11] (the Periodic Report).

6. This report is a follow-up to the preliminary information supplied to the 46th Pre-Sessional Working Group by Peace Movement Aotearoa last year.[12] Our preliminary report included an overview of developments in Aotearoa New Zealand in relation to economic and social rights since the state party's report was submitted in 2008 which is not repeated here.

7. Our preliminary report stated that:

> *"Following the change of government in late 2008, there have been a number of developments that are cause for considerable concern in relation to the state party's compliance with the Covenant. Rather than fulfilling its obligation to progressively realise Covenant rights, the state party has instead implemented a number of legislative and policy measures that have regressively eroded economic and social rights for a substantial proportion of the population."*[13]

8. It should be noted that since the National-led government was re-elected in November 2011, that trend appears to be accelerating, and some examples are outlined in this report.

C. General information (Question 1.1 of the List of Issues)

C. (i) Justiciability of economic, social and cultural rights

9. As noted by the Committee in 2003[14] and raised in the List of Issues (at 1.1), economic, social and cultural rights are not generally justiciable in New Zealand and this causes some difficulties in challenging the state party's lack of compliance with the Covenant. Legal challenges taken with respect to violations of Covenant rights can take years to proceed and are opposed by the state party at each step along the way.

10. One example, related to child poverty, is the case brought by the Child Poverty Action Group[15] in 2001, regarding the discriminatory nature of the In-Work Tax Credit (IWTC) - part of the Working for Families (WWF) package - which is available to families whose income comes from paid work but not to families on social security benefits.

11. It should be noted that an estimated one in five children in Aotearoa New Zealand live in households with an income below the poverty line[16] - one third in a household with income from paid work, and two-thirds in households reliant on social security.[17] In 2009, the OECD reported that:

> *"New Zealand government spending on children is considerably less than the OECD average. The biggest shortfall is for spending on young children, where New Zealand spends less than half the OECD average."*[18]

12. New Zealand performs poorly in a number of indicators when ranked against the other OECD countries, for example, ranked 21st (out of 30) on material well-being for children, and 29th on health and safety.[19]

13. As mentioned above, the Child Poverty Action Group case began in 2001, and after seven years of legal wrangling and attempts by government lawyers to stop it, it was considered by the Human Rights Tribunal (HRT) in 2008. The HRT ruled that the IWTC package did constitute discrimination with significant disadvantage for the children concerned:

"(192) We are satisfied that the WFF package as a whole, and the eligibility rules for the IWTC in particular, treats families in receipt of an income-tested benefit less favourably than it does families in work, and that as a result families that were and are dependent on the receipt of an income-tested benefit were and are disadvantaged in a real and substantive way." (Human Rights Tribunal, 2008) [20]

14. However, the HRT also found that the state party had proved this discrimination was justified.

15. The state party appealed the HRT's finding that the IWTC is discriminatory, and the Child Poverty Action Group appealed the finding that such discrimination is justified. The case then moved on to the High Court where it was heard in September 2011. The Child Poverty Action Group argued that the IWTC package is inconsistent with the right to be free from discrimination on the grounds of employment status, guaranteed in the New Zealand Bill of Rights Act 1990 (Bill of Rights Act), as it unlawfully discriminates against children on the basis of their parents' work status.

16. Following the hearing, the High Court, like the HRT, ruled that the IWTC is discriminatory in part, but said that this discrimination could be justified because the purpose of the IWTC is to incentivise parents into paid work.[21]

17. In November 2011, the Child Poverty Action Group filed an application for leave to appeal the High Court decision in the Court of Appeal, arguing that while the IWTC aims to incentivise parents to enter paid work, beneficiary families are ineligible for the IWTC even when paid work is not available, or when parents cannot meet the IWTC work requirements because of their child-caring responsibilities, disability or sickness. The state party's own estimates are that only 2% to 5% of beneficiary families are able to leave the benefit and obtain the IWTC (by getting a job or starting a relationship with somebody who is in paid work), yet the IWTC excludes the entire group of beneficiary parents and their children - more than 200,000 children are affected by this discrimination, and they are the poorest children in New Zealand.[22]

18. The outcome of the application for leave to appeal is not yet known.

19. This case is just one example of the difficulties in challenging the state party through the courts, as the state party persistently opposes any decision it perceives is at odds with its policies, resulting in any legal challenges becoming a long drawn out and costly exercise.

20. Furthermore, it highlights the inadequacies of the Bill of Rights Act under Section 5, 'Justified Limitations':

"the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."[23]

21. It is difficult to see how a discriminatory policy that affects the welfare of the poorest children can be demonstrably justified in a free and democratic society.

- ***Suggested recommendation****: Aside from the general issues of lack of justiciability of Covenant rights, we suggest the Committee recommends to the state party that the benefits of the Working for Families package be extended to all families, regardless of their source of income.*

C. (ii) Overall lack of protection for Covenant rights

22. The lack of justiciability for Covenant rights is particularly problematic as it occurs within an overall lack of protection for economic, social and cultural (as well as civil and political) rights in relation to Acts of Parliament and actions of the Executive. The notion of parliamentary supremacy has led to unusual constitutional arrangements whereby parliament can enact legislation that breaches the provisions of the Treaty of Waitangi, of domestic human rights legislation, and of the international human rights instruments that NZ is a state party to.

23. The state party's draft Periodic Report referred to this in relation to the Human Rights Act, part 1A[24], as follows:

> *"25. Where an enactment is found by the [Human Rights] Tribunal to breach part 1A, the remedy is a declaration of inconsistency. Other remedies are not available because BORA [Bill of Rights Act] is not supreme law and can be overridden by statute. Where a statutory regulation is found to be in breach of the Bill of Rights Act, the Tribunal can refer it to the High Court for a ruling that the regulation was invalidly made.*
>
> *26. ... While a declaration will not affect the validity of the enactment or prevent the continuation of the action prompting the complaint, it requires the responsible Minister to table the declaration in the House of Representatives along with a report setting out the government's response."*[25]

24. Furthermore, when replying to the List of Issues from the Human Rights Committee in 2010, the state party summarised this unfortunate situation thus:

> *"Under New Zealand's present constitutional structure, it remains open to Parliament to legislate contrary to the Bill of Rights Act and the other legislative protections set out above and so to the Covenant."*[26] [Note: to the International Covenant on Civil and Political Rights in that instance, but this applies equally to the ICESCR]

25. The Human Rights Committee specifically commented on this in its most recent Concluding Observations as follows:

> *"7. The Committee reiterates its concern that the Bill of Rights Act 1990 (BORA) does not reflect all Covenant rights. It also remains concerned that the Bill of Rights does not take precedence over ordinary law, despite the 2002 recommendation of the Committee in this regard. Furthermore, it remains concerned that laws adversely affecting the protection of human rights have been enacted in the State party, notwithstanding that they have been acknowledged by the Attorney-General as being inconsistent with the BORA. (art. 2).*

The State party should enact legislation giving full effect to all Covenant rights and provide victims with access to effective remedies within the domestic legal system. It should also strengthen the current mechanisms to ensure compatibility of domestic law with the Covenant."[27]

26. It should be noted that while the Bill of Rights Act includes some, but not all, of the rights elaborated in the International Covenant on Civil and Political Rights (ICCPR), it does not include economic or social rights (although the right of minorities to enjoy their own culture, Article 27 of the ICCPR, is at Section 20).

27. In any event, because parliament is able to enact legislation that violates even those rights which are included in the Bill of Rights Act, this means that there is essentially no possibility of effective remedy for any violation of human rights by the state party as required under the Covenant.[28]

- ***Suggested recommendation****: We suggest the Committee recommends that the state party enacts legislation giving full effect to all Covenant rights and provides access to effective remedies within the domestic legal system for any breaches of Covenant rights. The state party must also ensure that domestic law is fully consistent with the Covenant.*

C. (iii) Consideration of constitutional issues

28. The state party has outlined the process for consideration of constitutional issues in its reply to the List of Issues[29] and has given the impression that it is more wide-ranging than the Terms of Reference suggest. For example, in relation to the Bill of Rights Act, while entrenchment is mentioned, the other example given in the Terms of Reference is 'property rights'[30], which are already adequately protected in law while human rights, in particular economic, social and cultural rights, are not. There is no mention of economic, social and cultural rights in the Terms of Reference.

29. It should also be noted that after the Ministers leading the process report to Cabinet in 2013, "the Government will then consider whether further work on particular issues is desirable."[31] Any outcomes of the process will thus be dependent on the state party's willingness to implement them, which makes any substantive change uncertain.

Suggested recommendation*: We suggest the Committee makes note of the consideration of constitutional issues process, but reminds the state party of its binding obligations under the Covenant and recommends that legislative and policy measures to give full effect to Covenant rights and to provide effective remedies for any breaches of such rights must not be contingent on this process.*

C. (iv) Impact of cuts to public services and public sector staffing levels

30. In our preliminary report, we noted that:

"... there have been funding cuts to a wide range of public services and programmes, too numerous to detail here - for example, in education, including early childhood education ($400 million[32]), adult education, and education for children with special needs; and in health, including services under the accident compensation scheme and family violence prevention programmes".[33]

31. It should be noted that this trend appears to be accelerating, in relation to policy changes, funding cuts and cuts to the number of staff who ensure the provision of public services.

32. Our preliminary report provided some examples of this trend[34]. One example of another area where there have been recent changes is in relation to the provision of state housing through Housing New Zealand. In June 2011, the Housing Minister announced changes to the allocation of state housing whereby:

"only those in the greatest need (A and B priority applicants) will be eligible for state housing, and will be placed on Housing New Zealand's waiting list. Those with lower housing needs (C & D priority applicants) will no longer be eligible for a state house".[35]

33. There are two main issues with this. Firstly, removing those in need of housing from the waiting list does not remove their need for affordable housing. The Monte Cecilia Housing Trust commented on these changes as follows:

"Recent changes by Housing New Zealand are increasing the numbers of vulnerable families trapped in overcrowded, unhealthy, substandard housing. "At Monte Cecilia Housing Trust more and more desperate families are telling us that they have been turned away by Housing New Zealand because they are not eligible for housing," says David Zussman, Trust Executive.

These families cannot afford housing in the private sector and have no other option but to remain in shocking living conditions. They are approaching the Trust saying "Housing New Zealand won't help us. Where do we go and what are we meant to do?" Recent cases include a mother and child sleeping in a car who were told by Housing New Zealand that they could afford the private sector. "I think most New Zealanders would expect a homeless family like this to receive some meaningful kind of assistance and support from a government agency," comments David Zussman.

Housing New Zealand have stated that they are concentrating on those in most serious need – they have redefined the criteria and stopped helping anyone who is outside of these. This is creating a massive gap in services which the government is doing nothing to address. "There are no joined-up government services here and it looks as if the situation is only going to get worse"".[36]

34. Secondly, while this effectively cut the waiting list in half, nevertheless as at 30 September 2011, there were 2,000 families - around 6,000 people - in serious housing need on the waiting list[37] and nearly 3,000 who live in overcrowded conditions[38].

35. The policy changes in June 2011 also included a shift towards moving those who are still considered to be eligible for state housing out of state houses as soon as possible. This was described, for example, by the Prime Minister earlier this year as follows:

> *"National was changing the mentality that people were entitled to stay in a state house for life and all new tenants now have their agreement reviewed every three years. "In a way it's a great stepping stone, or platform, if you like; help people in real need, allow them to move on." Those in the most need could continue to stay but it was about the relative need of others waiting for a state house, Key said."*[39]

36. Aside from the issue of the discrepancy between what the state party considers "relative need" and the actual level of need, as outlined above, such public statements have caused needless anxiety for Housing New Zealand tenants who cannot afford to pay private rent levels.

37. Furthermore, in February 2012, as part of the state party's ongoing reduction in provision of public services and allied staff cuts, Housing New Zealand announced that it was closing local offices in favour of a national call centre[40]. From April 2012, those in housing need, as well as Housing New Zealand tenants needing repairs or other assistance, will only be able to contact and meet Housing New Zealand staff by pre-arranged appointment made by telephone or via the Housing New Zealand website. This raises obvious difficulties for those who do not have English as their first language, those who have disabilities such as speech or hearing impairment, and for those who cannot afford a telephone or internet connection - Housing New Zealand advised those without a telephone to use the internet at their local library[41], which aside from presupposing the existence of a local library with internet facilities, also raises access issues, as well as issues around emergency situations.

38. It is difficult to assess the full impact of the state party's ongoing cuts to public services, precisely because this process is ongoing and because it is so widespread, affecting the provision of services covering the full range of Covenant rights. In addition, it is being conducted with a degree of secrecy that adds to the difficulty in assessing both its scale and impact.

39. Nevertheless, some of the general impacts were outlined in our preliminary report[42], and as can be seen from the example above, even one policy change allied with a desire to cut staff can have far-reaching implications. The Public Service Association recently pointed out that more than 3,500 jobs have gone from the public service and Crown entities, which is impacting on services to the public.[43]

40. It is especially concerning that the cuts to public services - which have a particularly negative impact on the poorest individuals, families and communities - are occurring in the wider context of substantial income inequality here, as detailed in a recent OECD report:

> *The increase in inequality between 1985 and the late 2000s [in New Zealand] was the largest among all OECD countries, with the exception of Sweden. In 2008, the average income of the top 10% was 113 000 NZD, nearly 9 times higher than that of the*

bottom 10%, who had an average income of 13 000 NZD. This is up from a ratio of 6 to 1 in the mid 1990s.

... Over the past 25 years, real household incomes grew by 2.5% per year for the richest 10% of New Zealanders, but only by 1.1% for the poorest 10%. Most of the income growth took place after the mid-1990s.

The share of top 1% of income earners rose from 6% in 1980 to 9% in 2005, and that of the top 0.1% of earners more than doubled from 1.2% to 2.7%. At the same time, top marginal tax rates declined from 60% in 1980 to 33% in 2010.

Trends in employment and wages shaped the income distribution. The shares of wages and salaries in total household income saw a marked decrease between the mid-1980s and mid-2000s, especially for low-income households — by more than 11 percent. This is likely due to a large rise in the proportion of jobless households."[44]

41. As mentioned above, it is difficult to assess the full scale and impact of the public service cuts and policy changes. However, what is clear is that the state party is embarked on a restructuring agenda for "greater efficiency" in the public sector, which includes partial privatisation of state assets ("mixed ownership model"), the introduction of public-private partnerships in prisons and schools, increasing use of private sector and NGO delivery in social services,[45] increased contracting out of public services, and continued cuts to public service provision. The 2011 Treasury Briefing to Incoming Ministers refers to "an ongoing programme of efficiency savings and innovations in service delivery, together with targeted expenditure reductions".[46] The Minister of Finance recently stated that from 1 July 2012, state agencies will be required to find $980 million of savings over three years.[47]

- ***Suggested recommendation**: We suggest the Committee recommends that the state party examines the cuts to public services and staffing levels in the public sector in the light of its obligations to progressively realise Covenant rights, and adjusts its policies in this regard to ensure that those obligations are fully met.*

D. Indigenous peoples' rights

42. As mentioned in section A above, our main focus with regard to human rights is on support for indigenous peoples' rights, an area where the performance of successive governments has been, and continues to be, particularly flawed.

43. There has been a persistent pattern of government actions, policies and practices which discriminate against Maori (collectively and individually), both historically and in the present day. This has resulted in a situation, as described by the Special Rapporteur on the Rights of Indigenous Peoples on his recent visit, for example, as: "the extreme disadvantage in the social and economic conditions of Maori people in comparison to the rest of New Zealand society" ... "which manifests itself across a range of indicators, including education, health, and income".[48]

D. (i) Article 1, the right of self-determination

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

45. There is a clear link between the denial of the right of self-determination to Maori, both historically and in the present day, and the extreme disadvantage in the social and economic conditions of Maori in comparison to the rest of New Zealand society referred to above. If Maori hapu and iwi had been in a position to freely determine their political status and to freely pursue their economic, social and cultural development since 1840 as specified in Article 1, then the situation would be very different today.

46. Furthermore, the effects of the denial of the right of self-determination by the state party is clearly evident in the issues currently facing Maori hapu and iwi, some of which are outlined below, in relation to their economic, social and cultural rights.

47. We note that the Committee has included references to Article 1 in relation to indigenous peoples in Concluding Observations on other state parties, for example Australia[49] and Colombia[50].

- ***Suggested recommendation****: We suggest the Committee refers to Article 1 in all recommendations relating to Maori in the Concluding Observations, including those on the specific issues outlined below.*

D. (ii) Articles 1, 2.2 and 15(1.a) : the foreshore and seabed legislation

48. As outlined in section C (ii) above, there is no protection or remedy for human rights violations arising from Acts of Parliament, and the rights of Maori are particularly vulnerable as hapu and iwi are minority populations within a non-indigenous majority. There is a long history of New Zealand governments enacting legislation which discriminates against Maori, and this continues to the present day.

49. As outlined in our preliminary report, the clearest example of this in recent times is the state party's enactment of the Foreshore and Seabed Act (the Act) in 2004 in response to the 2003 Court of Appeal ruling in *Ngati Apa et al* - the Act vested ownership of the "public" foreshore and seabed in the Crown, thereby extinguishing any Maori title and property rights, while private fee simple title over foreshore and seabed areas remained unaffected. The discriminatory aspects of the Act have been outlined by, among others, the Committee on the Elimination of Racial Discrimination in 2005[51] and again in 2007[52], by

the UN Human Rights Committee in 2010[53], and by the UN Special Rapporteur on the Rights of Indigenous Peoples in 2006[54] and 2010[55].

50. In addition to Article 2.2, the Act also breached Articles 1 and 15(1.a) of the Covenant. It provided for state recognition of very limited 'customary rights' along with tests that made it all but impossible for many hapu and iwi to have even those limited 'rights' legally recognised. It was enacted in the face of unrelenting opposition from Maori.

51. Following the change of government in 2008, the state party announced a Ministerial Review of the Act. The Review Panel reported back in June 2009 and recommended repeal of the Act, and a longer conversation with Maori to find ways forward that respected the guarantees of the Treaty of Waitangi, as well as domestic human rights legislation and the international human rights instruments.

52. In response, in 2010, the state party issued a consultation document, 'Reviewing the Foreshore and Seabed Act 2004' and held public consultation meetings, including a limited number with Maori, on its proposals for replacement legislation.

53. It should be noted that despite hapu and iwi representatives clearly rejecting the government's proposals, on the grounds that the replacement legislation was not markedly different from the Act, the state party nevertheless introduced the legislation, the Marine and Coastal Area (Takutai Moana) Bill, in September 2010.

54. The replacement legislation retains most of the discriminatory aspects of the Foreshore and Seabed Act as it treats Maori property differently from that of others, limits Maori control and authority over their foreshore and seabed areas, and thus negatively impacts on the enjoyment of economic, social and cultural rights by hapu and iwi.

55. Of the 72 submissions to the Select Committee considering the Bill that came from marae, hapu, iwi and other Maori organisations, only one supported the Bill.[56] In addition, the Hokotehi Moriori Trust, on behalf of the Moriori people of Rekohu (Chatham Islands), supported the Bill only in so far as it repealed the Foreshore and Seabed Act and removed Te Whaanga lagoon from the common coastal marine area.

56. Regardless of the fact that 71 out of 72 submissions from Maori did not support the Bill, it was enacted and entered into force in March 2011.

57. We note that the Committee's General Comment on the right of everyone to take part in cultural life requires state parties to the Covenant to respect and protect "indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature", to "take measures to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources" and to "respect the principle of free, prior and informed consent of indigenous peoples in all matters covered by their specific rights".

58. None of these requirements were met in relation to the Marine and Coastal Area (Takutai Moana) Act.

- ***Suggested recommendation****: We suggest the Committee recommend that the state party repeals the Marine and Coastal Area (Takutai Moana) Act and enters into proper negotiations with hapu and iwi about how their rights and interests (including under Article 1 and 15.1.a) in relation to the foreshore and seabed areas can best be protected.*

D. (iii) Articles 1, 11, and 15(1.a): privatisation of state owned assets

59. Early this year, the state party confirmed it was preparing to remove four state-owned enterprises (SOEs) from the State-Owned Enterprises Act 1986 (SOE Act) in order to partially privatise them as part of its "mixed-ownership model" (51% state-owned, 49% privatised) policy. The first SOEs to be partially privatised are the energy companies Genesis Power, Meridian Energy, Mighty River Power, and Solid Energy New Zealand.

60. While there is a high level of public opposition to this, there is particular concern among Maori because the SOE Act is one of the few pieces of legislation that has a specific Treaty of Waitangi requirement (Section 9 "Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi") and also provisions to protect existing and likely future claims relating to land currently in Crown ownership (Section 27A-D). The level of Maori concern greatly increased when it appeared that Section 9 of the SOE Act would not be included in the proposed new legislation.

61. In response, the state party announced a process of "consultation" with Maori on 27 January 2012, less than a fortnight before the first consultation hui (meeting) was held on 8 February. The consultation document was not available until 1 February, a week before the first hui. The deadline for written submissions was only twenty-one days after the consultation document was released. Ngati Kahungunu, the third largest iwi, was left off the initial consultation hui list.

62. The government's original intention to keep the clause relating to the Treaty of Waitangi out of the SOE sales legislation was publicly revealed on 2 February 2012, following the accidental uploading of a draft document to the Treasury website.[57] When the final consultation document became available, it did not invite comment on the desirability of the SOE partial privatisation, but only put forward three options: that the new legislation include a clause similar to Section 9 of the SOE Act, that it should have a more specific Treaty of Waitangi clause, or that it should have no Treaty of Waitangi clause at all.

63. Our written submission on this issue, included the following comments on the consultation process:

> *"The repeated statements from various government politicians indicating that the decision to go ahead with the SOE privatisation has apparently already been made regardless of what is said during the consultation, illustrate it is clearly not even a proper consultation, let alone the negotiation that the Treaty requires.*
>
> *We note in this regard that Section 9 of the SOE Act requires the Crown to act consistently with the principles of the Treaty - such principles are said to include good*

faith and partnership, active protection, and a principle of redress. None of these have been met by this consultation process.

In addition, the government has not met its obligations under international law with regard to the minimum standards of behaviour expected of states in their relationship with indigenous peoples.

The expectation that states will obtain the free, prior and informed consent of indigenous communities in relation to decisions that affect their lands, resources, rights and interests has been outlined by, among others, the Committee on the Elimination of Racial Discrimination in General Recommendation 23 (1997) when describing how state parties should meet their obligations in relation to the International Convention on the Elimination of all Forms of Racial Discrimination, and the Committee on Economic, Social and Cultural Rights in General Comment 21 (2009) in relation to state party obligations under the International Covenant on Economic, Social and Cultural Rights - New Zealand is a state party to both of those instruments.

Free, prior and informed consent requires the government to approach hapu and iwi with an open mind as to the possibilities on any decision that may affect their lands, resources, rights and interests - not with a pre-determined agenda where the underlying decision, privatisation of state owned assets, has already been made.

Furthermore, we draw your attention to the recommendation by the Committee on the Elimination of Racial Discrimination in 2007 that the government:

> *"should ensure that the Treaty of Waitangi is incorporated into domestic legislation where relevant,* ***in a manner consistent with the letter and the spirit of that Treaty****.* ***It should also ensure that the way the Treaty is incorporated, in particular regarding the description of the Crown's obligations, enables a better implementation of the Treaty.****" (Concluding Observations of the Committee on the Elimination of Racial Discrimination: New Zealand, CERD/C/NZL/CO/17, para 14, our emphasis).*

We suggest that this recommendation is a good starting point for how the government should proceed - both the letter and the spirit of the Treaty require negotiation with the parties to it, not an over hasty process with a pre-determined outcome. Any new legislation must, as the Committee stated, enable better implementation of the Treaty."[58]

64. On 7 February 2012, while the "consultation" process was underway, the Maori Council and ten hapu lodged an urgent application with the Waitangi Tribunal[59] for a hearing into the SOE privatisation on the grounds that the Crown has breached the Treaty of Waitangi since 1840 by failing to recognise Maori control and rangatiratanga over fresh water and geothermal resources, and has expropriated these resources without Maori consent or compensation.

65. In early March, the state party tried to have the application dismissed[60], but on 28 March, the Waitangi Tribunal agreed that the urgent hearing should go ahead. Among other things, the Waitangi Tribunal held that if the state party "proceeds with its proposed asset sales without resolving these claims, the claimants are likely to suffer imminent, significant and irreversible prejudice."[61]

66. Based on past experience, the state party will disregard whatever recommendations the Waitangi Tribunal makes if it does not agree with them - and the state party is clearly intending to proceed with its SOE partial privatisation agenda.

67. The state party introduced the new legislation - the Mixed Ownership Model Bill 2012 - on 5 March 2012, and following its first reading on 8 March, the Bill was referred to the Finance and Expenditure Select Committee. Public submissions on the Bill are due on 13 April, and the Select Committee is required to report back to parliament by 16 July 2012.

68. While the Mixed Ownership Model Bill does include the provisions of Sections 27A-D of the SOE Act, and the SOE Act Section 9 clause "Nothing in this Part shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)"[62], the latter is followed by "For the avoidance of doubt, subsection (1) does not apply to persons other than the Crown."[63]

69. In the state party's information sheet on the new legislation, this addition is explained as follows:

> *"The Treaty is an agreement between the Crown and iwi. Therefore, it is not possible to bind non-Crown groups to Treaty provisions. Under the SOE Act, section 9 applies only to the Crown, and not to the SOEs themselves. Similarly, the Treaty clause in the Public Finance Act will apply to the Crown and not to the mixed ownership companies or minority shareholders."*[64]

70. This argument is based on faulty logic because if the state party is going to divest itself of responsibilities by giving up full control of state owned assets, then it needs to do so in a way that ensures Maori rights and interests under the Treaty of Waitangi are protected. Requiring third parties to act consistently with the Treaty of Waitangi would not make them parties to it.[65]

71. Furthermore, if the state party is retaining 51% ownership of the companies created by the new legislation, then surely those companies must be subject to Treaty provisions.

- **Suggested recommendations***: We suggest the Committee express its concern about the Mixed Ownership Model Bill in relation to Articles 1, 11 (right to water) and 15(1.a) and recommend that the Bill be put on hold until a process of full and proper negotiation with hapu and iwi has been held, and all pending claims before the Waitangi Tribunal or subject to direct negotiation covering land and resources that will be affected by the mixed ownership model are resolved to the satisfaction of the hapu and iwi involved.*

72. It should be noted that there are other issues with the Mixed Ownership Model Bill - for example, the SOE Act included a social responsibility clause requiring every SOE to be:

"an organisation that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when able to do so."[66] There is no social responsibility clause in the new legislation.

73. In addition, the new companies created by the Bill have been removed from the ambit of the Ombudsmen Act 1975 (which provides a mechanism for the investigation of complaints about administrative acts, decisions, recommendations and omissions of central and local government agencies, including SOEs, by an Ombudsman) and the Official Information Act 1982.

74. According to some reports, the Minister of Finance has acknowledged that the profits the government will lose as a result of the SOE partial privatisation will exceed the savings from the resulting reduction in debt[67] - this calls into question the purpose of this exercise, as the state party has described it from the outset as a way of reducing debt.

D. (iv) Articles 1, 11, 12 and 15(1.a): deep-sea oil seismic exploration and drilling, and hydraulic fracturing

75. Another example of state party breaches of Article 1, Article 11 (right to an adequate standard of living), Article 12 (the right to the enjoyment of the highest attainable standard of health) and Article 15(1.a) relates to the state party awarding the Brazilian oil company Petrobras a five-year exploration permit for oil and gas in the Raukumara Basin in June 2010, which the Committee raised in the List of Issues.[68]

76. As outlined in our preliminary report, the Raukumara Basin is a marine plain that extends 4 and 110 kilometres to the north-northeast of the East Coast of the North Island, located between the volcanically active Havre Trough to the west and the active boundary of the Pacific and Australian tectonic plates to the east. The permit covers 12,330 square kilometres.

77. The Orient Express, a deep-sea oil survey ship, is currently conducting seismic testing in the Raukumara Basin on behalf of Petrobras. The first two stages of exploration involve seismic surveying - firing compressed air from the surface to the seabed, and measuring the acoustic waves bouncing back to the sonar array trailing 10 kilometres behind the Orient Express. Seismic surveying can have an adverse impact on marine life, especially marine mammals. The current surveying is taking place during the season of whale migration along the East Coast.

78. Local iwi, Te Whanau a Apanui and Ngati Porou, did not give their consent to the exploration permit being issued or to the seismic survey[69] which they are strongly opposed to:

"This activity is being permitted in the rohe of Te Whanau a Apanui and Ngati Porou:
a. Without our agreement or consent,
b. In the face of strong opposition,
c. Contrary to the acknowledged mana of our hapu,

d. Contrary to agreements either entered into or being concluded with the Crown,
e. Without assurances regarding environmental standards and protection,
f. In breach of the Treaty of Waitangi, and the Declaration of the Rights of Indigenous Peoples, and
g. Which detrimentally affects the lives, livelihoods and survival of the communities of Te Whanau a Apanui and Ngati Porou."[70]

79. The permit includes permission for Petrobras to drill an exploratory well and the local iwi are also strongly opposed to the possibility of an exploration well being drilled off their coast. The Deepwater Horizon oil and gas spill in the Gulf of Mexico last year - which has threatened the economic and cultural survival of local indigenous communities[71] - was from an exploratory well at a depth of 1500 metres, whereas the proposed depth for drilling an exploratory well in the Raukumara Basin ranges from 1500 to 3000 metres. In addition, the Raukumara Basin sits on a major and active fault line, and there are frequent earthquakes in the area. It is therefore a particularly hazardous area in which to undertake any drilling activities.

80. When the seismic survey began, a flotilla of small boats travelled to the area to observe the Orient Explorer and to protest its presence; in response, the state party sent two navy warships and an air-force plane. On 23 April 2011, the skipper of the Te Whanau a Apanui tribal fishing boat San Pietro, was arrested at sea and detained on a navy vessel while fishing in Te Whanau a Apanui customary fishing grounds approximately 1.5 nautical miles away from the Orient Explorer. The arrest came the day after Maritime NZ withdrew the exclusion orders that police officers, assisted by the navy, had issued to boats in the vicinity of the Orient Explorer the previous week.

81. Since our preliminary report was submitted, there have been a number of developments in relation to the Raukumara Basin. In early October 2011, the container ship MV Rena ran aground on the Astrolabe Reef, 22 kilometres from the entrance to the port of Tauranga in the Bay of Plenty on the East Coast of the North Island. The resulting environmental disaster from leaking oil and the contents of containers washed off the ship[72] not only heightened awareness of the costs of oil contamination, but also of the state party's unpreparedness for even a comparatively small marine oil spill - salvage vessels and equipment had to be brought from overseas.

82. The coastline, estuaries and seafood gathering areas of hapu and iwi in the Bay of Plenty, including Te Whanau a Apanui, were seriously affected by the oil spill in particular. The threat to Ngati Porou's coastline prompted one of their leaders to describe the state party's assurances that the country is prepared to respond to marine oil spills as "fictitious myths".[73]

83. Beaches were closed while the oil washing ashore was removed, and while most re-opened five weeks after the grounding[74], there have been intermittent beach closures since due to subsequent oil leaks and hazards from containers washed off the wreck, including from rotting food and hazardous materials. A health warning in relation to shellfish is currently in place due to high levels of Paralytic Shellfish Poisons in the area.[75] Warnings of further issues with the wreck and the 685 containers remaining onboard are still being

issued whenever bad weather threatens the area.[76] In January 2012, 16 coastal iwi affected by the Rena disaster called for a Royal Commission of Inquiry into the grounding.[77]

84. Another development, which indicates the level of Te Whanau a Apanui's concern about the Petrobras permit, took place in September 2011 when Te Whanau a Apanui applied to the High Court for a judicial review of the permit on the grounds that the state party:

- failed to properly consider the environmental impact of Petrobras' activities, as required by New Zealand's obligations under customary international law, the United Nations Convention on the Law of the Sea 1982 (UNCLOS), and the Convention for the Protection of Natural Resources and Environment of the South Pacific Region 1986 (the South Pacific Convention);
- failed to properly consider the potential effects on marine wildlife;
- failed to factor in the requirements of the Treaty of Waitangi, which should have included consulting with Te Whanau a Apanui; and
- failed to consider the iwi's fishing rights and customary title claims to the area.

85. In December 2011, the High Court approved the application for the judicial review, and it will be heard in June 2012.[78]

86. We note that the state party in its replies to the List of Issues, has assured the Committee that it consulted with hapu and iwi in the area affected by the Petrobras permit and that it is committed to effectively engaging with them on the management of minerals and petroleum.[79]

87. These assurances are at odds with the facts relating to the Petrobras permit. In December 2011, Radio New Zealand reported that:

> *"Court documents obtained by Te Manu Korihi show the Government denies it unlawfully granted the permit. The papers show the legal team for the Minister of Energy and Resources say* ***there was no obligation to consult*** *with the iwi about the granting of the permit to the Brazilian company, Petrobras."*[80] [our emphasis]

88. Furthermore, it is clear that the free, prior and informed consent of Te Whanau a Apanui, for example, was not obtained in relation to the Petrobras permit - when asked that question in parliament in 4 May 2011, the Acting Minister of Energy and Resources replied "no".[81]

89. We note also that in its replies to the List of Issues, the state party points out that permits granted under the Crown Minerals Act 1991 do not address environmental effects and in that context refers to the Resource Management Act (RMA) as providing such assessment - however, the RMA only covers activities as far as the edge of the territorial sea (12 nautical miles) and it is likely that any deep-sea oil drilling will take place beyond that limit.

90. In 2010, the Ministry of Economic Development stated that there is a lack of an environmental permitting regime in the exclusive economic zone, the area beyond the territorial sea.[82] In February 2012, the Parliamentary Commissioner for the Environment (PCE) told the Select Committee considering the Exclusive Economic Zone and

Continental Shelf (Environmental Effects) Bill 2011 that the legislation has some serious flaws which undermine its purpose of environmental protection[83], in part because of the clause which provides for a marine consent to be granted for an activity if *"the activity's contribution to New Zealand's economic development outweighs the activity's adverse effects on the environment"*.[84]

91. The PCE's written submission pointed out:

> *"This test undermines clauses 10 through 13: 'Purpose', 'International obligations', 'Matters to take into account', and 'Information principles', because it sets out a single overriding criterion for making decisions. The EPA [Environmental Protection Authority] may set aside all other considerations and simply make decisions on this single criterion. This is a serious error."*[85]

92. It should be noted that the Raukumara Basin is not the only area where hapu and iwi are concerned about off-shore and on-shore oil exploration and drilling - in its enthusiastic support for the exploration industry and its aim to make New Zealand a net exporter of oil by 2030[86], the state party has issued permits similar to that awarded to Petrobras for areas covering most of New Zealand's coastline. According to the PCE, licences and permits granted in the last 10 years in relation only to petroleum deposits on and beneath the ocean floor include two permits for mining petroleum and 21 permits for exploring for petroleum.[87] The Ministry of Economic Development recently announced:

> *" we have proposed 25 onshore and offshore blocks for competitive tender from April 2012. The proposed blocks for 2012 cover approximately 40,285 km2 of offshore seabed and approximately 5,704 km2 of land in Waikato, Taranaki, Tasman, the West Coast and Southland."*[88]

93. The Texas-based oil company Anadarko is currently undertaking exploratory drilling at depths of 1400 and 1600 metres off the Taranaki coast.[89] The PCE has pointed out that: "It has recently been highlighted that New Zealand had only one government inspector for all of New Zealand's onshore and offshore oil and gas operations."[90]

- ***Suggested recommendation****: We suggest the Committee expresses concern about the state party's oil exploration and drilling programme in relation to Articles 1, 11, 12 and 15(1.a) and recommends that the state party put all oil and gas exploration and drilling on hold until the affected hapu and iwi have been fully consulted and have expressed their free, prior and informed consent for such activities to take place in their respective lands and coastal areas.*

94. It should further be noted that hapu and iwi are similarly concerned about the impacts of proposed hydraulic fracturing (fracking) in their respective areas - for example, Te Whanau a Apanui has indicated their opposition to fracking in their territory[91], other East Coast iwi have expressed concern[92], as have Taranaki hapu[93].

95. The City Council of Christchurch, the city devastated by major earthquakes in 2010 and 2011, earlier this year asked the state party to impose a moratorium on fracking in Canterbury until an independent inquiry is carried out into its effects[94] - the City Council

and wider community is understandably concerned about the risks of fracking near known and undetected fault lines and the associated earthquake risk.

96. The state party refused the request from the Christchurch City Council, with the Minister of Energy and Resources stating there is no need for a moratorium because:

> *"I am satisfied that hydraulic fracturing is an appropriately regulated activity in New Zealand and I am not aware of any reason to justify a moratorium on the activity because of either environmental damage or the risk of inducing earthquakes."*[95]

97. On 28 March 2012, the PCE announced that preliminary investigation had showed a substantive case for an official investigation into fracking and the PCE's office will conduct this over the next few months.[96]

- ***Suggested recommendation****: We suggest the Committee recommends that the state party puts a moratorium on hydraulic fracturing until the Parliamentary Commissioner for the Environment's investigation is completed.*

D. (v) Articles 1 and 15(1.a): Maori Language Strategy and kohanga reo

98. We note that in its replies to the List of Issues, the state party has responded to the Committee's question (at 20) about its strategy for the promotion of the Maori language by stating that Te Puni Kokiri (TPK) is responsible for overseeing the implementation of the government's Maori Language Strategy.[97]

99. It difficult to see how TPK will be in a position to continue to do this as it a small state sector department, and one of the hardest hit by the state party's restructuring agenda. According to the Public Service Association, more than 60 positions have gone from TPK over the past three years, and $8 million has been cut from its budget.[98]

100. In February 2012, the TPK Chief Executive told staff that there was a further $5 million shortfall in its budget, and that it was likely there would be further staff cuts to make up the shortfall - cutting a further 50 positions has been suggested.[99]

101. According to some reports, the restructuring will involve the closure of branch offices and the removal of major responsibilities, including te reo (Maori language), Maori economic development, and Whanau Ora.[100] The Minister of Maori Affairs expressed support for TPK staff, but did not reveal any details of the restructuring, saying only: "How the Ministry manages their fiscal pressures and efficiency dividend is of course an operational matter for management."[101]

102. Aside from the issues around promotion of the Maori language, the TPK restructuring is occurring in the context of other state sector departments disposing of Maori units and advisors, for example, the Ministry of Foreign Affairs and Trade is proposing to scrap its Maori policy unit[102]. It is not clear where advocacy within the public sector on Maori will come from in future.

103. With regard to the state party's Maori Language Strategy, aside from its future being uncertain due to the cuts at TPK, on 29 March it was announced that:

> *"Changes in the way that the Maori Language Commission operates will aim to put more resources into New Zealand communities so they can take responsibility for Te Reo, rather than the state."*[103]

104. While community responsibility for language is obviously of critical importance for its survival, it is deeply concerning that the state party appears to be ridding itself of its obligations in this area.

105. In the same news report, the Chairperson of the Maori Language Commission / Te Taura Whiri i Te Reo Maori, said the Commission:

> *"received about $760,000 a year when it was started in 1987, equivalent to more than $10 million in today's dollars. But the current budget is only half that, $5 million of which two thirds goes to communities to develop their proficiency in the language."*

106. He described working on a budget of $3.2 million as "a challenge".[104]

107. Finally in this section, it should be noted that the Waitangi Tribunal has just completed urgent hearings on the Te Kohanga Reo Trust Board's claim that the state party is treating kohanga reo like a standard early childhood education (ECE) centre provider, thereby undermining kohanga reo and threatening the future of the Maori language.[105] Te Kohanga Reo is a total immersion Maori language family programme for young children from birth to six years of age that was founded by Maori in the 1980s to pass the language on to future generations. There are 463 kohanga reo centres in different parts of the country the country, with just under 9000 enrolled pupils.[106]

108. When the urgent hearings began on 13 March 2012, counsel for Te Kohanga Reo Trust Board Mai Chen said that:

> *"the centres had flourished since their creation in 1982. But when responsibility was transferred from the Department of Maori Affairs to the Education Ministry, things started to deteriorate. Funding had failed to match that of other education centres and things were brought to a head with the creation of the Early Childhood Education Taskforce in 2010."*[107]

109. The ECE Taskforce report recommended prioritising funding for teacher-led ECE centres and changing the structure of Maori language preschool services. Kohanga reo centres had been assimilated into the mainstream ECE model, to their detriment. Funding levels were also drastically limited compared with other education areas and this had led to a deterioration in quality and a fall in numbers.[108]

110. Research showed kohanga reo produced pupils twice as likely to attend university, but kohanga reo had received a funding increase 200 per cent less than other early education services from 2001-2002 to 2009-2010.[109]

111. Te Kohanga Reo Trust co-chairwoman Tina Olsen-Ratana said the ECE Taskforce report was the "straw that broke the camel's back" and promoted a one-size-fits-all approach to early education. It did not take into account the cultural needs of Maori and how kohanga reo centres needed to be run differently from ECE centres but instead tried to mould them into something that did not work.[110]

112. Te Kohanga Reo Trust's statement of claim[111] includes the failure of the state party to protect the right of kohanga reo to exercise tino rangatiratanga over and develop taonga (such as the Maori language), forcing kohanga reo to fit within the regulatory framework for ECE, failing to respect kohanga reo as culturally distinct entities, and failure to provide adequate resources to fund kohanga reo on their own merits. Among the remedies sought are statutory recognition of Te Kohanga Reo as an independent stand alone initiative to protect, develop and enhance kohanga reo and the Maori language; an end to current inequities around funding and professional recognition; funding and quality frameworks in future to be determined in culturally appropriate ways; and that adequate funding be made available to kohanga reo, consistent with the Crown's obligations to protect taonga and allow the exercise of tino rangatiratanga.

113. The urgent hearing concluded on 24 March 2012, and closing submissions will be presented to the Waitangi Tribunal in late April 2012.

- **Suggested recommendations***: We suggest the Committee expresses concern about the level of the state party's commitment to the protection and promotion of the Maori language, and recommends that the state party reverses funding and public staffing cuts that will have a detrimental effect on this. We further suggest that the Committee recommends that the state party acts as a matter of urgency on the Waitangi Tribunal's recommendations on Maori language contained in the WAI 262 report and the forthcoming report on kohanga reo.*

D. (vi) Impact of New Zealand companies and government investments on indigenous communities in other parts of the world

114. In our preliminary report, we outlined two areas of concern around the impact of New Zealand companies and of government investments. With regard to the first, so far as we are aware, the state party makes no attempt to assess the impact of New Zealand companies on indigenous communities overseas, nor are their overseas activities regulated in this regard.

115. Unfortunately we have not had sufficient time or resources to update the information provided last year, so if the Committee is interested in this issue, please refer to our preliminary report[112] which outlines an example of the impact of a New Zealand company, Rubicon, on indigenous communities overseas, as well as examples of state party investments in four overseas corporations that have well-documented records in human rights and other abuses of indigenous peoples.

116. In relation to changes in the level of investment in those four companies by the New Zealand Superannuation Fund[113] since our preliminary report, according to the most recent list of equity holdings (30 June 2011)[114]:

- **Exxon Mobil Corp** - investment of $25,751,120 (an increase from 2010);
- **Chevron Corp** - investment of $22,365,200 (an increase from 2010);
- **Freeport McMoran and Rio Tinto** - $1,813,120 was invested in Freeport McMoron, $10,321,913 in Rio Tinto Ltd and $5,392,051 in Rio Tinto Plc (a total of $17,527,084, almost double the size of the investment level in 2010); and
- **Barrick Gold** - investment of $1,635,578 (a decrease from 2010).

- **Suggested recommendations***: We suggest the Committee recommends that the state party implements effective measures to monitor and minimise the impact of the activities of New Zealand companies on the enjoyment of Covenant rights by indigenous communities in other parts of the world; and excludes companies with a record of human rights abuses from all government investment portfolios.*

E. Other matters raised in the List of Issues

E. (i) Article 2.2: the enjoyment of the right to work by persons with disabilities

117. We note that the Committee asked the state party for more information as to the extent it guarantees the equal rights of persons with disabilities to the enjoyment of the right to work (at 3), and that among other things, the state party responded:

> *"The State Sector Act 1988 ensures that every employer in the public service is a "good employer" of all people and promotes equal opportunities. People with disabilities are seen as one of the groups requiring support so that they can enjoy equal employment opportunities."*[115]

118. We provide here one example of the state party's actions in this regard.

119. Following the general election in November 2011, the first profoundly deaf Member of Parliament (MP), Mojo Mathers, was elected to parliament via the Green Party list. On arriving at parliament to assume her duties, she began discussions with the Parliamentary Service and the Office of the Clerk about arrangements to allow her to participate fully in the House.[116]

120. A temporary arrangement comprising technical equipment (a laptop and specialised software) was provided by the Speaker of the House in December 2011.[117] However, in order to participate fully in parliamentary debates, Ms Mathers requires an electronic note-taking service - that is, a staff member (or two staff members working in shifts) to send an instant transcript of proceedings in the House to the laptop at her desk in the debating chamber.

121. When parliament resumed in February after the summer recess, the Speaker of the House announced that the funding for this service had to come from the support budget that Ms Mathers receives, as do all other MPs. This was clearly discrimination on the grounds of disability because other MPs do not have to fund the costs of equipment and services to enable them to fully participate in their work.

122. Subsequently, there were suggestions that the funding should come from the Green Party's parliamentary budget, similarly discriminatory as no other political party is required to fund the costs of equipment and services to enable MPs to fully participate in their work. In any event, the Green Party is not Ms Mathers' employer.

123. On 8 March 2012, the Green Party released legal advice from Chapman Tripp which said that the funding could come from the Office of the Clerk's budget, in the same way that translation services do. On 9 March 2012, the Speaker of the House announced that he was issuing a directive to the Parliamentary Service to cover the costs of the note-taking service.[118]

124. It should be noted that there was a great deal of media coverage and public commentary on this situation, and that much of it was negative. As Ms Mathers herself said when the state party finally provided the service she needs to fully enjoy her right to work:

> *""It's the reality of the situation for people with disabilities that it takes time to change attitudes and time to improve people's understanding of what real inclusion means.*
>
> *"It's the day to day reality of what people with disabilities lives are like and it's just this has been played out more in the public view.""*[119]

125. It is deeply unfortunate that when the state party had the opportunity to demonstrate the equal rights of persons with disabilities to the enjoyment of the right to work, it very visibly failed to do so.

- **Suggested recommendation***: We suggest the Committee expresses its concern about the state party's response to the services required by MP Mojo Mathers to enable her to fully participate in parliamentary debates, and recommends that the state party substantially increase its efforts to ensure that the equal rights of persons with disabilities to the enjoyment of the right to work are fully met by all employers.*

E. ii) Article 7 (the right to just and favourable conditions of work) and Article 8

126. There are currently a number of disturbing situations in relation to the right to just and favourable conditions of work, the right to strike and rights related to collective bargaining, including one situation involving Talley's AFFCO plants (AFFCO) and the other involving Ports of Auckland Limited (POAL). A brief summary of each is outlined below.

127. With regard to AFFCO, while the company was in negotiations with the Meat Workers Union about the workers' collective agreement, on 29 February 2012, it indefinitely locked out 750 workers at AFFCO plants in different parts of the country, and on 6 March 2012,

extended the indefinite lockout to a further 250 workers.[120] In April 2012, AFFCO informed a further 480 workers that they would be locked out over Easter, apparently to avoid paying them statutory holiday pay.[121]

128. AFFCO has advised the locked out workers that they can return to work at any time by signing an individual employment contract.[122] It is difficult to see this as anything other than an attempt to force workers to abandon their collective agreement and their union membership.

129. Although the state party ratified ILO Convention 98 in 2003, as welcomed by the Committee in its last Concluding Observations[123], it has made no effort to intervene in the AFFCO situation to protect the rights of the locked out workers - even though AFFCO's actions are clearly in breach of ILO 98, Article 1, in particular, Article 1.2(a) which requires state parties to ensure that workers enjoy adequate protection against acts of anti-union discrimination in respect of their employment, particularly in respect of acts calculated to "make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership".[124]

130. With regard to the POAL dispute, the Maritime Union of New Zealand (MUNZ) and POAL have been negotiating over a new collective agreement since early September 2011 (the agreement expired on 30 September 2011). POAL is owned by Auckland City Council.

131. POAL wants maximum flexibility in worker hours, given the timing uncertainties in ship arrivals, and MUNZ recognises this, but considers the present situation a good balance in flexibility: 53% full-time workers, 27% guaranteed a 24-hour week and 20% of workers employed as 'casuals'. To get the flexibility it wants, POAL offered a 10 percent increase in wages over 30 months - but it also wants to contract-out work to two non-union stevedoring companies. The POAL proposal would result in the casualisation of the majority of the workforce.

132. MUNZ's position is that casualisation would mean loss of security for workers and their families who rely on having guaranteed part-time contracts at present. MUNZ's bargaining position is for a 2.5 percent pay increase over 12 months, continued job security, an agreement not to contract-out, and several other health and safety provisions.

133. With no movement in the negotiations, several strike actions were taken in late 2011. At a mediation on 12 January 2012, MUNZ agreed to a number of changes including more flexibility in rosters, and greater use of part-time employees. POAL pushed for even greater casualisation, and in the midst of another strike, POAL announced on 7 March 2012 that it would make 292 port workers redundant and hire a replacement workforce.[125]

134. MUNZ took this matter to the Employment Court, and on 21 March 2012, POAL made an undertaking to the Employment Court that it would suspend the plans to make the workers redundant, and return to collective bargaining. On 22 March 2012, port workers accepted a MUNZ recommendation to end the strike. However, on the same day, POAL issued a 14 day notice of an indefinite lockout, and refused to allow the workers to return to work.[126]

135. On 27 March 2012, the Employment Court issued an injunction against POAL's plans to contract out MUNZ members' work[127] saying that MUNZ "has a "seriously arguable case" against the Ports of Auckland's decision to contract out union members' work".[128] On 30 March 2012, following a return to the Employment Court, POAL announced it had reflected on its position, was lifting the lock out notice and would now focus on a return to collective bargaining.[129] A substantive Employment Court hearing on the issues has been set down for 16 May 2012.

136. It should also be noted that in early March, union members in the ports of Tauranga, Wellington and Lyttleton refused to work on ships that had been loaded by non-union labour in Auckland, but in each case, a court injunction forced them to work on those ships.[130]

137. While some might say that the POAL situation demonstrates the effectiveness of the Employment Court in that it has acted in the interests of the workers' rights so far, we would argue that this dispute highlights the weaknesses in the Employment Relations Act 2000 (ERA) because it does not prevent employers from violating workers' rights. It is unreasonable for employers to behave in the manner outlined above in relation to both AFFCO and POAL, which has caused unnecessary stress and hardship to workers and their families. In addition, there is no guarantee that the Employment Court will have the power to fully protect workers' rights as the POAL case proceeds.

138. Furthermore, the state party is currently proposing to weaken the law on collective bargaining to make it more favourable to employers, as follows:

> *"As part of National's pre-election employment relations policy, the Prime Minister announced the following changes aimed at improving collective bargaining:*
>
> *Remove the current obligation to conclude a collective agreement unless there is a genuine reason not to do so, on the basis that this obligation has led to protracted negotiations, workplace disruption and a deterioration of relationships between employers and unions. The requirement to bargain in good faith would remain.*
>
> *Remove the "30 day rule" for new employees who are non-union members. Section 63 requires that a new employee who is not a union member must nevertheless be employed on the collective agreement terms that would bind them if they were a union member for the first 30 days of employment. Repealing this provision would mean that employers could offer non-union members different individual terms to take effect from the commencement of employment.*
>
> *Allow employers to opt out of negotiations for a MECA (multi-employer collective agreement).*
>
> *Introduce partial pay reductions for partial strikes or situations of low level industrial action. Currently, employees who engage in partial strike action (such as, for example, refusing to answer email) generally continue to receive full pay. It is proposed that an employer seeking to reduce pay would make an application to a Department of Labour*

Inspector, who would then determine an appropriate reduction in remuneration to reflect the level of work being done."[131]

139. It should be noted that an amendment to the ERA in 2010 required union representatives to request and obtain the consent of the employer or a representative of the employer before entering any workplace.[132] In November 2011, the Council of Trade Unions (CTU) reported that a union representative was denied access to workers who were continuing to work during a lockout situation, and although the law requires the employer to make a decision within a day on any access request, the employer instead wrote back to the union asking for more information[133]. The CTU has described this law change as "a deliberate attempt to undermine the union in the workplace".[134]

140. Another amendment to the ERA, which came into effect on 1 April 2011, enables all employers to employ new employees on a trial period of up to 90 calendar days. This is contingent on an employer and employee entering into a written agreement that, for the specified and agreed number of days (no more than 90 calendar days), the employer can dismiss the employee without the employee being able to take a personal grievance for reasons of unjustified dismissal. While this is described as a voluntary agreement, which "must be agreed to by the employer and employee in writing in good faith as part of an employment agreement"[135] it is difficult to imagine how any worker faced with a choice of this, or withdrawal of a job offer, will feel in a position to refuse the trial period and thus the possibility of dismissal with no recourse to redress.

141. In a recent commentary on the comparatively low level of wages here when compared with states with similar economic circumstances, and the reducing level of the "labour share" (the share that workers get of the income the economy generates), the CTU economist pointed out that a large part of the explanation for both is that the bargaining power of employers has greatly outstripped that of their employees. This trend is clearly evident in the examples outlined above.

142. The commentary goes on to say:

"The rapid opening of the economy encouraged employers to move jobs to low income countries, or threaten to. That was reinforced by the 1991 Employment Contracts Act which made the most effective form of wage bargaining, union-backed collective bargaining, extremely difficult. The most effective collective bargaining to raise general wage levels, national industry bargaining, was impossible. At the same time, the minimum wage was allowed to fall well below current wage levels. The Employment Relations Act which replaced it in 2000 was an improvement, but only a small one. Collective bargaining is still very difficult, and over 90 percent of private sector employees are not directly covered by it.

It is not just a union economist saying this: the IMF and the International Labour Organisation agree that loss of employee bargaining power is a cause of growing inequality internationally. Strengthened collective bargaining is recognised in international conventions as the most effective way to address it."[136]

143. Finally in this section, as Committee members will be aware, the state party has not ratified the ILO 87, one of the core ILO Conventions, mainly because the ERA puts tight restraints on the ability to legally strike, for example, strikes on issues relating to economic and social policy are not permitted, nor are sympathy strikes (as illustrated in the court injunctions against union members in Tauranga, Wellington, and Lyttleton). The ILO has expressed concern about this in the past.[137]

- **Suggested recommendations***: We suggest the Committee recommends that the state party removes its reservation to Article 8, ratifies ILO 87, and strengthens the provisions of the Employment Relations Act to provide better protection of workers' rights, their right to enjoy just and favourable working conditions, their right to collective bargaining and the right to strike. We further suggest that the Committee recommends that the state party incorporates the international instruments relating to all aspects of the right to work directly into its domestic legislation.*

E. (iii) Article 9: the right to social security

144. In response to the List of Issues (at 12), the Human Rights Foundation has provided the Committee with information on the Social Security Amendment Act 2007, and the state party's February 2012 announcement of stage one of its social welfare reforms, so this section provides some comment and an update on developments since that announcement.

145. Firstly, a comment about the process the state party is following with regard to the legislative changes required to bring about their social welfare reform agenda.

146. On 8 March 2012, the Minister of Social Development said:

> *"The first stage of legislation will be introduced to Parliament this month.*
>
> *It affects DPB, Widow's and Woman Alone Benefits, as well as young people and teen parents.*
>
> *Changes will begin to take place from late July,* ***but we have a robust Select Committee process to go through before then****."*[138] [our emphasis]

147. The first stage of the reforms are contained in the Social Security (Youth Support and Work Focus) Amendment Bill 2012 (the Bill). The Bill was introduced to parliament on 19 March 2012, and following its first reading on 27 March, the Bill was referred to the Social Services Select Committee (SSC). On 29 March, the SSC called for public submissions on the Bill - the deadline for submissions is 13 April 2012, only 15 days after the call for submissions. The SSC has stated that "hearings will be held at short notice" in mid to late April, and it intends to have the Bill reported back to parliament by 31 May 2012.[139]

148. The state party's concept of a "robust process" is rather different from ours. As, apparently, is their sense of irony as it did not escape our, and others, attention that the Minister of Social Development's speech about legislative changes that will negatively

affect the economic and social rights of women, in particular, was made on International Women's Day.

149. Secondly, some comment on the content of the Bill in relation to the state party's Covenant obligations. In summary, it is targeted at young persons (aged 16 to 18 years), sole parents on the Domestic Purposes Benefit (DPB), women receiving the Widows' and Women Alone benefits, and partners of recipients of other social welfare benefits. The Bill imposes training, education and / or work requirements as follows:

"**Youth obligations**

• full-time education, training or work-based learning working towards at least NCEA Level 2 qualification or equivalent;

• undertaking an approved budgeting programme and requirements;

• for parents, undertaking an approved parenting education programme and requirements.

Work availability expectations for sole parents, widows, women alone, and partners

• require sole parents receiving the domestic purposes benefit and partners of other main benefit recipients to be available for part-time work when their youngest child is five years of age:

• require sole parents receiving the domestic purposes benefit and partners of other main benefit recipients to be available for full-time work when their youngest child is aged 14 or older:

• extend these work availability expectations to women receiving the widows' benefit and the domestic purposes benefit for women alone:

• extend the ability to require pre-benefit activities before grant of a domestic purposes benefit for sole parents or women alone or widow's benefit.

Changes to work availability expectations for parents on benefit who have subsequent children:

• where a parent has additional children while receiving a benefit, their work availability expectations will be based on the age of their previous youngest child, once their newborn turns one year of age. [comment: if their previous youngest child is aged 14 years or over, these parents will be required to be available for full-time work when their newborn is one year old]

Activation powers

The Bill creates a new activation power which will enable Work and Income to require beneficiaries who are not expected to be available for work to take steps to prepare for work. It:

• replaces the existing provisions that focus on planning alone to set an expectation that, in general, beneficiaries should be taking reasonable steps to prepare for work:

• establishes a broad range of activities that people can be directed to do in order to improve their work readiness:

• aligns sanctions for non-compliance with the sanctions that apply to people who do not meet their work obligations."[140]

150. Administration and delivery of the new Youth Payment and Youth Parent Payment will be contracted out to service providers (including private companies), and the Bill allows for the sharing of personal information about young persons between the Ministry of Education, Ministry of Social Development, contract service providers, and any agency specified by an Order in Council.

151. Social welfare payments for young persons will be distributed through redirections for accommodation and utility costs, a payment card for food and groceries, and an in-hand allowance.

152. To assist with clarity, we provide comments below on some of the issues with this Bill in three sections: the discriminatory aspects and impact on Covenant rights; the impact of state party's social welfare reform agenda on societal attitudes towards Covenant rights; and some practical issues.

153. Firstly, with regard to the discriminatory aspects, if the legislation is enacted, it will set in law prohibited discrimination on the grounds of age, gender, family status and employment status. Persons in need of social welfare assistance will be treated differently from those who have other sources of income with respect to how they spend their income (young persons), how they care for their children, when they have children, and so on. They will be subjected to punitive and coercive measures that persons with other sources of income are not.

154. The legislation involves cross-cutting discrimination - for example, women, who are the majority of sole parents with child-rearing responsibilities, will be subjected to coercive and punitive measures that women with other sources of income are not, and will be subjected to discrimination on the grounds of gender, family status and employment status. Young women who are parents will be subjected to discriminatory measures involving age, gender, family status and employment status.

155. According to the state party's analysis of parents who have "subsequent children" while receiving social welfare assistance, 59% are Maori and 12% are "Pacific Island" [141] which raises a further issue of racial discrimination.

156. Children in families whose income is derived from social assistance will be negatively affected by the work requirements on their parents, when compared with other children, so in that sense, the legislation also involves discrimination against children.

157. It should be noted that the Attorney General's analysis of the Bill in terms of its consistency with the Bill of Rights Act, raises issues with respect to discrimination on the grounds of age, family status and employment status only, but concludes that the discrimination is justified. Bill of Rights Act analyses are conducted by the Attorney General, a government politician, not an independent human rights expert or human rights

body, and it is extremely rare for a Bill of Rights Act analysis of legislation to find unjustified discrimination. This highlights further the lack of constitutional protection for Covenant rights, and indeed, all human rights as outlined above in section C. (ii) 'Overall lack of protection for Covenant rights'.

158. With regard to the impact of this legislation on the Covenant rights of those in need of social welfare assistance, it is clear that if enacted, it will undermine the realisation of many Covenant rights including those elaborated in: Article 2 (freedom from discrimination), Article 3 (equal rights of men and women), Article 4 (unjustified limitations on Covenant rights), Article 6 (freely chosen and accepted work), Article 9 (social security), Article 10 (protection and assistance for families, care of dependent children, special measures of protection and assistance for children without discrimination), Article 12 (highest attainable standard of physical and mental health - in particular, the right to the highest attainable standard of mental health which is likely to be negatively affected by the punitive sanctions, and the right to control one's body in relation to freedom of reproductive health).

159. With regard to Article 11, the introduction to the legislation includes the statement: "There are well established links between people receiving benefits and poverty, poor health, and many other poor social outcomes."[142] It should be noted in this connection that the figures (as detailed in paragraph 11 above) indicate that of the one in five children in Aotearoa New Zealand in households with an income below the poverty line, one third are in a household with income from paid work[143] which indicates that paid work is not necessarily a solution to poverty. This further suggests that rather than forcing parents whose income comes from social welfare assistance to seek paid work, the state party should instead raise the level of social welfare assistance.

160. Secondly, with regard to the impact of the state party's social welfare reform agenda on societal attitudes towards Covenant rights, the state party's discourse (and thus the public discourse) is framed in a way that suggests those in receipt of social welfare assistance are in that position by choice, due to deficiencies in their moral character such as laziness or a lack of personal responsibility, and that they are deliberately ripping off other New Zealanders. There is much reference to "welfare dependency"[144] and "intergenerational dependence on welfare"[145] as though those in need of social welfare assistance are somehow addicted to its provision, or suffering from an affliction that can only be overcome by the prescription of paid work. The state party's discourse further reinforces prejudice against "the undeserving poor", for want of a better phrase.

161. The discourse around women who are in need of social welfare assistance while raising children is particularly offensive, especially around those "who choose to have more children while on a benefit"[146] (who have been singled out for work requirements when the child is one year old, rather than when the child is older). The reasons for, and the circumstances around, women conceiving are many and varied, and not all pregnancies are a result of choice. It is highly unlikely that many, if any, parents "choose" to have a child for the purpose of receiving or continuing to receive social welfare assistance at a level that almost certainly guarantees poverty for them and their children.

162. Most sole parents move between the DPB and paid work as their circumstances permit. It should be noted that the Minister of Social Welfare (the Minister leading the state party's

social welfare reform agenda) herself as a sole parent followed that pattern - in an interview in 2008, she said that she had two part time jobs while her daughter was young:

> *"Then I pretty much fell apart because I was exhausted. I went back on the DPB", she says. Over the next few years she worked as a cleaner, went back to the tourist job and was receptionist at a hair salon. In between, she was on and off the benefit."*[147]

163. That pattern is precisely why social welfare assistance for parents, without coercive or punitive measure, is so essential - to enable parents to care for their children without falling apart.

164. One of the most concerning impacts of the state party's social welfare reform agenda on the societal attitudes towards Covenant rights is that it further privileges paid work over the (largely unpaid) work of child-rearing and caring for those in need, and denigrates those who wish to raise their children without having to juggle those responsibilities with paid work commitments, or who are unable to engage in paid work for whatever reason. There is surely no work more important than looking after future generations - the well-being of children and their parents is of paramount importance, not the source of family income.

165. Another theme that reoccurs in the state party's discourse around its social welfare reform agenda is the implication that social welfare assistance is somehow old-fashioned, a thing of the past. This can be seen, for example, in the Minister of Social Welfare's speech introducing the Bill to parliament, where she referred to the reforms as "bringing the system out of the dark ages and into the light of modern day New Zealand".[148]

166. Thirdly, with regard to the practical issues around this legislation, it is unclear how young persons will be able to meet the requirements around full-time education, training or work-based learning due to issues around access, affordability and availability. There is no evidence as yet that the state party has addressed these issues. It should be noted in connection with this that since 2009, youth development programmes for "at risk" and "vulnerable" children and young persons have been run by the armed forces[149], a development which the state party explicitly linked to the New Zealand Defence Force's recruitment efforts in 2010[150]. Armed forces' recruitment efforts were also linked to the current high level of youth unemployment and the New Zealand Defence Force's ability to provide training opportunities for young persons that are not otherwise available.[151] We would be extremely concerned if further programmes are developed involving young persons in military-based or quasi-military training.

167. The requirement for young persons in need of social welfare assistance to attend budgeting (and where relevant, parenting) courses raises questions about the adequacy of the state party's education policies as surely all children should receive such information at school.

168. With regard to the work requirements on parents who are in need of social welfare assistance, even if these were desirable which they are not, there are practical issues around the availability of paid work. As at December 2011, the overall unemployment rate was 6.3%[152]. The unemployment rate varies by age, gender and ethnicity, for example, the rate for young persons was 17.3%[153]; for women, 6.7%[154]; for Maori, 13.4%[155]; and Pacific

peoples, 13.9%[156]. It also varies by geographic region, and in relation to the work requirement on women "who have subsequent children" while receiving the DPB, we note that the state party's figures[157] on the regions where the rate of women "who have subsequent children" is highest include Auckland (overall unemployment rate of 6.7%), Whangarei in Northland (overall unemployment rate of 8.3%), Rotorua, Whakatane and Kawerau in the Bay of Plenty (overall unemployment rate of 8.3%) and Wairoa in Hawkes Bay (overall unemployment rate of 7%).[158]

169. The work requirements on parents also raise issues around the availability and affordability of good quality childcare, which is already a difficulty for parents involved in part-time and full-time paid work - there is no evidence as yet that the state party plans to increase provision of affordable good quality childcare. The work requirements also raise issues around affordability, availability and accessibility in terms of transport, and other access and affordability issues.

170. Finally in this section, it should be noted that stage two of the state party's social welfare reform agenda involves similar punitive and coercive measures in relation to persons who are in need of social welfare assistance due to disability or ill health, and those who care for them, as well as those caring for those with terminal health conditions.[159] It can already be seen that the same devaluing of care work will underlie the second stage reforms, and that inappropriate work requirements will be placed on carers, for example, on those who are caring for anyone not requiring "hospital-level care".[160]

- ***Suggested recommendation****: We note the Committee listed "The absence of a legally enforceable right to adequate social assistance benefits for all persons in need on a non-discriminatory basis and the negative impact of certain workfare programmes on social assistance recipients" as one of the principal subjects of concern in relation to Canada in 2006[161] and suggest that similar, or stronger, wording be used in relation to the state party's social welfare reforms. We further suggest the Committee recommends that the state party examines the social welfare reforms in the light of its obligations to progressively realise Covenant rights, and abandons any reforms that do not ensure those obligations are fully met.*

F. The Optional Protocol to the Covenant

171. We note that the state party's position on the Optional Protocol was not included in either the Periodic Report or in its replies to the List of Issues.

172. During New Zealand's Universal Periodic Review in 2009, the state party rejected the recommendation that it ratify the Optional Protocol[162], and according to its mid-term progress review published in July 2011, "While New Zealand is not considering ratification at this stage, this treaty may be reviewed later."[163]

- ***Suggested recommendation****: We suggest the Committee recommends that the state party signs and ratifies the Optional Protocol as a matter of urgency.*

G. List of recommendations

C. General information (Question 1.1 of the List of Issues)

C. i) Justiciability of economic, social and cultural rights

Aside from the general issues of lack of justiciability of Covenant rights, we suggest the Committee recommends to the state party that the benefits of the Working for Families package be extended to all families, regardless of their source of income.

C. ii) Overall lack of constitutional protection for Covenant rights

We suggest the Committee recommends that the state party enacts legislation giving full effect to all Covenant rights and provides access to effective remedies within the domestic legal system for any breaches of Covenant rights. The state party must also ensure that domestic law is fully consistent with the Covenant.

C. iii) Consideration of constitutional issues

We suggest the Committee makes note of the consideration of constitutional issues process, but reminds the state party of its binding obligations under the Covenant and recommends that legislative and policy measures to give full effect to Covenant rights and to provide effective remedies for any breaches of such rights must not be contingent on this process.

C. iv) Impact of cuts to public services and public sector staffing levels

We suggest the Committee recommends that the state party examines the cuts to public services and staffing levels in the public sector in the light of its obligations to progressively realise Covenant rights, and adjusts its policies in this regard to ensure that those obligations are fully met.

D. Indigenous peoples' rights:

D. i) Article 1: the right of self-determination

We suggest the Committee refers to Article 1 in all recommendations relating to Maori in the Concluding Observations, including those on the specific issues outlined below.

D. ii) Articles 1, 2.2 and 15(1.a): the foreshore and seabed legislation

We suggest the Committee recommend that the state party repeals the Marine and Coastal Area (Takutai Moana) Act and enters into proper negotiations with hapu and iwi about how their rights and interests (including under Article 1 and 15.1.a) in relation to the foreshore and seabed areas can best be protected

D. iii) Articles 1, 11, and 15(1.a): privatisation of state owned assets

We suggest the Committee express its concern about the Mixed Ownership Model Bill in relation to Articles 1, 11 (right to water) and 15(1.a) and recommend that the Bill be put on hold until a process of full and proper negotiation with hapu and iwi has been held, and all pending claims before the Waitangi Tribunal or subject to direct negotiation covering land and resources that will be affected by the mixed ownership model are resolved to the satisfaction of the hapu and iwi involved.

D. iv) Articles 1, 11, 12 and 15(1.a): deep-sea oil seismic exploration and drilling, and hydraulic fracturing

We suggest the Committee expresses concern about the state party's oil exploration and drilling programme in relation to Articles 1, 11, 12 and 15(1.a) and recommends that the state party put all oil and gas exploration and drilling on hold until the affected hapu and iwi have been fully consulted and have expressed their free, prior and informed consent for such activities to take place in their respective lands and coastal areas.

D. v) Articles 1 and 15(1.a): Maori Language Strategy and kohanga reo

We suggest the Committee expresses concern about the level of the state party's commitment to the protection and promotion of the Maori language, and recommends that the state party reverses funding and public staffing cuts that will have a detrimental effect on this. We further suggest that the Committee recommends that the state party acts as a matter of urgency on the Waitangi Tribunal's recommendations on Maori language contained in the WAI 262 report and the forthcoming report on kohanga reo.

D. vi) Impact of New Zealand companies and government investments on indigenous communities in other parts of the world

We suggest the Committee recommends that the state party implements effective measures to monitor and minimise the impact of the activities of New Zealand companies on the enjoyment of Covenant rights by indigenous communities in other parts of the world; and excludes companies with a record of human rights abuses from all government investment portfolios.

E. Other matters raised in the List of Issues:

E. i) Article 2.2: the enjoyment of the right to work by persons with disabilities

We suggest the Committee expresses its concern about the state party's response to the services required by MP Mojo Mathers to enable her to fully participate in parliamentary debates, and recommends that the state party substantially increase its efforts to ensure that the equal rights of persons with disabilities to the enjoyment of the right to work are fully met by all employers.

E. ii) Article 7 (the right to just and favourable conditions of work) and Article 8

We suggest the Committee recommends that the state party removes its reservation to Article 8, ratifies ILO 87, and strengthens the provisions of the Employment Relations Act to provide better protection of workers' rights, their right to enjoy just and favourable working conditions, their right to collective bargaining and the right to strike. We further suggest that the Committee recommends that the state party incorporates the international instruments relating to all aspects of the right to work directly into its domestic legislation.

E. iii) Article 9: the right to social security

We note the Committee listed "The absence of a legally enforceable right to adequate social assistance benefits for all persons in need on a non-discriminatory basis and the negative impact of certain workfare programmes on social assistance recipients" as one of the principal subjects of concern in relation to Canada in 2006[164] and suggest that similar, or stronger, wording be used in relation to the state party's social welfare reforms. We further suggest the Committee recommends that the state party examines the social welfare reforms in the light of its obligations to progressively realise Covenant rights, and abandons any reforms that do not ensure those obligations are fully met.

F. The Optional Protocol to the Covenant

We suggest the Committee recommends that the state party signs and ratifies the Optional Protocol as a matter of urgency.

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