



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

**Submission of the
New Zealand Council of Trade Unions
Te Kauae Kaimahi**

to the

United Nations Committee

on the

**International Covenant on Economic, Social and
Cultural Rights**

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Contents

1. Introduction	5
2. New Zealand and International Treaties	5
3. New Zealand Trade Union and Employment Relations Framework	7
4. Free Trade Agreements and Labour Rights	9
5. Article 6: ICESCR: Right to Work	10
6. Article 7: ICESCR Right to Just and Favourable Conditions of Work	12
7. Article 8: ICESCR Trade Union Rights.....	16
8. Article 9: ICESCR Right to Social Security.....	17
9. Article 11: ICESCR Right to an Adequate Standard of Living	18
10. Conclusion	21
11. Bibliography.....	23

Summary of Recommendations:

1. That the New Zealand Government should move to ratify core ILO Conventions 87 and 138.
2. Legislation to repeal regressive employment rights enacted in 2011 and 2015.
3. That the New Zealand Bill of Rights Act, 1990 is amended to reflect the obligations of ICESCR to include:
 - The right to collectively bargaining and the right to strike in conformity with the law
 - The right to work (including the right to gain one's living by work which is freely chosen or accepted) should be included in the New Zealand Bill of Rights Act, 1990
 - The right to just and favourable conditions of work (as expressed in article 7 of ICESCR) should be included in the New Zealand Bill of Rights Act, 1990
 - That other Economic, Social and Cultural Rights (ESCR) are recognised as justiciable in the New Zealand Bill of Rights Act, 1990
 - That the optional protocol to ICESCR be ratified.
4. The repeal of regressive punitive sanctions in the Social Security Act.
5. Employment regulation and protection for workers in all forms of temporary, insecure and precarious work.
6. Legislative and regulatory changes to the Health and Safety at Work Act, 2015 to require all work sites to have worker participation systems.
7. The establishment of active labour market policies to provide workers made displaced/ redundant with training, support and adequate financial support.
8. That legislation setting child poverty reduction targets makes a significant difference in reducing New Zealand's unacceptable child poverty statistics and impacts.
9. Restoring the total value of the full range of Working for Families tax credits to its 2010 level.

10. That the current Labour-led Coalition Government's position to not enter into any future ISDS provisions in the TPPA and in future free trade agreements is supported and that it move to withdraw from any existing ISDS commitments.

11. Greatly improved protection for the employment rights of migrant workers and movement for New Zealand to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

1. Introduction

- 1.1. This submission is made on behalf of the 30 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With 320,000 members, the CTU is one of the largest democratic organisations in New Zealand.
- 1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 1.3. The CTU has a primary function in advocating for all New Zealand workers to receive fair treatment and recognition of their rights and voice at work. There are fundamental rights that are enshrined in international human rights law to ensure that workers are in decent, healthy and safe work and receiving adequate income to live in dignity.
- 1.4. Unions are an essential component of a democratic and strong civil society providing a means to ensure essential international and domestic human and employment rights are realised, to equalise the inequality of power in the employer and worker relationship, to collectively negotiate wages and conditions and to ensure healthy and safe workplaces.

2. New Zealand and International Treaties

- 2.1. New Zealand has a strong history of supporting international human rights conventions and played a critical role in the establishment of the first international human rights convention – the Universal Declaration of Human Rights (UDHR).
- 2.2. Work rights are expressed in many of the international human rights conventions. The UDHR contains numerous references to the world of work, including freedom from slavery, child labour and discrimination at work. There is also recognition of the essential right to join trade unions which stresses the important role of trade unions in society: Art 22(3) of the UDHR specifically provides that, “Everyone has the right to form and join trade unions for the protection of his interests”.
- 2.3. Membership of the International Labour Organisation (ILO) confers a commitment to work rights through the Declaration of Philadelphia (Declaration of Philadelphia, 1944) – the constitution of the ILO - which states that governments have a responsibility to pursue, “policies in regard to wages and earnings, hours and other conditions of work calculated to

ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection”.

- 2.4. Work rights are a strong component of the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Arts 6, 7 and 8 of the ICESCR specifically provide core work rights. New Zealand ratified ICESCR in 1978 though there is a reservation to art 8, as follows:

The Government of New Zealand reserves the right not [to] apply article [8 or 22] to the extent that existing legislative measures, enacted to ensure effective trade union representation and encourage orderly industrial relations, may not be fully compatible with that article.

- 2.5. This reservation does not constitute a blanket ‘opt out’ of the trade unions rights within ICESCR but only a restriction to ‘ensure effective trade union representation’ or ‘to encourage orderly industrial relations.’
- 2.6. Work rights and obligations in specific areas of work are explicitly expressed in the ILO Labour Conventions. New Zealand has ratified six of the eight fundamental ILO Conventions, with the exception of C87, Freedom of Association and Protection of the Right to Organise, 1948; and C138 Minimum Age Convention 1973. Alongside the fundamental conventions, New Zealand has ratified another 45 currently in-force conventions covering a wide range of areas including minimum wage fixing, labour inspection, unemployment provision, migration, occupational safety and health and labour statistics.
- 2.7. While New Zealand has not ratified C87 (Freedom of Association and Protection of the Right to Organise, 1948), the rights of freedom of association and collective bargaining are recognised by the ILO as sufficiently fundamental that membership of the ILO creates obligations to observe and promote these rights.
- 2.8. A recent and positive development and pressure for further recognition of work rights is the United Nations Sustainable Development Goals Agenda 2030. This agenda with its 17 goals and 169 targets has been ratified by all UN Member States and was signed by New Zealand in 2015. Ensuring decent employment conditions to sustain healthy people and healthy development is an integral part of the suite of economic, social and environmental objectives to reduce inequity within and between nations, end poverty, and ensure a sustainable future for the planet and its inhabitants. Goal 8 calls for nations to “promote

sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all” and has relevant sub-goals.

- 2.9. This CTU submission is focused on the articles of ICESCR as they relate to work rights and to working people’s standards of living. This intentional focus does not mean that the CTU is uninterested in other ICESCR articles and or New Zealand’s compliance with cultural and social rights such as health and education rights. These are all critical rights and issues for working people, unions and essential foundations for decent standards of living.

3. New Zealand Trade Union and Employment Relations Framework

- 3.1. The industrial relations framework and employment law framework in New Zealand has been subject to massive upheaval in the past 30 years. In 1983, New Zealand labour law included compulsory unionism, national awards, compulsory arbitration in many sectors and differing legal frameworks for the public and private sector. In less than a decade the pendulum had swung in a polar-opposite direction, under the Employment Contracts Act 1991, toward a system based on individual contracts with little scope for the exercise of collective rights.
- 3.2. The Employment Relations Act introduced by the Labour-led Government in 2000 restored some of the framework for collective bargaining and union rights but was not successful in significantly rebuilding union density and greatly increasing collective bargaining.
- 3.3. The National Government, elected in 2007, introduced changes in 2011 and 2015 to weaken collective bargaining and work rights. These regressive employment reforms included restricting union access on work sites, removing protection for vulnerable workers, instituting 90 day trial periods, removing duties on employers to conclude collective bargaining and removing guaranteed rest and meal breaks. Another regressive major employment relations change was the “Hobbit Amendment Act” – the Employment Relations (Film Production Work) Amendment Act, 2010 - which removed the rights of film production workers to collectively bargain.
- 3.4. The change in 2017 to a Labour-led Coalition Government, with a programme to repeal the regressive employment rights enacted in 2011 and 2015 is now underway.

- 3.5. Current protections relating to work rights are insufficient and regressive reforms relating to employment and trade union rights are ICESCR-inconsistent and breach a number of ILO Conventions.
- 3.6. Work rights are not explicit in New Zealand’s human rights legislation and framework. There is now a new opportunity to consider whether work rights are established in our major human rights legislation – The Bill of Rights Act, 1990 - to reflect the obligations of ICESCR and thereby prevent regressive employment law changes or other regressive changes without limitation of higher Parliamentary powers.
- 3.7. While some of the rights pertaining to ICESCR are set out in the New Zealand Bill of Rights Act 1990, in the main they are largely civil and political rights. Wider economic, social and cultural rights such as ‘just and favourable conditions of work’ and that ‘work is freely chosen’ are noticeably absent and are not justiciable.
- 3.8. In 2013 the CTU submitted to a panel considering whether New Zealand’s constitutional arrangements needed to be strengthened - the Constitutional Advisory Panel and stated that work rights are inadequately protected by Parliamentary safeguards and have been too easily circumvented or ignored (NZCTU, Te Kauae Kaimahi, 2013).
- 3.9. Three examples were provided to demonstrate how workers’ rights, not recognised in the New Zealand Bill of Rights Act 1990, have been breached by Government decisions and changes: the Social Security (Work Focus and Benefit Categories) Amendment Act (whereby failure to accept suitable employment results in a cancellation of benefit and a 13 week stand down); the adequacy of minimum wage fixing machinery; and freedom of association as shown by the “Hobbit Amendment Act”. In each case, rights under the ICESCR were compromised along with breaches of binding ILO Conventions.
- 3.10. The CTU advocates for explicit recognition of work rights and wider economic, social and cultural rights (ESCR) in the New Zealand Bill of Rights Act 1990 and recommends that:
- The right to collectively bargain and the right to strike in conformity with the law
 - The right to work (including the right to gain one’s living by work which is freely chosen or accepted) should be included in the New Zealand Bill of Rights Act, 1990

- The right to just and favourable condition of work (as expressed in Art 7 of ICESCR) should be included in the New Zealand Bill of Rights Act, 1990
- That other Economic, Social and Cultural rights are recognised as justiciable rights in the New Zealand Bill of Rights Act, 1990
- That the optional protocol to ICESCR be ratified.

4. Free Trade Agreements and Labour Rights

4.1. The CTU along with other union centres in TPPA nations, attempted to raise matters concerning labour rights, including the impact of the Investor-State Dispute Settlement (ISDS) mechanism and the Labour Chapter of the TPPA agreement but received no substantive response and the final agreement shows no sign we were listened to. The government repeats claims that the consultation over the TPPA “was among the most extensive that the Government has undertaken for any trade negotiation”. As we stated in the CTU submission (NZCTU, Te Kauae Kaimahi, 2016) on the agreement to Parliament:

...quantitatively that may be correct (no data has been produced to prove it) but the number of meetings between officials and other parties does not measure the quality of consultation. The CTU and affiliates attended numerous meetings with MFAT and other officials, mostly at our request. With a few honourable exceptions we learned almost nothing we did not already know from the exchange. We consistently learned much more from our national and international contacts, the international specialist media and leaks. The MFAT web site pages on the negotiations were often woefully out of date with perfunctory entries giving little more than a summary of the official line. More, and more up to date information could be gleaned from the web sites of MFAT’S Australian counterpart, DFAT, and the US Trade Representative, though even these provided meagre insights into what was going on.

4.2. In particular we remain highly concerned that the ISDS provisions have no protection against them being used to challenge actions taken by the government of the day to protect or improve labour rights or other human rights. We raised an example in our submission to Parliament in relation to the ‘Hobbit Law’ (mentioned elsewhere in the present submission). We asked for assurances that labour rights would not be compromised and received no such assurance. While the government lists “certain safeguards to preserve the Government’s right to regulate and to prevent unwarranted ISDS claims”, none of them protect against claims that would challenge human rights or actions taken by the government to protect or improve human rights, including labour rights.

- 4.3. We acknowledge that the new Labour-led Coalition Government is making positive changes in some of these areas, including a policy against accepting ISDS in future international commerce agreements. And we are hopeful that consultation will improve. It is too early to pass judgement on how these new policies will work in practice. Despite its welcome change in attitude towards ISDS, the new Government has announced that it will sign the TPPA in the form of the ‘Comprehensive and Progressive Trans-Pacific Partnership’ (CPTPP) including ISDS provisions which in all material ways do nothing to alleviate the above concerns. The principal change is suspension of a provision that would extend ISDS to contracts between an investor and the government.
- 4.4. The Government is also attempting to sign side-letters with as many countries as possible agreeing not to use the ISDS clause, but it will remain available to investors of some countries, including almost certainly Japan. Investors could structure their investments in New Zealand to be owned by subsidiaries in those uncooperative countries, ensuring that ISDS under the CPTPP is still available to them. Such ‘jurisdiction-shopping’ is common in ISDS cases. There are also questions regarding the enforceability of side-letters.

5. Article 6 ICESCR: Right to Work

- 5.1. Article 6 of ICESCR recognises the right to work which includes the right of everyone to the opportunity to gain their living by work which they freely choose to accept and with appropriate steps to safeguard this right. It outlines that the steps to be taken by a State party shall include technical and vocational training programmes, policies to achieve economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.
- 5.2. There has been a drop in the unemployment figures since the height and the aftermath of the Global Financial Crisis with New Zealand’s official unemployment rate in February 2018 at 4.5 percent (Statistics New Zealand, 2018). The female unemployment rate is considerably higher than for men at 5.0 percent (ibid).
- 5.3. A new problem is one of underemployment. While unemployment figures have dropped there are almost double the numbers of unemployed people (221,000) who don’t have enough hours, or are looking for work but are not included in the official definition of unemployed (ibid). This represents nearly a quarter of a million New Zealanders and their families who are experiencing the stress of work insufficiency.

- 5.4. An issue in New Zealand is higher unemployment in some regional areas. Some of these are highly economically impoverished regions like Northland, Gisborne or Hawkes Bay with unemployment rates well over 5 percent and workers short of work.
- 5.5. Māori workers have greatly increased risk of unemployment and the inequalities that Māori face in the workforce are multiple. December 2017 statistics for Māori unemployment are 9.0 percent with the Māori youth unemployment at 20.4 per cent and Māori female unemployment at 12.0 per cent in September 2017. Māori are over-represented in the unemployed (28.1 per cent or 36,800) and underutilised (79,000 or 23.5 per cent) and Maori are nearly a third of youth 'not in employment, education and training' (NEET) compared to the rest of the workforce (Ministry of Business Innovation & Employment, 2017a).
- 5.6. Despite this and some recent increase in the participation of Māori women and youth, the labour force participation rate for Māori has reached 69.7 per cent, the highest for Māori on record. But of major concern is that Māori have a higher proportion of workers employed in lower-skilled occupations and in industries particularly vulnerable to changes in technology and economic cycles (e.g. manufacturing, wholesale and retail trade and construction) (ibid).
- 5.7. Pacific Island workers also have greatly increased risk of unemployment with unemployment rate for Pacific peoples at 10.2 per cent in June 2017. Industries employing most Pacific workers were manufacturing, wholesale & retail, health care and social assistance. These are industries both at high risk of downturn and where low pay is endemic. About 12,300 Pacific youth were not in education, employment and training (Ministry of Business Innovation & Employment, 2017b).
- 5.8. Youth unemployment is disproportionately high at 19.4 percent in December 2017 for 15-19 years (Statistics New Zealand, 2017). In regional areas there are a high proportion of young people who are not in education, employment or training. These young people go on to face barriers throughout their life in getting employment. The new Labour led Coalition Government has announced plans to bring in specific youth training schemes but the details of these are now known. The NZCTU will urge Government engage with unions for these schemes to be set up in compliance with good labour standards and expectations that they provide employment that is meaningful and builds young workers' careers prospects and opportunities.

- 5.9. The social security reforms introduced by the National Government from 2012-2013 brought in a punitive sanctions regime applying to social welfare beneficiaries if they refused to accept work as directed by Work and Income processes. This is a direct breach of the ICESCR principles that work should be freely chosen. The response of the new government in social welfare is yet to be developed but there are some signals that punitive measures such as excessive sanctions will be dropped. This is an issue that the NZCTU will take up with the new Government.
- 5.10. For many people, particularly Māori and Pacific youth and disabled people, there are challenges in accessing training – whether that be in vocational or technical training schemes. A study using data from the surveys of Working Life in 2008 and 2012 into the volume of training and the proportion of employees in New Zealand participating in employer-funded training showed a decline in vocational over the past decade (Pacheco, G, Morrison, P, Cochrane, B, Blumenfeld, S, & Rosenberg, B, 2017). This is a major economic and employment issue that people in work are not getting adequate access to on the job training and support.
- 5.11. While there is a rising proportion of jobs in higher skilled occupations, there is also evidence of the average skill of workers falling in recent years because of strong growth in the employment of lower skilled workers (Rosenberg, 2017).

6. Article 7: ICESCR Right to Just and Favourable Conditions of Work

- 6.1. Article 7 recognises the right of everyone to the enjoyment of just and favourable conditions of work which ensures remuneration, fair wages and equal remuneration for work of equal value, in particular women being guaranteed conditions of work not inferior to those enjoyed by men with equal pay for equal work, a decent living for people with safe and healthy working conditions, equal opportunity and rest and leisure and reasonable limitation of working hours and periodic holidays with pay.
- 6.2. Though work is important so are the conditions in which that work is undertaken. The last decade has seen mounting concern in New Zealand over a growth in precarious/ insecure work. In a 2013 study on precarious/ insecure work the NZCTU estimated that 30 percent of New Zealand's workforce, or over 635,000 people, are in insecure work (NZCTU, 2013). Precarious work is associated with work conditions that are less favourable including the loss of benefits from tenure-related employment but also losses in overall pay.

- 6.3. Approximately 9.5 percent of the total workforce are estimated to be in some form of temporary employment (Pacheco, G et al., 2017) and these workers have considerably less favourable conditions of employment. Temporary workers are earning on average 20 percent less than permanent workers.
- 6.4. A positive development in securing fair and just condition of work is the successful equal pay litigation case of *Bartlett versus Terranova* which established through legal process as far as the Supreme Court, that the predominantly female occupation of caregivers, are entitled in law to equal pay for work of equal value. This case taken by the then Service and Food Workers Union (now E tū), argued that the employer of Kristine Bartlett, who was on a wage a little above the minimum wage, despite her 23 years of work experience, was in breach of the Equal Pay Act 1972.
- 6.5. This case was upheld in the Courts and the then Government entered negotiations with three NZCTU affiliated unions for wage settlements for over 55,000 caregivers. A pay settlement was agreed and pay increases from between 15 to 50 percent, depending on qualifications and experience, were announced in May 2017 with a \$NZ2.3 billion pay-out over four years commencing in July 2017 .
- 6.6. There are other groups of low paid female workers also working in occupationally segregated work who, with the support of their unions, are now taking equal pay case claims. The new Labour-led Coalition Government has announced its intention to reduce the gender pay gap and also its support for employment and legal processes to progress other equal pay claims. The cost of these will be significant and will require committed government funding.
- 6.7. Social services to Māori communities, including early childhood education (ECE) and primary healthcare, are provided by dedicated Māori community organisations receiving government funding. However, funding arrangements mean that Māori ECE teachers working for Kōhanga Reo (Māori language early childhood centres) education providers and Māori nurses working for Māori and iwi (tribal) health providers standardly receive lower pay for work of equal value to that of their counterparts in non-Māori organisations.
- 6.8. Supporting and increasing Māori participation in the health workforce is a critical measure to address and improve the persistent disparities in Māori health outcomes compared to the general population (Ministry of Health, 2016). The development of the Māori health

workforce is hampered by structural discrimination, including lower pay for work of equal value for Māori health workers employed by Māori health organisations, due to funding.

- 6.9. The New Zealand Nurses Organisation, an NZCTU-affiliated union representing nurses and associated health workers, together with Māori and iwi health organisations as employers, have repeatedly raised the issue of pay inequity for Māori health workers with the New Zealand government over the past decade. Despite recommendations from the Health Select Committee of the New Zealand Parliament and the New Zealand Human Rights Commission, there is a persistent pay inequity for Māori health workers. Recent pay equity announcements by the new Government are a signal for some hope.
- 6.10. There is increasing evidence showing that exploitation of migrant workers is widespread in New Zealand. Visits by the Labour Inspectorate to dairy farms across New Zealand between December 2013 and 2014 found breaches of legal minimum employment rights in 33 out of 44 cases (MBIE 2014). Research published by MBIE in 2015 found widespread exploitation of migrant workers in the hospitality industry across New Zealand (Searle Wendy, Keith McLeod, & Natalie Ellen-Eliza, 2015). The results of enforcement activity by the Labour Inspectorate (MacLennan, Catriona, 2017) shows significant non-compliance with employment law among New Zealand, including in industries that employ migrant workers.
- 6.11. The most precarious conditions tend to be faced by migrant workers with temporary immigration or work status. A survey of the employment experiences of migrant students in New Zealand (Anderson, Danae, Ryan Lamare, & Zeenobiyah Hannif, 2011) found that 38 percent were paid less than the legal minimum wage, 38 percent were working more than the 20 hours per week allowed by their visa, and 31 percent reported unsafe conditions of work.
- 6.12. Better employment protections for migrant workers are required including :
- Greater provision of accessible information and education for migrant workers;
 - Better enforcement of minimum employment standards and agreed and industry standard pay rates and conditions, and cooperation between regulators; and
 - Protections for migrant workers to address issues.
- 6.13. New Zealand has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). This would provide an auditing and monitoring framework to better report on migrant worker exploitation.

- 6.14. New Zealand has a record high workplace death rate. Some industries have appalling high rates of death and injuries. There are about 60 workplace fatalities a year. Between 700 and 1000 people die as a result of gradual work-related diseases and 6000 plus people notify the Ministry of Business, Innovation & Employment of serious harm incidents in their workplace.
- 6.15. New health and safety legislation came into force in 2016 following a Health and Safety Taskforce established to review workplace health and safety following the deaths of 29 men at the Pike River coal mine in 2010 which exposed the appalling failure of health and safety systems and the disastrous effects of the dismantling of New Zealand's health and safety at work regulatory framework.
- 6.16. There is a high incidence of worker deaths in forestry, agriculture and construction with the agricultural sector having the highest number of workplace deaths (WorkSafe New Zealand, 2018). Eight deaths in agriculture were reported to Worksafe NZ in the Jan to Dec 2017 period. The forestry sector also has a notorious reputation for health and safety of its workforce, with a high incidence of workplace deaths making it one of the most dangerous industries in New Zealand.
- 6.17. Māori and Pasifika workers are consistently over-represented in workplace injury rates. This reflects systematic racial inequalities in New Zealand workplaces. Between 2002 and 2015, Māori workers were on average 39% more likely to suffer a serious non-fatal injury at work than the general population. For the years 2013-2015, Māori workers were 31% more likely to suffer a non-fatal serious work injury (Serious Injury Outcome Indicators, 2018).
- 6.18. Research by the Department of Labour (now part of the Ministry of Business, Innovation, and Employment – MBIE) in 2012 found that Pasifika workers in manufacturing had consistently higher rates of injury than the general population, with Pasifika people working as labourers injured almost twice as often as non- Pasifika people in the same jobs (Labour and Immigration Research Centre, Department of Labour, 2012).
- 6.19. The NZCTU wants a stronger role of unions and health and safety representatives in all work sites and for worker participation systems, which are pivotal to improving health and safety, to be mandatory in all work industries, sites and workplaces. While many of the changes in the new Health and Safety Act 2015 are positive, there is still a reluctance to empower workers with tools of health and safety training and enforcement.

7. Article 8 ICESCR Trade Union Rights

- 7.1. Article 8 states that the State must ensure the right of everyone to form trade unions and to join the trade union of their choice subject to the rules of the organisation concerned, for the promotion of their economic and social interests. It also ensures the right to strike provided it is exercised in conformity with the laws of the country.
- 7.2. Employment changes brought in 2010 and 2013 were regressive to workers' rights and impacted on workers' ability to freely join trade unions restricting the right of unions to access worksites; removing what was known as the 30 day rule which provided new employees with the terms and conditions of the existing collective agreement; enabling employers to leave bargaining and not to comply with the previous 'duty to conclude bargaining'. Minimum guaranteed rest and meal breaks for all workers were also removed.
- 7.3. While the CTU welcomes the legislation to overturn most of these changes we are concerned that the provision of small employers to dismiss people after a 90 day trial period still remains. Workers in business with fewer than 19 employees will still be subject to unfair dismissal processes.
- 7.4. Weakened collective bargaining is a contributing factor for New Zealand's low wages and low wage growth. Not only will increasing and improving collective bargaining capacity ensure fundamental rights but it will improve wages for many low-paid and poorly paid workers. The Centre for Labour, Employment and Work (CLEW) at Victoria University in their annual analysis of collective employment agreements shows that there is a pay premium for people who are part of a collective agreement (Centre for Labour, Employment and Work, Victoria University of Wellington, 2017). This is critical for an economy beset by low wages and high levels of poverty among children and working poor.
- 7.5. But the number of working people directly benefitting from these union-negotiated increases is falling. Union coverage from collective agreement in 2016 was for 328,700 people compared to 333,000 in 2015 - that is about one in six New Zealand employees in the year to June 2016. It is a struggle for unions to do their job of creating a fairer balance in who gets income, resources and power in New Zealand (NZCTU, Te Kauae Kaimahi, 2017).
- 7.6. The employment legislative programme planned by the new Government including the establishment of industry fair pay agreements is to introduce industry standards to restore the current balance of power - now favouring employers – and enable workers and their

unions improved ability to negotiate and ensure just conditions of pay, decent work conditions and safer workplaces.

8. Article 9 ICESCR Right to Social Security

- 8.1. Article 9 recognises the right of everyone to social security.
- 8.2. We note the *Concluding Observations* on NZ in 2012, from the UN Committee on *Economic, Social and Cultural Rights* expressing concern about the regressive and potentially discriminatory nature of the New Zealand welfare reforms (United Nations, 2012).
- 8.3. The Social Security (Work Focus and Benefit Categories) Amendment Act of 2012 imposed sanctions for failure to participate in a work readiness test with a 50 percent benefit cut increasing to a 100 percent reduction until the person recomplies. For a second failure, the benefit can be suspended and for a third failure there is a full cancellation of the person's benefit.
- 8.4. The welfare reforms moved NZ's universal welfare system to an increasingly targeted and punitive system and fulfilled the objective of the reforms - to reduce the numbers of people on benefits. Child Poverty Action Group (CPAG), in their 2017 report (Cotterell, G, St John, S, Dale, C, & So, Y, 2017) refer to this as a continual dismantlement of key aspects of the welfare 'safety net' constituting a deliberate, methodical, continued and systematic reduction of social welfare and income support in New Zealand.
- 8.5. The objective of social security policy has become to reduce long-term benefit dependency and to 'discourage' people from either becoming beneficiaries or remaining on benefits (Chapple, S, 2013) In the context of a low-wage economy where many thousands of families, both in paid work and on benefits, are in poverty this has been harsh and cruel.
- 8.6. Over the last decade the weakening of active labour market policies in the social security have been particularly disadvantageous to displaced/ redundant workers. An ILO panel looking at support for workers made redundant in a 2017 OECD report "Back to work, New Zealand (OECD, 2017) identified the need to improve the re-employment prospects of displaced workers.
- 8.7. The report found that New Zealand's systems for assisting displaced workers are among the weakest in the OECD. 1.1 percent, or 29,000 New Zealanders, of working age had been made redundant in the last five years and had still not found a new job. Displaced workers

who do not contact Work and Income are very much left on their own to search for a new job or decide about a career change if they want or need it and as the report stated, “the number of displaced workers who have no contact with the public employment service is high, and this high share cannot be fully explained by their ineligibility for income support”. The report also pointed out that New Zealand’s benefit system (for displaced workers, though the same applies for most benefits) provided very low income replacement rates, particularly in the early stages of unemployment (the first one to two years).

- 8.8. The social security framework must change to provide support for workers who are made redundant. This is particularly important as work systems change and workers are facing uncertainty and insecurity with increased automation and industry changes.
- 8.9. The Social Investment Approach (a flagship policy of the previous Government) implemented in the Ministry of Social Development has not assisted displaced workers. This was based on the view that job training and employment support was not necessary because the workers with a recent work history are not at high risk for long-term benefit dependency. The new Government has yet to announce the changes it will make to the ‘investment approach’.
- 8.10. The CTU advocates for a renewed focus on active labour market policies and supports the conclusion of the 2017 OECD panel that, “The New Zealand labour market and social support framework places significant strategic weight on the creation and maintenance of flexible labour markets combined with a reliance on the family and private providers as the main support systems for displaced workers. As a result, social assistance and public employment support are reduced to a minimum and act very much as systems of last resort for displaced workers who end up in the welfare system”.

9. Article 11 ICESCR Right to an Adequate Standard of Living

- 9.1. Article 11 recognises the right of everyone to an adequate standard of living including adequate food, clothing and housing and to the continuous improvement of living conditions.
- 9.2. New Zealand’s wages are low compared to other otherwise high income countries. There is a declining share of income going to labour in wages affecting New Zealand workers. The share of New Zealand’s income going to wage and salary earners has fallen again and has been falling since 2009, back to the level it was at in 2006.

- 9.3. There is a dominance of low wage industries in our economy, particularly in the export sector – agriculture and tourism.
- 9.4. The economic and policy settings of the last decade have not delivered for working people and this is evident in wage trends. Wages only rose 1.8 percent in the last year (2017) according to the most recent Labour Cost Index (NZ Stats, 2017). Without the significant boost from the care and support workers settlement that would have been just 1.6 percent. Many working people are still not getting pay rises - 51 percent of private sector workers did not get pay rises in the last year.
- 9.5. A NZCTU report (Rosenberg, 2017) has shown the rising inequality in the hourly rates of gross earnings (before tax and benefits) among both wage and salary earners and the self-employed over the period 1998-2015, although the incomes of the lowest 10 percent (decile) of wage and salary earners benefited greatly from strong rises in the minimum wage since 2000. The majority of people, however, received either low incomes per hour or experienced low growth in those hourly rates, or both.
- 9.6. The NZCTU report showed a ‘hollowing out’ of the wage scale in the sense that the low and middle income half of employees were getting much lower real increases in pay rates than the top 40 percent – and that the higher income group is becoming increasingly unequal. The exception is the lowest income decile which is heavily influenced by the minimum wage, whose income has risen on average at about the same rate as the top decile. Other than that, wage rates for the next 50 percent (deciles 2 to 6) of employees rose much more slowly than the wage rates of higher income wage and salary.
- 9.7. The effects of low pay is severe for New Zealand workers impacting on work and people’s lives in multiple ways. A study into low pay (MBIE, 2018) in New Zealand has found that individuals on low pay are more likely to have weaker attachment to the labour market relative to individuals earning close to the median wage. Low paid workers tend to have shorter employment spells, higher likelihood of multiple employers, higher propensity to receive a benefit and have longer benefit spells relative to a worker on median wages. Low pay is correlated with being female, working part-time, aged 20-29 years or over 65 years, holding low level of educational attainment and being non-European.
- 9.8. With growing income and wealth inequality, unacceptable levels of family poverty and homelessness there has been an increasing focus on other means to increase the wages of

low-paid working people. Of the 290,000 children living in poverty 50 percent are from families where at latest one adult is in full time work of self-employed.

- 9.9. The Living Wage movement has established itself in New Zealand as a credible force and with strong community support promotes and provides the means to implement a Living Wage for workers. The current rate is \$20.20 - \$4.45 above the minimum wage rate.
- 9.10. The Living Wage is a response to the growing disparity between high and low income groups and higher levels of poverty among the New Zealand working people. The Living Wage is calculated to provide “the income necessary to provide workers and their families with the basic necessities of life andwill enable workers to live with dignity and to participate as active citizens in society”.
- 9.11. Along with supporting the Living Wage and the framework around it, the NZCTU advocates for a higher minimum wage to be set at two thirds of the average wage. This rate would make measurable progress in improving the lives of some of the poorest of New Zealand families.
- 9.12. The latest Child Poverty Monitor (Child Poverty Monitor Report 2017, 2017) report shows that 290,000 New Zealand children - 27 are living in poverty - the measurement of poverty being living in a household with an income less than 60 percent of the medium contemporary income. The report showed 7 per cent, 80,000 Kiwi children, were in severe poverty, facing material hardship ¹and living in a low-income household.
- 9.13. The Child Poverty Reduction Bill introduced in January 2018 by the new Labour-led Coalition Government will establish child poverty measures and will set targets for poverty reduction, require regular reporting on reduction, and will establish a child well-being strategy to ensure agencies work together. It requires government to set a ten-year target on defined measures, with targets published every three years, and the annual Budget will require Government to show its progress on reduction targets and highlight how the Budget would reduce child poverty.

¹ Material hardship means that children will be living in households that meet a number of indicators of hardship such as living in damp overcrowded houses, not having adequate clothing such as a rain proof jacket or adequate shoes, or being hungry many days and going without nutritional food.

- 9.14. The NZCTU supports the newly elected Labour Government's intention to introduce legislation to set a child poverty reduction target.
- 9.15. Another policy of the newly elected Labour-led Coalition Government - to "all workers in the core public service on the Living Wage and to extend it to contractors over time" – is also welcomed.
- 9.16. The tax credits that subsidise wages known as Working for Families have also fallen behind wage growth as rates have not been adjusted for inflation, abatement rates increased and thresholds at which abatement begins have been reduced in real terms. The total value of the full range of Working for Families tax credits fell in 2017 dollar terms from \$3.1 billion in 2010 to an estimated \$2.4 billion in 2017. A new package adjusting the Working for Families package will take effect on 1 July 2018 correcting some of these losses but abatement rates will remain high (creating very high effective marginal tax rates) and they are not adjusted for wage growth. They are also only available for households with children.

10. Conclusion

- 10.1. Work rights are a strong component of the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Yet work rights are explicit in New Zealand's human rights legislation and framework. The absence of explicit work rights has enabled regressive changes to weaken collective bargaining and trade union and worker rights. Work rights should be in our human rights legislation – The Bill of Rights Act, 1990 – and reflect the obligations in ICESCR on employment rights.
- 10.2. We are highly concerned that the ISDS provisions in the TPPA have no protection against them being used to challenge actions taken by the government of the day to protect or improve labour rights or other human rights.
- 10.3. Many of our labour market statistics show that we do are not meeting minimum human rights ICESCR obligations. Under employment is high and other employment inequities are the greatly increased risk of unemployment for Māori, Pasifika and young workers and the high levels of unemployment in some regional areas. A major concern and priority must be to meet the commitment in Article 7 of ICESCR and move to radically improve the health and safety statistics and outcomes in New Zealand workplaces.

- 10.4. We recognise the positive developments in equal pay and employment rights of women and urge that the new Government support for these is maintained and increased. Low wages and high levels of income inequality impact on children, working people, families and communities and cause financial stress and social and economic hardship.
- 10.5. We note the falling Working for Families budget allocation. We welcome changes that will be implemented in 2018 to increase the income of families receiving Working for Families tax credits.
- 10.6. We welcome the intentions, plans and measures already taken by the new Labour- led Coalition Government to bring changes that will restore the balance of equality and provide working people with more bargaining power, equality, fair pay agreements – all measures that will increase the standards of living and income for working people.

11. Bibliography

- Anderson, Danae, Ryan Lamare, & Zeenobiyah Hannif. (2011). *The Working Experiences of Student Migrants in Australia and New Zealand*. Routledge.
- Centre for Labour, Employment and Work, Victoria University of Wellington. (2017). *Annual analysis of collective employment agreements*.
- Chapple, S. (2013). *Forward Liability and Welfare Reform in New Zealand*. Retrieved from <http://igps.victoria.ac.nz/publications/files/e2aca8c99ff.pdf>
- Child Poverty Monitor Report 2017*. (2017). Retrieved from <http://www.childpoverty.co.nz/>
- Cotterell, G, St John, S, Dale, C, & So, Y. (2017). *Further fraying of the welfare safety net*. Child Poverty Action Group.
- Declaration of Philadelphia (1944). Retrieved from http://blue.lim.ilo.org/cariblex/pdfs/ILO_dec_philadelphia.pdf
- Labour and Immigration Research Centre, Department of Labour. (2012). *In Harm's Way: A case study of Pacific Workers in Manukau Manufacturing* (p. 80). Wellington, New Zealand: Department of Labour. Retrieved from <http://www.dol.govt.nz/publications/research/hs-practices-in-pacific-workplaces/report.pdf>
- MacLennan, Catriona. (2017). *Wage Theft in Aotearoa/New Zealand: How employers are stealing millions of dollars from workers and how to fix it* (No. Unpublished).
- Ministry of Business Innovation & Employment. (2017a). *Maori in the Labour Market 2012-2107*. Retrieved from <http://www.mbie.govt.nz/info-services/employment-skills/labour-market-reports/maori-labour-market/maori-in-the-labour-market-report/maori-in-the-labour-market-2012-2017>
- Ministry of Business Innovation & Employment. (2017b). *Pacific Peoples Labour Market Trends*. Wellington, NZ. Retrieved from <http://www.mbie.govt.nz/info-services/employment-skills/labour-market-reports/pacific-peoples-labour-market-trends>
- Ministry of Business, Innovation and Employment. (2018). *Low pay in New Zealand*.

- Ministry of Health. (2016). *Te Ara Tuarua – Pathway 2: Māori participation in the health and disability sector*. Retrieved from <http://www.health.govt.nz/our-work/populations/maori-health/he-korowai-oranga/pathways-action/te-ara-tuarua-pathway-2-maori-participation-health-and-disability-sector>
- NZCTU, Te Kauae Kaimahi. (2013). *NZCTU Submission to Constitutional Advisory Panel*. Wellington, NZ.
- NZCTU, Te Kauae Kaimahi. (2016). *CTU Submission: TPPA*. Retrieved from <https://www.union.org.nz/wp-content/uploads/2016/11/160324-NZCTU-submission-on-the-TPPA.pdf>
- NZCTU, Te Kauae Kaimahi. (2017). *CTU Monthly Economic Bulletin*. NZCTU, Te Kauae Kaimahi.
- OECD. (2017). *Back to work, New Zealand: improving the re-employment prospects of displaced workers*. Paris, France: OECD Publishing. Retrieved from <http://dx.doi.org/10.1787/9789264264434-en>
- Pacheco, G, Morrison, P, Cochrane, B, Blumenfeld, S, & Rosenberg, B. (2017). *Understanding Insecure Work*. Wellington, NZ: Victoria University of Wellington,. Retrieved from https://workresearch.aut.ac.nz/__data/assets/pdf_file/0019/56224/Understanding-Insecure-Work-brochure.pdf
- Rosenberg, B. (2017). *Shrinking portions to low and middle-income earners: Inequality in Wages & Self-Employment 1998-2015*. Wellington, New Zealand: New Zealand Council of Trade Unions Te Kauae Kaimahi. Retrieved from <http://www.union.org.nz/wage-and-salary-earners-below-the-average-wage-lost-out-on-income-growth/inequality-wages-self-employment-1998-2015/>
- Searle, Wendy, Keith McLeod, & Natalie Ellen-Eliza. (2015). *Vulnerable Temporary Migrant Workers: Canterbury Construction Industry*. Ministry of Business Innovation & Employment. Retrieved from <http://www.mbie.govt.nz/publications-research/research/migrants---settlement/vulnerable-temporary-migrant-workers-canterbury-construction.pdf>

Serious Injury Outcome Indicators. (2017). Retrieved from

http://www.stats.govt.nz/browse_for_stats/health/injuries/serious-injury-outcome-indicators-reports.aspx

Statistics New Zealand. (2017). *Labour market statistics: December 2017 quarter*. Wellington, NZ.

Retrieved from <https://www.stats.govt.nz/information-releases/labour-market-statistics-december-2017-quarter>

Statistics New Zealand. (2018). *Labour Market Statistics, December 2017 quarter*. Retrieved from

<https://www.stats.govt.nz/information-releases/labour-market-statistics-december-2017-quarter>

United Nations. (2012). *Committee on Economic, Social and Cultural Rights. Forty-eighth session*.

New York.

WorkSafe New Zealand. (2018). *Workplace fatalities summary*. Retrieved from

<https://worksafe.govt.nz/data-and-research/ws-data/fatalities/workplace-fatalities-summary/>