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Consideration of the Fourth Periodic Report of the New Zealand Government

by the

United Nations Committee on Economic, Social and Cultural Rights

March 2018

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Introduction

- 1 This submission is on behalf of the Human Rights Foundation of Aotearoa New Zealand (HRF). It is a parallel report to the New Zealand Government's 4th Periodic Report to the United Nations Committee on Economic, Social and Cultural Rights.

- 2 The HRF is a non-governmental organisation, established in December 2001, to promote and defend human rights through research-based education and advocacy. We have made submissions on new laws with human rights implications. We also monitor compliance and implementation of New Zealand's international obligations in accordance with the requirements of the international conventions New Zealand has signed up to, and have, over the past 17 years, prepared parallel reports for relevant United Nations treaty bodies to be considered alongside official reports. Though the primary focus of the Foundation is on human rights in New Zealand, we recognise the universality of human rights and have an interest in human rights in the Pacific and beyond.

- 3 The HRF endorses several sections of reports and recommendations prepared by other NGOs: Child Poverty Action Group/ Action for Children and Youth Aotearoa (CPAG/ACYA), Peace Movement Aotearoa (PMA) and the Council of Trade Unions (CTU). These sections are referred to where appropriate.

- 4 We appreciate this valuable opportunity to present our views to the Committee. Our submission is focussed on some, but not all, of the Committee's List of Issues Prior to Reporting. We will make reference to the following documents: the HRF's LOIPR report of February 2016¹ the

¹ Human Rights Foundation Submission for the List of Issues Prior to Reporting, January 2016

CESCR's LOIPR,² the New Zealand Government's draft report³ and the HRF's submission of 2013 to the Constitutional Review Panel.⁴

- 5 We make two preliminary comments: as the Committee will be aware, parliamentary elections in New Zealand in late 2017 delivered a new coalition Labour-led Government. In its first hundred days (to February 3rd) this Government has already signalled a raft of policy changes, many of which have a direct bearing on ESC rights and on the questions posed in the LOIPR. These changes, or questions about or references to them, are mentioned where appropriate in the sections that follow, a process which we understand the Government also intends to follow. We therefore recommend that the Committee require a follow-up timetable for assessing progress on these policy changes.
- 6 More fundamentally, given the extent of these proposed changes and the Government's emphasis on poverty and inequality and their relevance to a number of ESC rights, we find it even more surprising, and disappointing, that there is still no indication that there will be any change in the Government's stance on the enhancement of the status of ESC rights in New Zealand (see below question 1). The Covenant rights provide an ideal framework by which to assess the Government's plans and their implementation. Such recognition would also help to establish clearly New Zealand's overall commitment to international human rights standards.

² List of Issues prior to submission of the fourth periodic report of New Zealand, 12 April 2016 E/C.12/NZL/QPR/4

³ Implementation of the International Covenant on Economic, Social and Cultural Rights, Fourth periodic report submitted by States parties under articles 16 and 17 of the Covenant, New Zealand, 16 March 2017

⁴ Human Rights Foundation, "Contribution to the Constitutional Advisory Panel on the Constitutional Review", 31 July 2013

IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

PART A ISSUES OF PARTICULAR RELEVANCE

Question 1: Please update the Committee on the Constitutional Review Process, in particular as regards any development in the recognition of economic, social and cultural rights in the New Zealand Bill of Rights Act, and on mechanisms for ensuring the compatibility of laws with international human rights treaties and the State party's own sources of constitutional law, such as the Treaty of Waitangi and the Bill of Rights Act. In this regard, please explain the scope/relevance of declarations of inconsistency issued by the State party's judicial power. Please also provide specific examples of cases, for the period 2012 and 2016, where Covenant rights have been invoked or applied by the domestic courts.

ESC RIGHTS ARE NOT INCORPORATED INTO THE DOMESTIC HUMAN RIGHTS LEGAL FRAMEWORK: THERE IS NO CONSTITUTIONAL OR DIRECT LEGISLATIVE PROTECTION FOR ESC RIGHTS.

7 The desirability of incorporating the Covenant into domestic law is stressed in the Committee's General Comments Nos. 3 and 9 and the Committee has consistently emphasised this to the New Zealand Government in its two previous Concluding Recommendations.⁵

⁵ UN Committee on Economic, Social and Cultural Rights: Concluding Observations, New Zealand, 4 January 1994, E/C.12/1993/12; 26 June 2003, E/C.12/1/Add.88.

- 8 Although New Zealand has an historical commitment to ESC rights since its support for their inclusion in the UDHR, this commitment has not been reflected in domestic law. Prior to the enactment of the New Zealand Bill of Rights Act (NZBORA) in 1990, the Select Committee suggested in its Final Report that ESC rights should be included. Unfortunately, this suggestion was not taken up by the Government of the day and the NZBORA was enacted with no reference to ESC rights.
- 9 Submissions to the constitutional review process, including from the HRF,⁶ strongly recommended the incorporation of ESC rights into the New Zealand human rights framework. However, as appears from the Government report, there is currently an intention only of “further consultation” on this matter.
- 10 Thus, despite the recommendations from the Committee and both 2009⁷ and 2014⁸ Universal Periodic Reviews (UPR), New Zealand has not yet formally incorporated ESC rights into the domestic human rights framework. The Government has argued in these forums that individual statutes already protect such rights, as they do to some extent, although in piecemeal fashion. However, the advantages of the incorporation of civil and political rights apply equally to ESC rights. Further, if these rights, as argued, are so well protected, there can surely be no objection to their being incorporated directly into the New Zealand human rights framework.

⁶ See above, footnote 4

⁷ UNGA “Report of the Working Group on the Universal Periodic Review-New Zealand” 4 June 2009

⁸ <http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/NZ/NEWZEALAND.pdf>

11 The lack of protection for many of these rights affects the members of those groups that are most vulnerable and marginalised, providing even greater reason for their formal constitutional or legislative incorporation.

12 Although we still strongly recommend incorporation of ESC rights into the NZBORA, below in paras 20-25 we draw the Committee's attention to important limitations of the NZBORA itself, which require reform.

JUSTICIABILITY OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Introduction

13 We note also the desirability of making ESC rights justiciable as is recommended in the Committee's General Comment No. 9. Although historically ESC rights have not been considered to be justiciable in the way civil and political rights have been, this perception has changed in many jurisdictions and the justiciability of aspects of many ESC rights is increasingly recognised, domestically, regionally and internationally.

The New Zealand Experience

14 Historically, the Courts in New Zealand have been reluctant to treat ESC rights as directly enforceable.⁹ This is partly due to the lack of direct incorporation into domestic law as noted in previous paragraphs, and partly relying on the argument that the allocation of resources involved with ESC rights is of a political nature, and therefore a matter for Parliament rather than the judiciary.

⁹ *Lawson v Housing New Zealand* [1997] 2 NZLR 474.

15 However, we note a trend in the judicial system where judges are increasingly inclined to take note of the State's international obligations, including the ICESCR,¹⁰ as noted in the list of cases in the Government report¹¹. It is not clear however whether the Covenant yet carries sufficient weight to have any effect on the outcome in such cases.

16 We acknowledge that some ESC rights are protected by specific legislation,¹² but consider direct incorporation to be also necessary. Direct incorporation and recognition of ESC rights promotes a clear human rights framework for interpretation and implementation of such statutes.

OPTIONAL PROTOCOL TO THE ICESCR

17 New Zealand has been a signatory to the First Optional Protocol to the International Covenant on Civil and Political Rights (OP-ICCPR) since 1989. However, its intentions with regard to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) remain unclear.

18 We strongly recommend the New Zealand Government ratify the OP-ICESCR, as it would not only provide an avenue for individual complaints to be heard where there is a lack of recognition for these rights in New Zealand but also indicate a commitment to take ESC rights seriously.

Recommendations

10 *Tavita v Minister of Immigration* [1994] 2 NZLR 257.

11 See above, footnote 3, paragraph 38

12 Employment Relations Act 2000, Human Rights Act 1993, NZBORA, Equal Pay Act 1972, Health and Safety in Employment Act 1992, Minimum Wage Act 1983, Education Act 1989.

19 The HRF recommends that the Committee:

- a. reiterate its recommendation to New Zealand to incorporate the ICESCR directly into domestic law;**
- b. recommend that a range of ESC rights be included in the NZBORA, including rights to work, social security, health, housing, water, food, education, environment and cultural life.**
- c. recommend that New Zealand ratify the OP-ICESCR.**

Weaknesses of the NZBORA

20 Because the NZBORA is subject to parliamentary override via other legislation, in our view it does not provide sufficient protection for human rights,¹³ notwithstanding the recent safeguards referred to in the Government's report.

21 Currently the NZBORA can be over-ridden by any other statute. Parliament has at times exercised its "supremacy" to override the NZBORA, even where this is contrary to New Zealand's international obligations. For example, the New Zealand Public Health and Disability Amendment Bill (No 2) was not only passed under urgency thereby limiting debate, but contained a clause preventing review of the subject matter of the law for incompatibility with the NZBORA by the Human Rights Review Tribunal or by the Courts. Similarly, the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 enacted a blanket disenfranchisement of all prisoners, despite the

¹³ Although s7 requires the Attorney-General to bring to the attention of the House of Representatives any apparent inconsistencies with the rights contained in the NZBORA within proposed legislation, there is no obligation for the House of Representatives to act consistently with the rights, due to the principle of parliamentary supremacy.

Attorney General's advice under section 7 that this was inconsistent with NZBORA.¹⁴

22 The National Report for New Zealand's Universal Periodic Review in 2014 highlighted the lack of the right to an effective remedy for human rights violations. The Government noted that: "Individuals who consider that any of their rights under the NZBORA have been infringed can bring an action against the Government... a number of remedies are available, including the ability to award damages or compensation and to exclude evidence obtained in breach of a right guaranteed by the BORA".¹⁵ At this very same time, the Attorney General was arguing in the courts that this right to a remedy did not apply to breach of the NZBORA by the judiciary, a claim that was eventually upheld by the Supreme Court.¹⁶ We consider that the Government should have been more frank with the UN system.

23 We note that despite this lack of a right to an effective remedy, the Courts are increasingly willing to award damages for breach of these rights.¹⁷ It would be preferable however for the right to an effective remedy to be included in the NZBORA itself.

Recommendations

24 The HRF reiterates its recommendations to the Constitutional Review Panel that the NZBORA be granted supreme status to override rights-infringing legislation, and that it be procedurally entrenched (requiring passage of any amendment by a 2/3

¹⁴ Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010.

¹⁵ HRF "Joint Stakeholders' report for the Universal Periodic Review" 18th session of the Working Group on the UPR, January/February 2014

¹⁶ *Attorney-General v Chapman* [2011] NZSC 110

¹⁷ *Simpson v Attorney-General* [Baigent's case] [1994] 3 NZLR 667.

majority). Further we strongly suggest that mechanisms for monitoring compliance with the NZBORA be further improved – for example by extending the section 7 review of Bills by the Attorney General to Supplementary Order Papers.

- 25 **The HRF recommends that the NZBORA be amended to provide an explicit right to an effective remedy for breach of the NZBORA including by the judiciary.**

Question 2: Please provide information on the measures taken to consult all stakeholders, including Maori, in the elaboration, negotiation and ratification of trade agreements, such as the Trans-Pacific Partnership Agreement and the Free Trade Agreement with the European Union, to ensure the protection of human rights and compliance with international human rights obligations. Please also indicate the safeguards in place to ensure that the investor-State dispute settlement mechanism contained in the Trans-Pacific Partnership Agreement will not force States to compromise their international obligations.

The Trans-Pacific Partnership Agreement, now the Comprehensive and Progressive Agreement on Trans-Pacific Partnership

- 26 In its submission on the LOIPR in February 2016 the HRF raised a number of concerns as to the effect of the TPPA on the enjoyment of ESC rights and on the lack of consultation around its negotiation.

- 27 The effects of commitment to the TPPA had been a matter of concern to many groups in a number of countries, including in New Zealand. These groups include human rights groups, environmentalists, healthcare professionals and trade unions. Arguably, the main concern

was the possible loss of sovereignty, especially in connection with the Investor-State Dispute Settlement (ISDS) Process, where corporations can challenge domestic laws, which can be argued to have a detrimental effect on the profits or activities of investing corporations. Such laws may well be designed to improve a human rights or environmental situation in that state.

28 Such rights include the rights to health, including access to essential medicines; to work and in the work place and rights to strike and to collective bargaining; the right to an adequate standard of living, including access to housing, food and water; rights to intellectual property, which may come into conflict with patenting rights; rights to a sustainable and healthy environment and to commitments to address climate change.

29 We were also concerned that the rights of some vulnerable groups may be particularly at risk. These include those in poverty, especially children, and indigenous people.

30 There are also several procedural rights, sometimes called ‘democracy rights’, the rights to information, consultation and participation in policy and decision-making by those whose rights will be affected, which seemed not to be taken into account, either in the ISDS proceedings or more broadly in the way the TPPA was negotiated.

31 Following the withdrawal of the USA from the negotiations, the HRF had ongoing concerns over the effect on the protection of ESC rights of the new government’s interest in pursuing the new Trans-Pacific Partnership Agreement (TPP-11). The processes involved still

appeared not to be set up to take human rights or environmental concerns into consideration.

32 In further developments, the Government is now set to sign the Comprehensive and Progressive Agreement on Trans-Pacific Partnership (CP-TPP) in March of this year. Despite Government assurances that concerns raised previously have been addressed, those concerns have not been allayed since the text of the agreement remains secret. Such secrecy and lack of information has been one of the strongest critiques of the process so far.¹⁸

33 The HRF endorses recommendations that negotiations take place under conditions of openness, including the regular release of draft negotiation texts to the public; furthermore, that negotiation mandates be voted on by Parliament – including the consideration of public submissions – before the start of future trade and investment negotiations. That also allows for independent economic, health, human rights and environmental impact assessments to be taken into account.

Note: the concerns detailed here are also relevant to the discussion of Articles 6, 7, 8, 11 and 12 below.

Question 3: Please provide an assessment of how the different policies and programmes in the State party for the enjoyment of economic, social and cultural rights by disadvantages and marginalised groups, in particular Maori, Pasifika and children and young people below 24 years of age, have addressed

¹⁸ New Zealand Herald, 'Jane Kelsey: Excess of spin on revised TPP cause for concern' 7 February 2018 http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11989194

structural factors. Please also indicate the remaining obstacles and how the implementation of the recommendations contained in the 2015 report of the New Zealand Productivity Commission on social services would address them.

For Maori and Pacifica people: the HRF endorses the recommendations of the report of Peace Movement Aotearoa.

For children and young people: the HRF endorses the recommendations of CPAG/ ACYA, report p 3

Question 4: Please provide an assessment of how measures to combat different types of violence for groups such as women and girls, persons with disabilities, children and transgender persons have been effective.

Introduction

34 This section focuses primarily on violence against women, as this is an issue the HRF has previously addressed in parallel and UPR reports.

35 We begin by outlining recent initiatives of the previous government, comment on some results of those initiatives and then propose recommendations.

Government measures

36 The HRF notes the government measures outlined in the New Zealand government's report. The previous government, particularly the Minister of Justice, Hon Amy Adams, was energetic and committed to reducing family violence. We expect that the new Minister of Women's Affairs, Hon Julie Genter, will be as equally committed. Violence against women and girls is one of the priority

areas of the Ministry of Women's Affairs, as indicated on their web site.

37 In addition to the range of measures outlined in the government report, the following are worth noting:

- a. The Chief District Court Judge and Chief Family Court judge have stated that all District Court judges are to receive regular on-going education on family and sexual violence. After the Family Violence Death Review Committee's 4th Report, the District Court organised a three-day conference dedicated to better understanding domestic violence and its effect on victims. Further, the Institute of Judicial Studies has put considerable effort into family violence in its curriculum.¹⁹
- b. Almost half of Family Court judges are now women.²⁰
- c. The Ministerial Group on Family Violence and Sexual Violence have developed a Workforce Capability Framework to increase the quality of knowledge, skills and behaviours of the workforce, decrease re-victimisation and promote continuous improvement within the workforce. It is not clear how this framework will be implemented.
- d. The Ministry of Justice has developed a Family Violence Risk Assessment and Management Framework to ensure consistency and best practice in supporting victims to recover and perpetrators to take responsibility for their

¹⁹ Letter of Jan Marie Doogue, Chief District Court Judge and Laurence Ryan, Principal Family Court Judge to the Auckland Coalition for the Safety of Women and Children, 25 October 2017.

²⁰ See above.

behaviour. This framework is detailed and over 50 pages long. Again how the Ministry proposes to implement this framework is not clear from the document. Nor is it clear who will be required to implement it.

Assessment of effectiveness

38 Because much violence against women and children is underreported, it is extremely difficult to assess the effectiveness of recent measures. However, the Family Violence Clearinghouse compiles from official sources a range of statistics on violence against women and girls. The FVC 2017 reports indicate that violence against women and children remains disturbingly high. Key statistics are:

- a. In 2016 the Police investigated 118,910 family violence incidents, up from 110,126 in the 2015 year. Responding to family violence accounts for 41% of a frontline Police officer's time.
- b. The Family Violence Clearinghouse reports that since the release of the 2013 data summary, the Police have not updated the data for the number of children linked to family violence investigations. Hence in 2012 101,293 children were linked to family violence investigations. No updating data are recorded.
- c. In 2016 Police issued 15,994 Police safety orders, compared with the 13,997 issued in 2015.²¹ In 2016,

²¹ A Police safety order is provided for in the Domestic Violence Act 1995. It permits the Police to issue a safety order on the spot for a duration of five days requiring the perpetrator to leave the premises for that period. The experience of many family lawyers, including the writer, is that these orders have been very effective. As they last for 5 days, this gives the victim the time and space to consult a lawyer or other support person to consider her future options.

8% of Police safety orders were breached, the same proportion as in 2014 and 2015.

- d. In 2016, the Police recorded 24,086 assaults against female victims, up from the 22,062 recorded in 2015. 55% of these assaults involved a partner, ex-partner, boyfriend/girlfriend or ex-boyfriend, girlfriend.
- e. In 2014, there were 7,163 male assaults female recorded, up from 6,749 in 2013.
- f. In 2016 the Police recorded 4,852 proceedings for breach of a protection order, compared with 4,655 in 2015. 4,104 people were convicted of breaching a protection order, up from 2,323 in 2007.
- g. In 2016 the Police recorded 2,430 sexual assaults against females aged 16 and over. In 82% of those, no offender was identified. Of the offenders identified, 33% were family members of the victim,
- h. In 2016 the Family Court received 5,461 applications for protection orders, an increase from the 5,265 in 2015. Of these applications, 76% were made without notice, a marked decrease from 2008 when 89% of applications for protection orders were made without notice.
- i. Of the 5,461 applications, 63% were granted
- j. In 2016, 89% of applicants were female, a proportion that has been remarkably constant over the past 10 years. Similarly 89% of respondent in protection order applications were male, also a consistent statistic.

k. The Family Violence Death Review Committee in its fifth report notes that between 2009 and 2015 there were a total of 194 family violence deaths, accounting for 40% of all homicides and related offences. Of the 188 death reports, there were 194 family violence deaths. Almost half, 47%, were intimate partner violence (IPV) deaths and 29% were child abuse and neglect deaths.

39 The New Zealand Crime and Safety Survey 2014 (NZCASS) published by the Ministry of Justice surveyed some 6943 adults on their experience of crime in the previous 12 months.

40 In contrast to the statistics above for violence against women and children, overall the NZCASS reported a reduction in virtually all types of violence offences or crimes since its previous survey in 2009.

Its key statistics include the following:

- a. There were 186,000 sexual offences reported, compared with 285,000 in 2008.²² Hence the percentage of adults who were the victim of 1 or more sexual offences decreased from 4% in 2005 then down to 2% in 2013.²³
- b. There were 512,000 assaults recorded, down from the 744,000 in 2008.²⁴
- c. Assaults amounted to 14 offences per 100 adults, compared with 22 offences per adults in 2008, a significant decrease.
- d. 5% of adults experienced a violent interpersonal offence by an intimate partner, down from 7% in 2008.²⁵

²² NZCASS, Ministry of Justice, 2014, 21.

²³ Above, 29.

²⁴ Above, 21.

Women were more likely than men to be the victim of a violent interpersonal offence by an intimate partner in 2013.²⁶

- e. A small percentage of adults, 1%, experienced about half of violent interpersonal offences.²⁷ The report notes that “if we could stop victimisation after 2 offences, in 2013 we could have stopped around 271,000 violent interpersonal offences by intimate partners (or 55% of intimate partner violence).

41 Unsurprisingly, the report highlights the continuing low reporting of crime with 68% of crimes not reported to the Police.²⁸ However, 76% of violent interpersonal offences committed by an intimate partner were not reported to the Police. The report does not report on the 2013 figure for reporting on sexual offences, due to a sampling error, but notes that in 2008 only 7% of sexual offences were reported.²⁹

42 Of concern was the number of adults, 45%, who said they didn’t know of any community services or organisations, apart from Police, that would be available if they were the victim of a crime, up from the 37% in 2009. Given the government-led emphasis to preventing violence in the past few years, including television advertisements, this statistic is disappointing if not surprising. Also of some concern is that only 55% of adults who reported offences to the Police were

²⁵ Above, 43.

²⁶ Above, p49. 6% of women were likely to be the victim of a violent interpersonal offence by an intimate partner compared with 4% of men. However, as has been discussed in family violence literature, these figures obscure the fact that men are more likely to be the primacy aggressor in violent interpersonal offences.

²⁷ Above, p62.

²⁸ Above, p46.

²⁹ Above p106.

satisfied with the Police service while 32% were dissatisfied or very dissatisfied.³⁰ These figures are largely unchanged from 2008.

43 The HRF is also concerned at the lack of comprehensive research into the effectiveness of programmes for perpetrators of intimate partner violence or family violence in New Zealand. One report on responding to perpetrators notes:³¹ “Current responses are piecemeal and insufficient, and mired in a complex web of bureaucracy.

- Four government departments provide funding for short term perpetrator non-violence programmes in the community
- More work is needed to develop better risk assessment and risk management practices across different parts of the system
- Behaviour change-oriented programmes are relatively short with limited scope for tailoring to the heterogeneity of perpetrators
- Level and type of service is based on referral pathway rather than risk or need
- Self-referrals are growing, but most are unfunded
- Methods for engagement with victims and families for safety monitoring are still developing
- There is a lack of recognition in service provision models that contact between perpetrators, victims and families often continues or resumes after a specific episode
- A sustained programme of public education similar to road safety campaigns is needed “at the top of the cliff”, to increase the impact of these “bottom of the cliff” efforts.

³⁰ Above, p138.

³¹ Professor Devon Polaschek, “Responding to Perpetrators of Family Violence”, paper delivered to NZ Law Society Family Law Conference, October 2017.

- 44 This same author notes that “Perpetrators and others have described their New Zealand as a ‘permissively violent society’. If we are to reduce family violence, we need to become a society much less tolerant of all violence.”³²
- 45 As has been widely noted in the literature, gender-based violence is a complex problem and one that is grossly under-reported. Hence it requires an integrated system where all agencies and individuals who are either directly or indirectly involved operate as one system. It requires a shared understanding about the dynamics of gender-based violence and an understanding that keeping current and future victims safe is a public responsibility.
- 46 We are concerned that the government has yet to provide the framework, let alone the details, of a comprehensive integrated system. We are also concerned that the government avoids acknowledging the gender-based nature of the problem, referring to it instead as “family violence” and “sexual violence”.
- 47 In this section, we have not addressed the amount and impact of sexual violence on women and children. In New Zealand, this sector tends to be overshadowed by the emphasis on family violence and intimate partner violence. Sexual violence, including rape, has its own complex dynamics and causes devastating impacts on women and, particularly, children. Those impacts can be life-long. We address this issue briefly in our recommendations.

Recommendations

³² Above, citing Roguski R, Gregory N, “Former family violence perpetrators’ narratives of change”. Report prepared for the Glenn Inquiry, 2014.

48 The HRF recommends that the Committee urge the New Zealand government to:

- a. implement a sustained programme of public education similar to road safety campaigns to reduce the culture of violence in New Zealand against women and children.**
- b. formulate a comprehensive multi-faceted plan for responding to and preventing violence against women and children. This must include an integrated system where all agencies and individuals who are either directly or indirectly involved operate as one system with shared understandings of the dynamics of gender-based violence.**
- c. pilot such an integrated system in a smaller geographical area so it can be adequately funded, carefully monitored, reviewed and key lessons shared in other areas.**
- d. ensure that the equally complex subject of sexual violence, which receives far less attention, is given equal priority. This will require formulating an integrated system which should include the following;**
 - i. reviewing the effectiveness of relationship and sex education in all schools and making appropriate changes if required;**
 - ii. implementing a social media-based public education programme for young people promoting a culture of consent and respect in personal relationships;**

- iii. ensuring that all agencies that respond to victims of sexual violence are properly funded so that they can recruit and retain fully qualified and expert staff, provide timely crisis and therapeutic responses to all victims, manage the administrative demands of government funding contracts and participate in advocacy and public education programmes;
- iv. researching and implementing initiatives to ensure that the Police and justice system are responding fairly and sensitively to crimes of sexual violence.

The HRF also endorses the recommendations of the report of CPAG/ACYA, p 5

PART B IMPLEMENTATION OF THE COVENANT

ARTICLE 1 (2): RIGHT TO FREELY DISPOSE OF NATURAL WEALTH AND RESOURCES

Question 5: Please update the Committee on the implementation of the recommendations of the Waitangi Tribunal to ensure the free prior and informed consent of Māori on any decisions regarding their lands, territories, waters and maritime areas, as well as on its recommendation on the Māori's right to conserve, promote and develop their own culture, language and cultural heritage, traditional knowledge and cultural expressions, and their the right to protect their intellectual property.

The HRF endorses the recommendation of the report of Peace Movement Aotearoa.

ARTICLE 2 (1) : OBLIGATION TO TAKE STEPS TO THE MAXIMUM OF AVAILABLE RESOURCES

Question 6: Please provide information on the public consolidation budget for sectors relevant to the Covenant rights, particularly with regard to employment, social security, health and education, indicating the share of the total public budget over the past five years. Please also provide information on additional spending for new policies to address inequalities.

The HRF endorses the recommendations in the report of PMA .

Question 7: Please provide information on the measures taken to ensure that private companies respect ESC rights throughout their operations, including when operating abroad. In doing so, please provide information on effective remedies available for victims of violations of Covenant rights by companies.

49 The Government's draft report in paras 115 to 125 addresses several issues concerning the responsibilities of private companies operating in New Zealand and the necessity of their adhering to New Zealand law. It does not, however, address the responsibilities or possibly obligations of multinational companies (MNEs) based in New Zealand operating abroad nor of the obligations of states in regard to such operations, with the exception of a reference to the OECD Guidelines.

33

³³ Organisation for Economic Cooperation and Development (OECD), OECD Guidelines for Multinational Enterprises,

50 Although all international standards as regards the extraterritorial obligations (ETOs) or responsibilities of MNEs are as yet voluntary (including the Global Compact,³⁴ the Ruggie Principles³⁵ and various industry specific guidelines such as those for extractive industries),³⁶ the international obligations of states as regards companies operating out of their territories are becoming clearer and increasingly a matter of interest to Treaty Bodies.

Recommendations

51 Accordingly, the HRF recommends that the Committee raise the issue of the Government’s position as regards such ETOs, including its data collection of the acceptance by locally-based MNEs of any voluntary standards and its processes for addressing any violations of ESC rights by such MNEs abroad.

52 The HRF also recommends that the Committee enquire as to the New Zealand Government’s position on proposals in General Assembly resolutions to make MNEs directly responsible under international law for such violations.³⁷

ARTICLE 2 (2): NON -DISCRIMINATION

53 Note: Efforts to combat discrimination need to account for the intersectional nature of discrimination where, for example, gender,

³⁴ A Compact For The New Century – The “Global Compact” www.unglobalcompact.org

³⁵ Special Representative of the UN Secretary-General on business & Human Rights, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework”: endorsed by the UN Human Rights Council, 16 June 2011.

³⁶ The Voluntary Principles on Security and Human Rights, 2000 www.voluntaryprinciples.org

³⁷ For the text of the UN Resolution see: <http://unsr.vtaulicorpuz.org/site/images/docs/un/2014-a-hrc-res-26-9-en.pdf>

ethnicity, age and disability may act as multipliers of discrimination experienced by an individual.

Question 8: Please provide information and statistical data on the enjoyment of economic, social and cultural rights by persons with disabilities.

The HRF endorses the report of CPAG/ACYA at pp. 9,10,14 as regards the rights of children with disabilities

Question 9: Please indicate to what extent asylum seekers, refugees and their reunified family members are able to enjoy their rights under the Covenant.

Refugees

54 New Zealand continues to have a formal Refugee Quota Programme of 750 places in addition to the 300 places available annually under the Refugee Family Support Category.³⁸ However, the refugee quota in New Zealand has not changed from 750 for 28 years. Despite its relative wealth, stability and regular statements of support for human rights, New Zealand currently ranks 88th in the world for the number of refugees and asylum seekers we host.³⁹ Calls to increase New Zealand's quota have come particularly in response to the refugee crisis following the war in Syria.⁴⁰ In September 2015, the National Government undertook a further commitment to take 750 Syrian refugees over the next three years.⁴¹

³⁸ Auckland Regional Public Health Service "Refugees and Asylum Seekers in New Zealand" (2007) Refugee Health <www.refugeehealth.org.nz>

³⁹ Tracey Barnett "About Wage Peace NZ" (2015) Wage Peace NZ <www.wagepeacenz.org>

⁴⁰ Alan Gamlen "Why NZ should raise the refugee quota" (3 September 2015) New Zealand Herald <www.nzherald.co.nz>

⁴¹ Honourable Michael Woodhouse "New Zealand to take 750 more Syrian Refugees" (7 September 2015) National Party <<https://www.national.org.nz/news>>

55 The quota is set to come up for review this year, and there is considerable pressure from NGOs and civil society in support of increasing the quota to at least 1500. Labour’s election policy was to increase the quota to 1500 over three years, but this commitment did not find itself into the Coalition Agreement between the three coalition parties. Party during Both New Zealand’s population and the number of refugees settled in New Zealand when considered in comparison with our comparative wealth (using GDP) would indicate that New Zealand should be playing a more significant role.

Refugees: Right to Housing

56 Assistance in finding housing is provided for quota refugees under the Refugee Resettlement Programme via agencies such as New Zealand Red Cross.⁴² They continue to be supplied with Housing New Zealand homes because quota refugees are ‘A’ priority: they are at-risk households with a severe and persistent housing need that must be addressed immediately.⁴³ As they are of permanent resident status, refugees are entitled to the ongoing support of Housing New Zealand.

57 Many refugees desire to settle in Auckland for reasons of employment and the presence of established refugee or ethnic communities.⁴⁴ However, house prices in Auckland are now the second highest relative to income in the developed world⁴⁵ which means it is more or less impossible for refugees ever to own their own home, a situation aspired to by most New Zealanders.

⁴² New Zealand Red Cross “Resettlement Programme” New Zealand Red Cross <www.redcross.org.nz>

⁴³ Department of Labour “Settlement and Housing: Auckland Regional Resettlement Strategy” (2010) Immigration New Zealand <www.immigration.govt.nz>

⁴⁴ Ibid.

⁴⁵ New Zealand Herald “London house prices have nothing on Auckland” (25 November 2015) New Zealand Herald <www.nzherald.co.nz>

Asylum Seekers

58 An asylum seeker is a person who fears returning to his or her home country and seeks refugee or “protected person” status. Asylum claims in New Zealand are decided according to the Immigration Act 2009 in accordance with the Convention Relating to the 1951 Status of Refugees, the International Convention on Civil and Political Rights (ICCPR), and the 1984 Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment. The refugee claim process is declaratory, not constitutive, meaning that a successful claimant is *recognised* as a refugee, that status pre-dating the determination of their claim. Accordingly, asylum seekers too should have access to basic ESC rights. Despite this, asylum seekers in New Zealand receive only minimal support.

Asylum seekers: Right to Education

59 According to the Immigration New Zealand Operational Manual, dependent children of asylum seekers and student asylum seekers are considered to be domestic students upon being issued a student visa.⁴⁶ In practice, delays in the processing of visa applications can prevent students from accessing education for some time. Asylum seekers who have a current temporary entry class visa (for example, a work visa) are eligible to attend tertiary education as domestic students, without needing to obtain a student visa.⁴⁷ This ensures compliance with the ICESCR. Financial assistance with tertiary education in the form of a

⁴⁶ *Immigration New Zealand Operational Manual* at [U3.35.5(e)].

⁴⁷ *Immigration New Zealand Operational Manual* at [U3.35.10(f)].

student loan, however, is only available for those whose claims to refugee status have been approved.⁴⁸

Asylum seekers: Right to Housing

60 Given the distressing background of asylum seekers and refugees, adequate settlement support is vital. Housing New Zealand generally only provides housing to residents. Any refugee seeking housing assistance must have a right to remain in the country. This effectively rules out the possibility of asylum seekers receiving such assistance. While asylum seekers are eligible for some government assistance, it is insufficient to cover the market rent of houses. Some asylum seekers who receive the emergency benefit may be eligible for assistance on a case-by-case basis. As of June 2014, the New Zealand government cut all funding to the Asylum Seekers Support Trust (formerly the Auckland Refugee Council) who provided Auckland's only asylum seeker accommodation.⁴⁹ However, due to significant community support, the hostel has been able to remain open and has operated at full capacity.⁵⁰

61 It must be recognised first that the service provided by the Asylum Seekers Support Trust is limited. Secondly, asylum seekers are often destitute and traumatized, having had to flee and leave family behind. It seems evident that there is a gap in support here because upon

⁴⁸ Ministry of Social Development "Residency requirements" <www.studylink.govt.nz>.

⁴⁹ Tony Wall "Refugee support staff face redundancy" (8 June 2014) Stuff <www.stuff.co.nz>

⁵⁰ Asylum Seekers Support Trust "AGM Report" (2017) <www.aucklandrefugeecouncil.org>.

arrival, many are largely without assistance and unable to cover the market rent of a house.⁵¹

Asylum seekers: Right to work

62 Asylum seekers are able to work as long as they have a valid work visa to remain in New Zealand. In order to be issued with a work visa, asylum seekers must demonstrate a need to work to support themselves in New Zealand while their claims are ongoing. Immigration New Zealand now issues work visas with a twelve-month validity to increase the incentive to employ asylum seekers, and improve job prospects.⁵²

63 However, those who are denied formal entry and not given a visa may be kept in hard detention (prison) if they are considered a security risk, in a “soft” form of detention at the Mangere Resettlement Camp (with curfew hours) or may be allowed into the community if they are sponsored. They are not given work visas and have to rely on the charity of their friends and the community. Lack of employment and thus income increases the struggles of these convention refugee and complementary protection applicants. Asylum seekers lawfully in New Zealand may be eligible to receive Emergency Benefit or Temporary Additional Support where they have made an application for refugee status and are waiting for a decision (including a decision from the Immigration and Protection Tribunal).

Asylum seekers: Right to Physical and Mental Health

⁵¹ Sharon Brett Kelly “Asylum seekers sleeping in cars, streets – advocates” (3 May 2017) Radio NZ <www.radionz.co.nz>.

⁵² Immigration New Zealand “Working Temporarily in New Zealand” Immigration New Zealand <www.immigration.govt.nz>

64 Both those individuals who have protection status and those who are in the process of having an application for refugee or protection status are eligible for publically provided health services upon presentation of an approval letter or receipt of claim letter from the RSB.

65 However, in reality, accessing the care is difficult. It appears agencies working with asylum seekers, such as Refugees and Survivors New Zealand, lack the funding and support to help asylum seekers understand, access and use the health services they are entitled to. In addition, any benefits that could be gained by this care appear to be almost entirely negated by the conditions in which many asylum seekers find themselves upon arrival: already distressed, many are homeless or living in vulnerable situations with minimal financial means.

66 Furthermore, asylum seekers must still register with local general practices and pay practice fees as any other residents would. This proves a barrier to accessing healthcare in addition to the language and cultural barriers refugees face.

67 The Operational Manual has policies regarding people trafficking, however there it is difficult for victims to access this information. Suspected victims of people trafficking may be issued a special work visa if the New Zealand Police or Immigration New Zealand determine it is necessary for the person to remain in New Zealand, the person has not obstructed an investigation, and if an immigration officer determines that the person has personal circumstances justifying the grant of a work visa. This policy leaves victims of people trafficking vulnerable, as they face a risk of being deported upon reporting to the

authorities if their account is not accepted or if the authorities decide the grant of a work visa is not warranted.⁵³ Many victims may therefore choose not to report offending, for fear of facing compliance action by Immigration New Zealand.

Recommendations

- 68 The HRF recommends that the Committee request a report as to the governments' intentions as regards to increasing the refugee quota.**
- 69 The HRF recommends that the Committee request an interim report on measures undertaken to address the difficulties of refugees in accessing ESC rights.**
- 70 The HRF recommends that the Committee request a report as to measures taken to address barriers preventing asylum seekers from accessing ESC rights**
- 71 The HRF recommends that the Committee encourage the New Zealand Government to support or adopt measures to ensure that all refugee claimants have the right to work in New Zealand while their claims for refugee and protected person status are being determined.**
- 72 The HRF recommends that the Committee encourage the New Zealand Government to support or adopt measures to ensure that all refugee claimants have meaningful access to healthcare**

⁵³ *Immigration New Zealand Operational Manual* at [WI16.1].

services, including mental health services, and support for torture and trauma by qualified professionals.

73 As per the HRF report to the Committee in 2012 we reiterate our recommendation that the New Zealand Government amend the current laws to allow refugee and protection applicants who have attained permanent residency to be eligible immediately for Housing New Zealand accommodation upon receipt of refugee status.

Article 2(2): an additional issue: the Rights of Older Persons. Problems and challenges that are having an impact on the ESC rights of older New Zealanders

74 It is well known that the number of New Zealanders living past the age of 65 is growing and will continue to grow over the coming years. Statistics New Zealand has made long term projections for New Zealand's ageing population, in particular about increasing numbers and proportions of the population at the older ages (details are set out in the Appendix) and that population growth will slow as New Zealand's population ages and the gap between the number of births and deaths narrows. These trends require the New Zealand Government to take comprehensive and proactive measures to deal with the many current and ongoing problems and challenges that result from the increasing number of New Zealanders living to an advanced age as well as ensuring that their ESC rights are fully recognised and protected.

75 The Appendix sets out a number of problems and challenges that face older New Zealanders. These include: age discrimination, elder abuse, some pensioners experiencing financial hardship, barriers preventing older people from ascertaining the social security assistance to which they are potentially entitled, and the impact on the right to health of older people stemming from the manipulation by successive Governments of the waiting lists for operations and medical treatment. These issues involve New Zealand's obligations under Article 11- the right to an adequate standard of living; Article 9 - barriers preventing some older people from easily accessing information about supplementary benefits; Article 12 - issues having an impact on older peoples' right to health and the provision of the necessaries of life; Article 12 - hospital waiting lists and older people; Article 9 - Barriers obstructing some older people from easily accessing information about supplementary benefits, and pensioners in financial hardship.

76 Based on the details and analysis in the Appendix, the HRF makes the following recommendations:

Recommendations

77 Given the growing number of people over 50 who still need to work in order to enjoy an adequate standard of living there is a need for the New Zealand Government to introduce stringent sanctions designed to deter employers and potential employers from discriminating older employees and job applicants.

78 There is also an urgent need for a Public Inquiry into age discrimination. Such an inquiry should focus on the extent of the

problem in New Zealand, the lack of transparency in relation to hiring decisions, and ways in which hiring decisions can be made more transparent.

79 The New Zealand Government should increase (if necessary, means-tested) the NZS entitlement provided to older New Zealanders who are currently experiencing financial hardship and is available to those who are likely to experience such hardship in the future.

80 In order to help older people, their families and advisors to quickly identify the range of Benefits, Subsidies Allowances and Grants that are, or may be, available to them, a separate Senior Citizens' Benefits, Subsidies Allowances and Grants Act should be enacted which sets out those benefits in one place. Similarly, a single regulation about benefits, subsidies and grants should also be promulgated with a title such as the Senior Citizens' Benefits, Subsidies Allowances and Grants Regulation.

81 Information about the Act and Regulations could then be consolidated on a single website containing all the supporting information (including application forms and practical advice about how to meet the eligibility criteria for each type of benefit or other form of assistance) relevant to the forms of financial support contained in the suggested Act and Regulations. This initiative should also be supported by the provision of trained and free advocates who can assist older people to navigate their way through the labyrinth of application processes and to represent

them in their dealings with the agencies who handle pensions and benefits.

82 The benefits of adopting this suggested solution are that it would:

- a. Support the Government's Ageing in Place policy by demonstrating that the Government is serious about providing "older person friendly" support to those who wish to remain in their own homes;**
- b. Greatly assist family members and support persons for older people to easily identify the forms of benefits and other assistance for which older people are entitled to apply;**
- c. Enhance New Zealand's good reputation as a champion of human rights (especially ESC rights) and a respecter of the rights of older people by removing barriers that have the potential to impede easy access by older people to information about benefits and assistance for which they are, or may be, eligible.**

83 In order to contain, control and reduce the level of elder abuse in New Zealand the Government should provide a far greater level of financial support to the elder abuse network by:

- a. Developing specialist, well-resourced and nationwide groups of police units that focus exclusively on (a) investigating instances of elder abuse that are criminal in nature, and (b) ensuring that those proven to be responsible for such crimes are held responsible for their conduct;**

- b. Ensuring that the amount of funds made available to agencies who support the victims of elder abuse is increased to a level which allows those agencies to employ many more staff and thereby increase their capacity to identify and assist the police with their task of effectively combating elder abuse in New Zealand both now and in the future;**
- c. Supporting a law change, which will make it a criminal offence for those who are aware of actual or suspected cases of elder abuse to fail to report what they know or suspect to the police.**

84 There should be an independent inquiry into the way in which waiting lists for elective surgery have been manipulated by successive Governments with a view to enacting a law to make it illegal to artificially dilute waiting list numbers by deliberately excluding from those lists, many people in genuine need of that surgery.⁵⁴

85 The Government needs to take urgent steps to genuinely reduce the size of the elective surgery waiting list (if necessary by using the some charitable organizations that carry out simple operations (eg, the Fred Hollows Foundation for cataract surgeries).

⁵⁴ One other issue that needs to be monitored is the Parliamentary Bill called The End of Life Choice Bill, **which** proposes to give people with a terminal illness or a grievous and irremediable medical condition the option of requesting assisted dying. Under no circumstances should the Bill (especially if it is enacted) be used to justify an argument that elderly people with terminal illnesses or grievous medical conditions should be encouraged to end their lives and thereby decrease the number of people on hospital waiting lists.

ARTICLE 3: EQUAL RIGHTS OF MEN AND WOMEN

Question 10: Please indicate whether the implementation of the Gender Equality Declaration has helped to accelerate women's access to decision-making positions in the public and private sectors. Please provide an assessment of the remaining obstacles to the achievement of gender equality.

Introduction

86 In this section, the HRF outlines women's access to decision-making positions in the public and private sectors, provides comment on the remaining obstacles to gender equality and proposes some recommendations.

Women in the public sector

87 Under the State Sector Act 1988, chief executives in the public service are required to operate a personnel policy that includes provisions requiring an equal opportunities programme and that recognises the employment requirements of women.⁵⁵ Other state sector entities, for example, Crown Entities, are governed by similar provisions. The State Services Commission is supporting chief executives to lead improvements in diversity in their agencies.⁵⁶

88 The participation of women in the Public Service workforce continues at a high level, with 60.5% of employees being female, at 30 June

⁵⁵ State Sector Act 1988, s56.

⁵⁶ Human Resources Capability Survey, State Services Commission, 2017, p28.

2017. This compares with only 47.3% in the overall New Zealand labour force in the year to June 2017.⁵⁷

89 Female representation at the senior leadership level is lower than the proportion of women in the Public Service, but has increased strongly over the past decade. As at 30 June 2017, 47.9% of the top three tiers of senior management were women, up from 38.4% in 2008. The State Services Commission estimates that, if current trends continue, by around 2020 50% of the top three tiers of senior management will be women.⁵⁸ While welcoming this progress, we also note that, at February 2018, only 12 (or 38%) of the 31 Chief Executives of the Public Service departments are women. This indicates that at the most senior level of the public service women still face hurdles to achieving gender equality and this is unlikely to be achieved by 2020.

Women in the private sector

90 In contrast to the public sector, in the business sector, women make up a much smaller proportion of leaders. A study of 500 businesses conducted for Westpac by Deloitte found that women make up 49% of the workforce but only 29% of leadership roles.⁵⁹ The study also found that, of those surveyed, 42% of businesses said they had seen no change in gender balance in leadership in the last two years.

91 The study also revealed that only 40% of businesses had a gender parity strategy and of those who had one, only 26% measured

⁵⁷ Human Resources Capability Survey, State Services Commission, p29.

⁵⁸ Human Resources Capability Survey, State Services Commission, p29.

⁵⁹ NZ Herald, "Gender Gap costs \$900 million: Study", 5 December 2017, B1.

themselves against it.⁶⁰ Of concern is that just under half of respondents said a lack of female talent, either in the workforce or internally, was a barrier to parity. Yet New Zealand women are now earning tertiary qualifications at a higher rate than men. For example, the proportion of women with formal qualifications has increased from 42% in 1991 to 80% in 2013. The figures for men increased from 50% in 1991 to 70% in 2013.⁶¹

92 In 2015, data from 125 listed NZX companies showed that 17% of directors on private sector boards were women, up from 14% in 2014.⁶² Data from the NZX also found that the proportion of women in senior roles in New Zealand decreased from 21% in 2014 to 19% in 2015.⁶³

93 We note that the Ministry for Women identified three barriers to women continuing to advance their careers at the same rate as men:

- a. unconscious bias against women taking up leadership roles. This can affect recruitment, assessment and development practices at every level within an organisation;
- b. employer breaks to employment (eg for child-rearing) or a non-traditional career path (eg community leadership or executive roles), can make it difficult for women to maintain an upward career path;

⁶⁰ Above, NZ Herald, p B3.

⁶¹ Statistics New Zealand, Women at Work: 1991 – 1993, October 2015 at p23.

⁶² Ministry for Women “Increasing the Representation of Women on Private Sector Boards” August 2018, at p2.

⁶³ “Increasing the Representation of Women on Private Sector Boards”, p9.

- c. lack of options for flexible work or a workplace culture that applies informal or formal penalties for using flexible work options.⁶⁴

94 We agree with this analysis. In addition, we consider that the poor performance of the private sector reflects a lack of leadership and commitment to addressing gender equality.

95 There appear to be small pockets in the private sector where business leaders are addressing this issue.⁶⁵ For example the New Zealand Law Society (NZLS) has recently launched a “Gender Diversity and Inclusion Charter”. This move reflects the fact that women now make up close to 70% of law graduates, are now just over half of lawyers with practising certificates yet make up less than 30% of those who are partners or directors of firms. Although voluntary, signatories to the Charter are expected to:

- a. develop recruitment, retention and promotion policies that include diversity and inclusion;
- b. conduct gender pay audits to identify and eliminate gender pay disparities;
- c. actively work to increase the percentage of women in senior legal roles.⁶⁶

96 In addition, the NZLS and New Zealand Bar Association have implemented the “Gender Equitable Engagement and Instruction

⁶⁴ “Increasing the Representation of Women on Private Sector Boards”, p17.

⁶⁵ See NZ Herald article at FN 5 above in which both Westpac and NZ Herald owner NZME expressed their commitment to gender diversity.

⁶⁶ Poalo Taruc, “Law Society calls for feedback on gender diversity and inclusion charter”, NZ Lawyer, 18 September 2017.

Policy” which aims to have at least 30% of court proceedings, arbitral proceedings and regulatory investigations led by women lawyers with relevant expertise by 1 December 2018.⁶⁷ In announcing the policy, the NZLS acknowledged the disadvantage faced by many women barristers because of attitudinal mind-sets among law firms and clients. It stated that “this policy is aimed at driving cultural change and giving greater opportunities to women.”⁶⁸

Recommendations

97 The HRF recommends that the Committee encourage the New Zealand government to support or adopt the following measures:

- a. The government and public sector must continue to play a leading role in promoting and reporting on gender diversity. Reporting comprehensively on and achieving gender diversity should be included in the key performance indicators of all public sector CEOs.⁶⁹**
- b. The government should ensure that at least 50% of new appointments to public sector boards are women.**
- c. Serious consideration be given to legislative measures requiring businesses of a certain size to produce and implement equal employment opportunity programmes with minimum mandatory requirements including measurable targets. There is a wealth of literature on producing such**

⁶⁷ Sol Dolor, “Profession pushes for the advancement of women lawyers”, NZ Lawyer, 18 December 2017.

⁶⁸ NZ Lawyer, 18 December 2017.

⁶⁹ The Hon Julie Ann Genter, Minister of Women, has recently proposed that the KPIs of public sector CEOs include reporting on and achieving pay equity. We applaud the introduction of such a measure.

programmes and the most effective measures. Businesses that do not comply could face sanctions, including fines.

- d. The local government sector, including local authorities, should also be required by legislation to implement and report on appropriate equal employment opportunity programmes with measurable targets. Section 40 of the Local Government Act 2002 requires local authorities to prepare a local governance statement that includes information on “equal employment opportunities policy.” This is too general and contains no sanctions for inadequate programmes or policies. It is time for New Zealand to be serious on promoting and achieving equity for women at all levels of the workforce.**
- e. The achievement of gender equality needs to take into account the impact of ‘multiple discrimination’ as an obstacle for the achievement of gender equality for all women in Aotearoa New Zealand.**

ARTICLE 6: THE RIGHT TO WORK

Question 12: Please provide information on the impact of measures taken to promote adequate employment for women, Māori, persons with disabilities and young persons.

The HRF endorses the report of the CTU in paragraphs 5.3-5.11

ARTICLE 7: THE RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

Question 13: Please report on steps taken to address the prevalence of insecure-work arrangements and on how the right to just and favourable conditions of work is realized, for example, for workers who are required to be available for work under zero-hour contracts or are subject to shift cancellations without notice.

The HRF endorses the report of the CTU in paragraphs 6.2-6.4

Question 14: Please explain to what extent the various minimum wage rates enable a decent living for workers and their families. Please provide information, including statistical data, on households whose members are in paid employment but whose incomes are below the poverty line.

The HRF endorses the recommendations of CPAG/ACYA at p 7 and the report of the CTU in paragraphs 6.14-6.19

Question 15: Please provide information on the extent of discrimination on the ground of sex, race or other status, as well as on bullying and sexual harassment in the workplace, and elaborate on the effectiveness of prevention measures taken and of avenues of remedies for victims.

The HRF endorses the report of the CTU in paragraphs 6.4-6.6 which address the issue of equal pay for women

ARTICLE 8: TRADE UNION RIGHTS

Question 16: Please describe how the Employment Relations Amendment Act affects collective bargaining arrangements and what protections remain for new employees and young people who may be disadvantaged by the changes.

98 Union membership in Aotearoa New Zealand has declined, quite sharply, since 2011. Younger workers are less likely to be members of trade unions.⁷⁰ Research outside of Aotearoa New Zealand has shown that rates of union membership tend to be lowest in the sectors of economy in which young people are heavily represented, such as sales and personal and protective services that are often in small firms. Many young workers in these sectors regard their jobs as short-term and so they have little incentive to engage in a struggle to improve pay and conditions.⁷¹

The HRF also endorses the report of the CTU in paragraphs 7.2-7.6

ARTICLE 9: RIGHT TO SOCIAL SECURITY

Question 17: Please update the Committee on measures taken to ensure that ongoing welfare reforms do not further disadvantage the most marginalized individuals and groups, as well as on social assistance measures in place for those no longer entitled to insurance-linked benefits

⁷⁰ Sue Ryall and Stephen Blumenfeld, 'The state of New Zealand Union membership in 2014' (Wellington: Victoria University of Wellington Centre for Labour, Employment and Work, 2014), 2.

⁷¹ Andy Furlong and Fred Cartmel, *Young People and Social Change: New Perspectives* 2nd ed (Maidenhead: Open University Press, 2007), 52.

Introduction

99 The right to social security, contained in Art 9 of the ICESCR, is of fundamental importance for the guarantee of basic human dignity and is integrally related to other basic human rights, such as the right to an adequate standard of living.

100 In this section, we address the following: we report on the continuation and extension of the welfare reforms discussed in some detail in our March 2012 report, we discuss the effect of these reforms on the living standards and dignity of beneficiaries, we comment on proposals of the new Labour-led government and we propose recommendations.

Ongoing reforms to New Zealand's welfare system

101 Since 2011, the previous National Government steadily increased reforms of the welfare system, intensifying its focus on getting participants into paid work and the use of sanctions against recipients who failed to comply with requirements. As a result, the current welfare system is cumbersome, confusing, entitlements are hard to determine and the culture of WINZ has been described as unhelpful and lacking in compassion.

102 What is notable about the reforms is that there has been little effort to restore basic benefits to the levels they were before the significant cuts in 1991. Nor have benefits been adequately indexed to movements in average weekly wages or cost of living.

103 For example, in 2012 the government made changes to the Working for Families (WFF) package.⁷² In brief these changes lowered the abatement threshold from \$36,827 to \$35,000; increased the abatement rate of 25 cents in the dollar compared with the 2011 level of 20 cents in the dollar. The Family Tax credit was increased for inflation but the rate for those aged 16 and over was frozen. The threshold for abatement was reduced.⁷³ The result of these changes was to reduce dramatically real spending on WFF over time. Compared with what a properly indexed scheme would have cost, the cumulative savings were very significant. It has been estimated that over the period 2017 -2018 the cumulative loss to low income families was nearly \$3 billion.⁷⁴

104 In October 2012, increased work obligations for sole parents and partners of beneficiaries came into force; for example, single parents with children aged 5 and over to be available for part-time work, single parents with children 14 years and over to be available for full-time work; single parents who had another child while on the benefit to be available for work after that child reached one year. Also in October, MSD implemented a new Service Delivery Model, including Work-Focused Case Management, as a pilot in 24 WINZ offices.

105 Sanctions continued to apply to beneficiaries who failed to meet obligations. There are three types of sanctions: graduated (ie a percentage reduction in benefit amount), suspended and cancelled.

⁷² Working for Families tax credits are paid to the caregiver in eligible families with dependent children aged 18 or younger to help with living costs.

⁷³ Gerard Cotterell, Susan St John, Claire Dale, "Further fraying of the welfare safety net" (Child Poverty action Group 2017) 16.

⁷⁴ Cotterell, St John, Dale above, 16.

Sole parents and couples with dependent children face a maximum of 50% reduction of their main benefit when sanctioned within a 12-month period. For single people with no dependent children, the first sanction is a maximum 50% reduction in their benefit; for a second failure they face a 100% suspension of their main benefit.⁷⁵

106 The government also increased an emphasis on “benefit fraud” through a range of policy announcements and measures including enhanced information sharing provisions for example with Inland Revenue. In addition, those receiving Job Seeker Support and Sole Parent benefits were also required to re-apply after twelve months, drug testing was introduced for some recipients and sole parents were asked to provide the name of a person who could verify their relationship status. And in 2014 MSD implemented the Low Trust Client initiative, designed to prevent beneficiaries who had been convicted of welfare fraud or had in the last 12 months had overpayments established following a fraud investigation, from repeating this behaviour.⁷⁶

107 In July 2014, the Social Security (Fraud Measures and Debt Recovery Amendment Act) came into force. The Act had a particular focus on relationship fraud which the government argued made up a large proportion of welfare fraud each year. It made spouses and partners, as well as beneficiaries themselves, potentially also accountable for relationship fraud.

⁷⁵ MSD Fact sheet: “Benefit sanctions – December 2017 quarter”.

⁷⁶ See above, 19.

108 A wide range of NGOs and Maori organisations voiced their concerns at the spread and impact of poverty, shown in rising homelessness, increased use of foodbanks and a deterioration in child health associated with poverty-related factors.

109 Hence, the new government from 2014 to 2017 introduced some measures aimed at alleviating poverty. These included increasing the Parental Tax Credit (PTC) from \$150 per week to \$220 a week, extending the period of payment from eight weeks to ten weeks and increasing the maximum payment from \$1,200 to \$2,200, increasing paid parental leave from 14 weeks to 16 weeks, and then to 18 weeks on 1 April 2016, and increasing benefit rates for families with children by \$25 a week from April 2016. Paid parental leave was increased in line with the movement in average weekly wages.⁷⁷

110 Alongside these positive measures, the government continued to implement increased obligations for beneficiaries. For example, as a result of changes introduced in the 2015 budget, most sole parents and partners of beneficiaries were required to look for part-time work when their youngest child reached the age of three years (previously five years). From 1 April 2016, beneficiaries receiving Sole Parent Support (SPS) needed to re-apply for their benefit every 12 months, as was already required of those on Jobseeker Support.

The impact of these reforms

111 The HRF is concerned that overall the reforms have undermined the dignity and security of beneficiaries, many of whom belong to the most marginalised groups in New Zealand. A result of the government's policy

⁷⁷ See above, 24 -25. The maximum rate of paid parental leave is currently \$538.55 before tax.

direction has been to make being a ‘beneficiary’ an undesirable status and something solely within the control of the beneficiary. The implication is that with appropriate effort beneficiaries can move quickly off welfare into the more desirable state of paid employment. This ignores the complex needs and vulnerabilities of beneficiaries, many of whom have experienced challenging and unforeseen life events or are performing the traditionally undervalued but skilled work of caring for children and dependents.⁷⁸ The purpose of a social security system is to support and protect citizens through these life events and circumstances, so that they can enjoy the same basic economic and social rights of citizens with more favourable life circumstances. This is a fundamental human right, well within the affordability of a wealthy country such as New Zealand, which, on the contrary has growing inequality.

112 This policy approach also ignores the complexity of the New Zealand labour market in which a significant number of jobs are low paid, casual, or short-term in nature. Being pressured off a benefit into a job that may be short-term or have casual hours (that are not guaranteed) provides at best uncertain security. And paid employment is not a guarantee against poverty for families with children. Around 40% of children in poverty live in families supported by paid work.⁷⁹ Hence the investment into the complex but much-needed WFF package.

113 Of considerable concern is the low level of core benefits which mean that the standard of living experienced by beneficiaries, compared to that of the wider community, has continued to decline. This has led to an

⁷⁸ For instance, at 31 December 2017, 60,678 people, being 2.1% of the working age population, were receiving Sole Parent Support. MSD Benefit Fact Sheet. December 2017.

⁷⁹ Perry B (2017) “Household incomes in New Zealand: Trends in indicators of inequality and hardship 1982 to 2016” Wellington, Ministry of Social Development.

increasing gap between wages and benefit payments.⁸⁰

114 The low level of benefits has also led to many beneficiaries being required to access third tier supplementary assistance. The main types of supplementary assistance are: Accommodation Supplement (AS), Temporary Additional Support (TAS), Special Needs Grants (SNGs), Benefit Advances (ADV) and Recoverable Assistance Payments (RAP). These grants (apart from the AS) are complex to access and require a scrutiny of the beneficiary's expenditure, income and assets. Some forms are repayable, adding to the debt trap.

115 The number of people receiving TAS increased by 4,111 since December 2016 to 72,355 as at 31 December 2017. The number of hardship grants (which include SNG, ADV, and RAP) increased from 252,422 in the December 2016 quarter to 290,070 in the December 2017 quarter, an increase of nearly 15%. The value of these grants increased by 6.7%. This followed significant increases in the preceding year. Of serious concern is that food has remained the main reason for needing hardship assistance. Most of the value of payments granted is either for accommodation related costs (excluding Emergency Housing) or food assistance.⁸¹

116 Determining one's entitlement to the Accommodation Supplement is difficult as it depends on an assessment of several factors including assets and location. One way to determine the level of AS is to complete an on-line questionnaire, impossible for those without ready access to computers.

⁸⁰ See Perry above, 55.

⁸¹ MSD Benefit Fact Sheets December 2017 quarter.

117 Further, the AS is also inadequate given increasing rent levels in New Zealand. One client of the author of this section, a woman with significant mental health issues arising from childhood sexual abuse, separated from her spouse and needs to support herself through a difficult separation. She received the following benefit payments:

Jobseeker Support	\$212.45
Accommodation Supplement	\$145.00
Temporary Additional Support	\$45.57
Total payments issued	\$403.02 ⁸²

She is renting a small flat in a central Auckland suburb and paying a weekly rent of \$350. She simply cannot manage on her benefit level, her rent is in arrears and her mental health is deteriorating.

118 Since 2014, many beneficiaries including families experienced sanctions. The MSD benefit fact sheets and data tables include the following statistics:

The number of benefit sanctions imposed due to failure to fulfil work obligations increased by 30.1% in the December 2017 quarter.

From March 2015 to 31 December 2017, 41,378 people on SPS (who are sole parent families) were sanctioned.

From March 2015 to 31 December 2017, the number of people sanctioned involved 59,701 children.

⁸² MSD letter dated 24 November 2017 to Ms X [name withheld]. Letter in possession of author.

119 This establishes that sanctions are affecting children. However, there is no official information on the impact of sanctions on the wellbeing of children and families. One research report “Off-benefit transitions” looked at 140,000 people who moved off a benefit from 1 July 2010 to 30 June 2011.⁸³ It showed that, while 78% of those who had moved off a benefit had not returned to one within two years:

- *For 18% of people who moved off a benefit but did not return, their main activity two years later was unknown. It is possible that some of these people are being supported by their partner.*
- *Most people who returned to a benefit did so within 12 months.*
- *People who moved off a health-related benefit and into a job were less likely than others to still be in employment two years later.*
- *People who moved off a benefit to take up tertiary education were more likely to return to a benefit two years later than those who had found jobs.*
- *Those who moved off a benefit because they had been placed in detention tended to return to a benefit or were still in detention two years later.*

120 MSD fact sheets on benefits do not provide statistics on Maori including the impact of sanctions on Maori families. This area also deserves careful research, given that Maori are over represented in the benefit population, and it may required special measures to turn around this situation.

121 Nor, despite the number and range of reforms, has there been any comprehensive evaluation of the effectiveness of the reforms, including

⁸³ MSD Social Policy and Research Unit, 2017) cited in Cotterell, St John and Perry, n2 above, 28.

their impact on behavioural change, on people's employment and economic security.

122 Many community organisations consider that the reforms have led to a punitive and unhelpful culture in WINZ.⁸⁴ Beneficiaries complain of not being informed of their full entitlements, such as child care support. The Citizens Advice Bureau publicly reported that over the last two years, it received 7,000 calls from beneficiaries. It has just been awarded a contract to advocate for beneficiaries.⁸⁵ One woman who spoke out on a public radio programme was a grandmother caring for her grandson. On approaching WINZ for a benefit, she was told by a case manager that she was not eligible as there had been no involvement by Child Youth and Family (now the Ministry of Vulnerable Children Oranga Tamariki). A year later she again approached WINZ supported by a Grandparents Group. This time she succeeded in being granted a benefit. Unsurprisingly, there is a widespread perception that, in order to gain appropriate assistance from WINZ, beneficiaries need the support of an experienced advocate.

123 The Public Service Association (the largest public sector union) in this same radio programme expressed concern for beneficiaries. It highlighted the lack of time staff are allocated to support beneficiaries due to high caseloads and having to meet performance indicators. Some staff are expected to see 40 people a day.

124 One recent High Court case heard in late 2017 demonstrates the confusing and arbitrary nature of WINZ decision-making. In this case,

⁸⁴ Insight documentary, RNZ, 14 January 2018, 8.10am

⁸⁵ See above.

the MSD held that the beneficiary, who was in receipt of the Domestic Purposes Benefit at the relevant time, had received income over and above what she was entitled to and must repay the benefit. In order to make ends meet, the beneficiary borrowed money from a variety of sources including her mother. She had repaid virtually all of it. The Social Security Appeal Authority largely upheld the decision of the MSD that the beneficiary has to pay back over \$100,000 to MSD. Its key findings were that money spent by the plaintiff from her credit card, from bank overdraft, spending to repay her mother for a loan and spending from Avanti and GE loans amounted to “income”. The beneficiary appealed to the High Court, arguing that money in the nature of a loan to be repaid does not have the essential quality of income in the Social Security Act 1964. For the relevant period, the beneficiary was repeatedly told by her case managers that she did not have to declare loans or borrowed money as income when she filled in her yearly and other forms. Neither did any WINZ policy available to her state that spending from borrowed money was or could be classified as income for the purposes of benefit entitlement. Indeed, the WINZ web-site to this day does not state that “loans” have to be declared as income. The High Court has not yet released its decision.

125 There is also concern at the lack of independence of Benefit Review Committees (BRCs). If a beneficiary disputes a benefits decision, they have to complete a Review of Decision form. The MSD will first take a look at the original decision and may change it. If not changed, the decision goes to the Benefits Review Committee (BRC). The BRC comprises two MSD staff members who were not involved in the original decision plus a community representative. It conducts hearings which the beneficiary is entitled to attend. Given the importance of these

committees, many NGOs propose that these committees should be completely independent of the MSD. Presently it is difficult and daunting for many beneficiaries to present their case to the BRC. If they are fortunate enough to have access to a community law centre, they may be able to find an experienced advocate. Legal aid is not available for BRCs, something that should be reconsidered.

Initiatives of the new Labour-led Government

126 Since taking office, the new Labour-led government has introduced some important measures to increase the income and security of beneficiaries and families. These include:

- a. Increasing paid parental leave from 18 weeks to 22 weeks from 1 July 2018, with a further increase to 26 weeks from 1 July 2018;
- b. National superannuitants and beneficiaries will get a one-off payment of \$500 to help pay for heating over the winter. As this applies to all beneficiaries without asset testing, it will be simple to administer.
- c. Giving all parents of new born babies \$65 extra a week for a year, with poorer families getting it for three years.
- d. Increasing the orphan's benefit, unsupported child benefit and foster care allowance.

127 While these are significant measures, the HRF considers that New Zealand's welfare and social security system needs a comprehensive review and overhaul. We set out our key recommendations in the next section.⁸⁶

⁸⁶ In formulating these recommendations, we are indebted to the excellent work of Child Poverty Action Group, Associate Professor Susan St John and Catrionna McLennan, Barrister.

Recommendations

128 The HRF recommends that the Committee urge the New Zealand Government to:

- a. Review the design of family income support and welfare benefits, income tests, the archaic view of relationships and the harsh sanctions in place so that the social welfare system is focussed on helping those in need, rather than on reducing benefit numbers and reducing costs.**
- b. Set benefits at liveable levels. This will reduce the complicated system of third tier support and relieve the hardship of many beneficiaries.**
- c. Index all benefits to wages or inflation so they are increased each year like New Zealand superannuation.**
- d. Simplify and rewrite the purposes of the Social Security Act 1964 so its principal object is, one again, to help those in need so that all citizens can enjoy basic economic and social rights and live in dignity.**
- e. Begin an immediate review of all MSD cases before the courts and all enforcement by MSD of alleged beneficiary debts and seriously consider a moratorium on further enforcement action while the review is completed.**
- f. Consider writing off all debts owed by beneficiaries to WINZ. The total figure is approximately \$200 million. In the 2015 budget, the previous government announced it would write off up to \$1.7 billion in child**

support penalties. Between 2008 and 2014, Inland Revenue wrote off \$5 billion in tax debt.⁸⁷

- g. Close the tip line people can call in to report on benefit fraud. Many allegations of fraud are made maliciously by former partners or are motivated by personal disputes. They add to the administrative burden of already overworked staff.**
- h. Increase the amount beneficiaries can earn (it is currently \$100 a week) before their benefits are abated. This assist beneficiaries transition to work and enables them to maintain work experience and skills while in receipt of a benefit.**
- i. Repeal the law that applies a sanction of between \$22 and \$28 a week levied against parents who cannot or will not name the other parent in law. These sanctions apply 97.7% to women and 52% to Maori.⁸⁸ Some women do not wish to name the father because of an abusive or violent relationship – they should not be penalised for doing so.**
- j. Consider making entitlements to benefits individual rather than basing them on relationship status. This would reduce intrusive and complex investigations into the status of a person’s relationship. In the alternative, simplify the definition of ‘relationship in the nature of marriage’ to reduce the intrusive investigations into highly personal matters. For example, a new beneficiary who enters into an intimate relationship**

⁸⁷ www.catrionnamaclennan.co.nz/blog/welfare-reform-15 -point-plan

⁸⁸ See fn 16 above.

may be entitled to retain their benefit until they marry, or enter into a civil union or are in a de facto relationship for, say, three years.

k. Transform the culture of WINZ so that every staff member is required to treat beneficiaries fairly and respectfully and ensure that beneficiaries receive all the assistance to which they are entitled.

l. Abolish the BRCs and replace them with an independent body to deal with decisions about benefits. Consider establishing a Social Security Ombudsman.

Question 18: Please indicate to what extent the protection of the right to social security, the right to an adequate standard of living, and the best interests of the child are taken into account in decision-making processes regarding benefit sanctions under the Social Security Act 1964.

129 As noted by CPAG, some New Zealand children experience discrimination stemming from the Government's emphasis on the active citizenship model of social security, which in turn is focused on the 'work readiness' of parents and caregivers, rather than the impact of such an approach for children. Social security legislation is not informed by the principle of the best interests of the child.

130 The HRF endorses recent efforts by the NZ Human Right Commission to ensure that the rewriting of social security legislation includes a commitment to ensure that decision-makers have regard to the welfare and best interests of any child. Such an approach is also consonant with s 6 of the Vulnerable Children Act 2014, which states that

improving the well-being of vulnerable children means promoting their best interests. In particular, s 6(f) of the Act requires the taking of measures – informed by the best interests of the child- to improve the social and economic well-being of vulnerable children.

Recommendations

- 131 **The HRF endorses recent efforts by the NZ Human Right Commission to ensure that the rewriting of social security legislation includes a commitment to ensure that decision-makers have regard to the welfare and best interests of any child.**

The HRF also endorses the report of CPAG/ACYA at p 7

ARTICLE 11: the RIGHT TO AN ADEQUATE STANDARD OF LIVING

Question 19: Please update the Committee on the poverty threshold applied in the State party. Please also provide updated statistical data on poverty, disaggregated by age group, ethnicity, household size and family status. Please provide information on obstacles to reducing child poverty in the State party.

- 132 The right to an adequate standard of living comprises rights to food, clothing, water and housing. As discussed above in the introductory paragraphs, none of these rights are protected by constitutional or direct legislative incorporation in New Zealand law.

- 133 As the HRF noted in its LOIPR report, New Zealand does not have the levels of absolute poverty that are experienced elsewhere. Nevertheless, there is general agreement on the existence here of relative poverty.
- 134 An issue of major concern is the increased and increasing level of inequality in New Zealand, stemming from the market-oriented employment and benefit reforms of the 1980s and early 1990s. This inequality gap has a major effect on the enjoyment of the component rights of an adequate standard of living, particularly for those on low wages or on benefits. The issue of “the working poor” remains an issue for New Zealand, as it does for most other OECD countries.⁸⁹
- 135 Successive governments have made some attempt at alleviation of hardship for lower income families, notably through the introduction in 2007 of a family assistance policy, “Working For Families”. However, this programme assists only those families in work, not those on a benefit. The Child Poverty Action Group (CPAG) has challenged this aspect in the courts as discriminatory on the ground of employment status, which is prohibited under the Human Rights Act 1993.
- 136 Social security legislation that focuses on ‘work readiness’ of parents and caregivers and fails to incorporate the fundamental principles of non-discrimination and the best interests of the child is a major obstacle to improving the child’s right to an adequate standard of living. The Office for the Commissioner for Children has engaged in research to secure better outcomes for children living in poverty in

⁸⁹ “Key findings”, <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/monitoring/household-incomes/index.html>

Aotearoa New Zealand and such research – in terms of its methodology that includes extensive consultation with children and young people – as well as its findings is to be considered as current best practice.

137 Concern about the level of child poverty in New Zealand was raised by the HRF in its 2012 report and in the Committee’s 2012 Concluding Observations. It remains a matter of concern to a wide range of NGOs and others in New Zealand, including the Children’s Commissioner and the Child Poverty Action Group (CPAG) (see below).

138 The new Government has made poverty alleviation and eradication a central plank of its policies, with the Prime Minister taking on a leadership role. In January 2018, as part of its first 100 days programme, the Government introduced comprehensive new child poverty legislation.⁹⁰

Recommendations

139 **The HRF recommends:**

- a. that the Committee recommend that the Government take note of reports of the Office of the Commissioner for Children, CPAG and the Salvation Army;**
- b. that the Committee ask for an interim report on the progress of the Government’s initiatives to address child poverty and growing inequality in New Zealand**

⁹⁰ www.newshub.co.nz/home/politics/2018/01/government-announces-child-poverty-legislation.html

The HRF also endorses the report and recommendations of CPAG/ACYA at pp.3 and 9 and the CTU in paragraphs 9.2-9.8 and 9.12-9.16

Question 20: Please provide information on measures taken to respond to the reported increase in the number of families resorting to food banks.

Article 11: the Right to an Adequate Standard of Living: the Right to Food

140 As with other ESC rights, there is no constitutional or legislative protection of the right to food in New Zealand. Nor are there any statutory or judicial or quasi-judicial structures such as protect aspects of the rights to work and housing.

141 As noted above, New Zealand does not have the levels of absolute poverty or food deprivation which are experienced elsewhere. Nevertheless, there is general agreement on the existence here of relative poverty, which can lead to difficulty in accessing adequate food. The lack of access to adequate, sufficient, appropriate, food is particularly acute for certain disadvantaged groups, including the poor and Maori and Pacific people. For all of these the underlying issue is poverty and children are particularly affected.

142 The fact that many schools, often with the assistance of local companies and the Government itself, have to provide breakfast and/or lunch for a significant number of children, provides a telling example, as does the increasing call on foodbanks, as outlined in a series of policy reports over a number of years by the Salvation Army.

143 These problems have not been lessened since the HRF raised concerns in its LOIPR report. Indeed recent reports from the Auckland City Mission (ACM)⁹¹ and the Salvation Army⁹² confirm that the need for foodbanks is increasing.

The HRF endorses the recommendations of CPAG/ACYA at p 10

Question 21: Please provide updated information and disaggregated statistical data on the gaps in the realization of the right to adequate housing in the State party in terms of affordability, habitability and security of tenure, and on the existing challenges to decrease those gaps, in particular with reference to the long waiting list for social housing.

Article 11: the Right to an Adequate Standard of Living: The Right to Housing

144 The right to housing, that is to housing which is secure, affordable, habitable, accessible and culturally appropriate is not specifically provided for in any New Zealand legislation. However, as the HRF noted in its LOIPR report, a range of central government policies, laws and regulations provide certain rights and protections related to housing.⁹³

⁹¹ Auckland Now www.stuff.co.nz/auckland/10002557/needy-camp-overnight-at-auckland-city-mission-for-food-parcels 20 December 2017

⁹² Salvation Army “Kei a Tatou – It Is US: State of the Nation 2018” www.salvationarmy.org.nz/research-media/social-policy-and-parliamentary-unit/latest-report

⁹³ Building Act 2004 (which repealed the Building Act 1991); Building Amendment Act 2009; Housing Improvements Regulations 1947 (under the Health Act 1956); Housing Restructuring and Tenancy Matters Act 1992; Residential Tenancies Act 1986; Residential Tenancies Amendment Act 2010; Residential Tenancies Amendment Act 2016; Local Government Act 1974 (where still in force); Local Government Act 2002; Resource Management Act 1991 (covers the zoning of residential areas and also the environmental impact of housing); Resource Management (Simplifying and Streamlining) Amendment Act 2009; Fire Service Act 1975; Watertight Homes Resolution Services Act 2006.

145 None of these statutes, however, afford protection or remedy in the case of a number of serious housing issues:

- a. **Affordability:** The cost of housing in many parts of New Zealand, particularly in Auckland, has made the buying or, increasingly, the renting of a home unaffordable for a great many people.
- b. **Lack of social housing:** There is a severe shortage of social and emergency housing in many areas of New Zealand, again especially in Auckland. Media reports have described people, including children, who are waiting for social housing allocation, reduced to living and sleeping in cars.
- c. **Tenancy:** Despite the existence of tenancy protection legislation and tenancy tribunals, the lack of affordable housing and the scarcity and increasing cost of rentals can provide opportunities for exploitation and lead to housing which is not fit for purpose.
- d. **Homelessness:** Homelessness, in its various forms, affects a significant number of New Zealanders and is reported, by for example the Auckland City Mission and the Salvation Army, to be increasing. A recent report commissioned by the incoming government confirms these findings.⁹⁴

146 All of these issues are exacerbated by the former Government's failure to devise a national action plan which might address what is regarded by many as a housing crisis in a systematic and considered manner.

⁹⁴ "A Stocktake of New Zealand's Housing" February 2018

147 A lack of access to secure, affordable, accessible, culturally suitable housing affects a number of disadvantaged groups in particular: the poor, those with disabilities, Maori and Pacific people.

148 The HRF would like to commend the previous Government on the implementation of *He Whare Āhuru He Oranga Tāngata* (*He Whare Āhuru*), the Māori Housing Strategy which sets out six directions to improve Māori housing over the period of 2014 to 2025. This is a much larger commitment than has been seen in the past and we hope it will have continual positive effects.

149 However, the same cannot be said of the Government's strategy for Pacific people's housing. The HRF suggests a similar approach be adopted for the Government's Pacific Economic Strategy.

Recommendations

150 **The HRF recommends that the Committee (1) recommend that the Government draw up a national action plan to address what is regarded by many as a housing crisis in a systematic and considered manner; (2) request that the Government present an interim report on its actions to address these housing crises.**

151 **On the effect of these housing issues, particularly on children, see further the report and recommendations of CPAG/ACYA at pp.10 and 11, which the HRF endorses.**

ARTICLE 12: the RIGHT TO PHYSICAL AND MENTAL HEALTH

Question 22: Please provide information on the impact of measures taken to ensure the right to physical and mental health of, and improved health outcomes for, Māori and Pasifika people.

See the report and recommendations of CPAG/ACYA at pp 11 and 12, which the HRF endorses.

Question 23: Please update the Committee on the impact of privatisation of water distribution on the availability and affordability of water. Please inform the Committee of measures taken to address freshwater pollution from agriculture and the impact thereof.

Article 11: the Right to an Adequate Standard of Living: the Right to Water

152 As with the other ESC rights, the rights to water and sanitation are not directly protected by legislation in New Zealand. The crucial issues in relation to water rights in New Zealand parallel those emerging in case-law and policy decision-making in other parts of the world: namely the privatisation of water supply and sanitation facilities, with the consequent expanding involvement and influence of non-state actors (NSAs) and the introduction of user-pays systems.

153 In 2012, the New Zealand Human Rights Commission released a report entitled *Human Rights and Water*. The report stated that rights to water were becoming an increasing concern both internationally and nationally, and identified the main issues in the New Zealand context as being the availability, accessibility, affordability, quality and safety of water; water

services being socially and culturally acceptable; the accountability of the main actors, and the sustainable management of water resources.⁹⁵

154 The stated position of the Government is that nobody owns water in New Zealand, rather that the Crown holds water in trust for the public. Water must be contained or captured in order to become property in law. At common law, water in its natural state is not capable of private ownership. Section 354(1) of the Water and Soil Conservation Act [1967] preserves the vesting of water in the Crown. Due to that ownership, control is delegated to local councils and authorities.

155 The **affordability** of water is clearly a human rights issue, in New Zealand as elsewhere, and is linked with the increasing privatization of the water supply and sanitation facilities, with the consequent expanding involvement and influence of NSAs and the introduction of user-pays systems. The Resource Management Act 1991 (RMA) does not require public resources taken for private use to be paid for, but water suppliers, including councils managing a reticulated supply, can charge consumers for water supply and wastewater services. Provisions in the Local Government Act 2002 prevent the wholesale privatisation of council water-services, the rationale being that water services must remain the responsibility of democratically elected local bodies, answerable to their constituents. While councils may contract out aspects of water services, they will continue to be legally responsible for the provision of water services, the pricing of those services, and the development of water provision-policies regardless.⁹⁶ Nevertheless, there is increasing criticism of the level of charging for water in parts

⁹⁵ Human Rights Commission *Human Rights and Water* (Human Rights Commission, Auckland, 2012) at 6.

⁹⁶ LGA, s 136(2); see also Local Government (Auckland Council) Act 2009 pt 5 (additional provisions in relation to Auckland council controlled water organization).

of New Zealand and resistance to the introduction of user-pays systems and to the installation of water metering.

156 The **quality and safety** of water: in 2009-10 the Ministry of Health found that 6 per cent of New Zealanders were drinking water that was unsafe.⁹⁷

While pollution is a relative term, the Human Rights Commission notes that there is an increasing consensus about the poor quality of New Zealand's water bodies in general⁹⁸ and the onus for resolving these problems falls primarily upon local authorities.

157 There are various legal regimes in place as regards certain aspects of water rights, such as water management and the right to access water for domestic or agricultural use. The main actors in relation to water management are local government. The regulatory regimes governing the quantity allocated and quality of water are contained in the RMA, the Local Government Act 2002 and the Health Act 1956.

158 The statutory provision that most closely resembles a 'right to take water' is found in the RMA: section s14(3) provides that individuals' may take freshwater for their reasonable domestic needs (and the reasonable drinking-water needs of their animals),⁹⁹ Māori may use geothermal resources for the communal benefit of the tangata whenua,

⁹⁷ *Annual Review of Drinking-Water Quality in New Zealand 2009-2010* (Ministry of Health, Wellington, 2011) reported in *Human Rights and Water* (Human Rights Commission, Auckland, 2012) at 15.

⁹⁸ Human Rights and Water, above n 49, at p 10; *Managing freshwater quality: Challenges for regional councils*, (Office of the Auditor-General, Wellington, September 2011); The New Zealand Institute, *NZahead* (New Zealand Institute, Wellington, 2011) at 84-85; and reports by the Parliamentary Commissioner for the Environment: *Water Quality in New Zealand: Land use and nutrient pollution* (November 2013); *PCE Freshwater reforms submission* (April, 2013); *Water Quality in New Zealand: Understanding the science* (March, 2012). The greatest polluter of waterways is the dairy industry. The industry has agreed to a voluntary code of conduct - *Sustainable Dairying: Water Accord* (July 2013) <<http://www.dairynz.co.nz/publications/dairy-industry/sustainable-dairying-water-accord/>> - although this code has been criticized for ineffectiveness by environmental NGOs (for example see: Forest and Bird, "New dairy farmers' accord misses key lessons" (20 February 2013) <<http://www.forestandbird.org.nz/what-we-do/publications/media-release/new-dairy-farmers%E2%80%99-accord-misses-key-lesson>>).

⁹⁹ RMA, s 14(3)(b).

and in accordance with tikanga Māori,¹⁰⁰ and all persons may take the water, heat or energy from the general coastal water for their reasonable domestic or recreational needs.¹⁰¹

159 All of these takes and uses are permitted on the proviso that they do not create ‘an adverse effect on the environment’.¹⁰²

160 In practice, there are many demands on available water resources and the Human Rights Commission has warned that the over-allocation of water is becoming a serious problem in parts of New Zealand.¹⁰³ At present, legislative processes manage water-allocation poorly – both between competing *uses* of water and in relation to competing *users* – a point highlighted in numerous cases.¹⁰⁴

161 Increasing pressure on water resources – particularly in a climate-changed world¹⁰⁵ – makes the issue of water availability increasingly pressing and the Government has made dealing with over-allocation a national objective. The National Policy Statement for Freshwater 2011 (as amended in 2014 and 2017), promulgated by central Government, requires local councils to identify over-allocated water resources and resolve the problem.

¹⁰⁰ RMA, s 14(3)(c)

¹⁰¹ RMA, s 14(3)(d).

¹⁰² RMA, s 14(3)(b)–(d)

¹⁰³ Human Rights Commission *Human Rights and Water* (Human Rights Commission, Auckland, 2012) at p 10.

¹⁰⁴ See, in particular, comments by the Court of Appeal in *Central Plains Water Trust v Ngai Tahu Properties Ltd* [2008] NZRMA 200; *Central Plains Water Trust v Synlait Ltd* [2009] NZCA 609; [2010] 2 NZLR 363. See also Land and Water Forum Reports recommending alternate strategies for managing water: *Report of the Land and Water Forum: A Fresh Start for Freshwater* (2010); *Second Report of the Land and Water Forum: Setting Limits for Water Quality and Quantity Freshwater Policy and Plan Making through Collaboration* (April 2012); *Third Report of the Land and Water Forum* (November 2012). Further, see Ministry for the Environment, *Freshwater reform 2013 and beyond* (Ministry for the Environment, Wellington, 2013).

¹⁰⁵ Mandate of the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, “*Climate Change and the Human Rights to Water and Sanitation*” United Nations Position Paper (2010), related to access to safe drinking water and sanitation.

162 The tension is particularly acute when it is necessary to balance the interests of domestic consumers, environmental protection and industrial use.

163 Quality of freshwater remains a significant issue. The National Policy Statement on Freshwater (‘NPS-FW’) sets the national direction for water quality standards and Regional Councils implement these standards by introducing regulatory methods that are deemed appropriate in the locality (that can include both voluntary and non-voluntary measures). However, while some flexibility to tailor solutions is necessary this devolved system has led to inconsistencies between regions that are proving problematic. Reviewers express concerns about: slow implementation (full compliance is not required until 2025 and many councils are not addressing urban water quality as a priority, even though urban areas still have some of the poorest water quality); the lack of nationally consistent methodologies (with the result that councils are setting water quality limits using different methodologies); legal uncertainty with regards to the use of specific regulatory mechanism targeted at agricultural run-off (such as requiring the use of OVERSEER) and setting nitrogen load limits in plans; the use of Freshwater Management Units and offsetting (where some water bodies are allowed to deteriorate below acceptable standards if others are improved); keeping stock out of waterways; and requiring better farming practices by implementing Good Management Practices.¹⁰⁶ Further, constructing adequate water storage to ensure access to water in a climate-

¹⁰⁶ Land and Water Forum *Better Freshwater Management* (Wellington, 2017); Land and Water Forum, *Land and Water Forum Commentary on the Ministry for the Environment’s ‘National Policy Statement for Freshwater Management Implementation Review’* (Wellington, 2017); Ministry for the Environment *National Policy Statement for Freshwater Management Implementation Review: National Themes Report* (ME3122) (Wellington, 2017); see also *Ngāti Kahungunu Iwi Inc v Hawke’s Bay Regional Council* [2015] NZEnvC 50 (New Zealand Environment Court highlights concerns about offsetting and Freshwater Management Units)

changed world remains a significant challenge.¹⁰⁷ The Land and Water Forum recommend that greater central government leadership and practical support is required to address all of these challenges, and a properly independent and systematic review of the efficacy of the NPS-FW is required.¹⁰⁸ The HRF is however encouraged by recent government commitments to addressing these challenges: the NPS-FW was revised in September 2017 to include (amongst other things) a target that 90% of rivers and lakes will be ‘swimmable by 2014’ and a requirement that Regional Councils specify nutrient levels (such as nitrogen and phosphorous) that will be permitted in waterways. The new Minister has also indicated a willingness to work with Land and Water Forum to address some of the significant issues that remain.

PRIVATISATION OF WATER: IMPLICATIONS FOR MAORI RIGHTS

164 In New Zealand also, due to our history, there is another factor of growing importance: the making of customary claims by Maori, which can then affect many aspects of water control, allocation and use. This is particularly the case as access to water becomes an issue of environmental and climate change concern and of potential profit. The issue here is whether the New Zealand government has adequately recognised the right of Maori to govern, manage or own freshwater in New Zealand.

165 Access to safe drinking water by indigenous peoples is closely linked to control over their ancestral resources, including freshwater. Lack of legal recognition or protection of this resource can have far reaching

¹⁰⁷ Land and Water Forum, *Land and Water Forum Commentary on the Ministry for the Environment’s ‘National Policy Statement for Freshwater Management Implementation Review’* (Wellington, 2017)

¹⁰⁸ Ibid

implications for their enjoyment of the right to water.¹⁰⁹ Traditionally, water is a *taonga* (treasure) for Māori and even today it remains an integral political, economic and spiritual resource.

166 In New Zealand, some recognition of Māori having legally binding rights and interests concerning freshwater resources can be seen in the government's co-management approach to the Waikato river.¹¹⁰ It has been noted that in order for Māori to be in partnership with the Crown in relation to water management, the government needs to implement co-management strategies. A Treaty claim was lodged by Māori concerning the issue of whether the Waikato-Tainui iwi (tribe) were partners with the Crown or stakeholders.¹¹¹ The deed of settlement in 2009 resulted in the establishment of the Waikato River Authority which was made up of equal members appointed by the Crown and iwi. The Authority was made responsible for the joint management of the river and for issuing resource consents. The settlement also provides for recognition of the Waikato-Tainui environmental plan, revisions for regulations relating to fisheries and other matters concerning conservation.

167 However, New Zealand legislation as a whole does not clearly state whether Māori have rights and interests concerning freshwater resources. A Cabinet Paper in June 2009 noted that “the rights and interests of Māori in New Zealand’s freshwater resources remain undefined and unresolved”.¹¹² Jacinta Ruru, a senior lecturer at the University of Otago, states that “the uncertainty [of water ownership] arises because the common law in relation to flowing water does not recognise ownership

¹⁰⁹ *The United Nations Fact Sheet on “The Right to Water”*, No.35, 1014-5567, (2010) at 23.

¹¹⁰ At 21

¹¹¹ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010

¹¹² “New Start for Freshwater” (3 February 2009) Office of the Minister of Environment and Office of the Minister of Agriculture <www.mfe.govt.nz>

possibilities but the doctrine of native title does along with guarantees made to Māori in the Treaty of Waitangi. Further, New Zealand legislation is silent on ownership of water”.¹¹³ The New Zealand Human Rights Commission contends that the Crown has reserved the right to grant access to water under the Resource Management Act¹¹⁴ and that this reflects the government position on water ownership in New Zealand.¹¹⁵ It has also been argued that if ownership of water is unclear under New Zealand legislation then the government must negotiate with Māori. It has been argued that if customary title rights still exist then the government must not continue to privatise something that they do not own.¹¹⁶

Conclusion

168 There are clearly complex issues of ownership that arise in relation to Māori customary claims to water resources. In fact, the issue of water ownership remains highly contested and controversial in New Zealand, particularly in light of recent developments in relation to State Owned assets.

Recommendation

- 169 **The HRF recommends that the Committee ask to be kept informed on a regular basis as to how the New Zealand government is addressing:**
- a. pressing issues concerning the availability, affordability, quality and safety of water in New Zealand;**
 - b. the recognition of Māori water rights.**

¹¹³ Ruru J “The Legal Voice of Māori in Freshwater Governance: A Literature Review” (2009) Land Care Research <www.landcareresearch.co.nz>

¹¹⁴ Section 354.

¹¹⁵ Ibid.

¹¹⁶ Dr Maria Bargh “Fresh Water Issues for Māori” (2006) New Zealand Political Science Conference Paper Presented at the University of Canterbury

Note: For additional background to these issues see the HRF's 2012 Report to the Committee.

Article 12 The Right to Health

170 The Government has itself recognised that in New Zealand, Māori, Pacific peoples and socio-economically disadvantaged groups generally experience worse health outcomes than other New Zealanders. The causes of these differential outcomes are complex, but include differences in access, use and experience of health services, as well as differences in exposure to risk factors.

171 These health issues are often linked to the problems of inadequate housing and are another factor stemming from and associated with poverty. Again children can be particularly affected. For example, the current levels of rheumatic fever in New Zealand are considered to be generally unacceptable in an affluent developed nation.

172 Since 2000 there has been little change in the rate of death for children aged 0–14 years as a result of assault, abuse or neglect, and a small but significant fall in the hospitalisation rate for such injuries. The highest rates of assault, neglect or maltreatment are seen in the first year of life.

Article 12 - The Right to a Sustainable Healthy Environment

173 One recognised social determinant of the right to health is a sustainable healthy environment. New Zealand's constitutional framework makes no reference to environmental issues; however a comprehensive suite of

environmental legislation and regulations address environmental quality. Nevertheless, public participation in environmental decision-making has become a concern for the HRF.

174 Over the course of the last government a strong trend excluding the public from environmental decision-making emerged. For example, the Resource Management Act 1991 was amended to introduce limited-notification on some plan-making, and the long-standing statutory presumption in favour of public notification of resource consent applications was removed; the Exclusive Economic Zone and Continental Shelf (Environmental Effects—Non-notified Activities) Regulations 2014 were enacted to lock the public out of all decision-making concerning exploratory offshore oil and gas drilling; and the Crown Minerals Act 1991 was amended to make protesting against minerals exploitation at sea a criminal offence.¹¹⁷ The manner in which this later change was effected drew condemnation from many sectors. It was introduced via a supplementary order paper (a process reserved usually for minor technical amendments to Bills) thus avoiding any opportunity for public input and parliamentary scrutiny. All of these measures suggest moves away from core environmental law principles and the 1992 Rio Declaration. New Zealand is regarded as a liberal country with meaningful participatory democracy, and New Zealanders have a proud tradition of protesting against perceived social wrongs. It is the combination of these factors that make recent changes to public participation in environmental decision-making so incongruent and of concern to the HRF.

¹¹⁷ Crown Minerals Act 1991, ss 101B-C; see also *Teddy v Police* [2014] NZCA 422

RECOMMENDATION

175 THE HRF recommends the Committee raise with the Government the issue of public participation in environmental decision-making.

ARTICLES 13 AND 14: RIGHT TO EDUCATION

Question 24: Please provide statistical data on the educational outcomes from children from disadvantaged and marginalised households, disaggregated by gender, ethnicity and family status. Please provide information on support to households that may not be able to afford the indirect costs of schooling so as to ensure that access to education, including to secondary education, is not impaired due to such costs.

176 Concerns expressed by education stakeholders in recent years include:

- a. Slow access to “inclusive education” for children with disabilities, because of restricted professional development and financial support to schools
- b. A narrowing of the enacted curriculum in schools prompted by introduction of “National Standards” in literacy and numeracy, threatening the commitment to a broad curriculum aimed at “the full development of the human personality and the sense of its dignity”
- c. Threats to “free education” made by (illegal) fees and invoiced requests to parents for standard “donations”.

177 The Labour-led government has made a range of commitments regarding the right to education.

“The right of everyone to education” (article 13.1)

178 The government has committed to strengthening provision for three groups ill-served by NZ education – Maori, Pasifika, and children with disabilities – though specific details are not yet available.

179 The government has pledged to “comprehensively review the entire system of learning support so that resources are allocated based on individual needs assessment for each child”, “progressively increase the level of financial support available to those with additional learning needs”, and “ensure that all teachers and support staff receive training and professional development and information on inclusive education and disability awareness”¹¹⁸

180 Despite government policy on “inclusive education” in local schools, parents of children with disabilities continue to experience difficulties relating to enrolment, access to the curriculum and participation in school life. In 2008 IHC, an NGO advocating for the rights, inclusion and welfare of people with intellectual disabilities, lodged a complaint with the Human Rights Commission concerning discrimination. Two and a half years later after a preliminary hearing by the Human Rights Review Tribunal, IHC is still awaiting a decision.

“Education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms” (article 13.1)

¹¹⁸ Labour election manifesto

181 In December 2017 the Minister of Education announced the Government had stopped National Standards, and the equivalent in Maori-medium schools, to focus on “the progress and achievement of all children” across the national curriculum.¹¹⁹

“Primary education shall be compulsory and available free to all” (article 13.2 (a))

182 The government has indicated it will offer schools financial incentives if they stop requesting standardised “donations” from families. Details are expected in the 2018 Budget.¹²⁰

“Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all” (article 13.2 (b))

183 Labour Party policy includes commitments to ensure;

- a. every student has a personalised career and learning development plan from their first year at secondary school, professionalising careers advice and integrating it into learning
- b. that every high school has highly trained, skilled, careers advice teachers who are properly funded through ring-fenced funding to do their jobs

“Higher education shall be made equally accessible to all” (article 13.2 (c))

¹¹⁹ <https://www.beehive.govt.nz/release/national-standards-ended>

¹²⁰ <https://www.stuff.co.nz/national/education/101095932/schools-split-on-governments-plan-to-overhaul-donation-system>

184 Labour Party policy includes a commitment to “progressively introduce 3 years of free post-school education, allowing access to university, polytechnic or on-job training for young New Zealanders and those who have not studied before”.

Early childhood education initiatives

185 The Government has undertaken to progressively restore previous requirements for 100% qualified and registered teachers in early childhood education, “actively support the establishment of new public early childhood centres in areas of low-provision through targeted establishment grants”, and develop a 10 year strategic plan for early childhood education.¹²¹

Children’s say in matters affecting them (article 12)

186 Although there is growing awareness in public agencies of the value in hearing children’s views, there is rarely acknowledgement of their *right* to have a say in matters affecting them in the education system. Although secondary schools have a compulsory provision for a student-elected member of the school’s governing body, school practices providing for student input into decision making vary greatly, with many schools apparently not having student councils or other forms of consultation with students.

187 Following work by the Children’s Commissioner, the Minister of Education appointed a Youth Advisory Group in November 2017 and established an open Online Youth Forum.¹²²

¹²¹ Labour Party manifesto

¹²² <https://www.beehive.govt.nz/release/twelve-young-people-selected-youth-advisory-group>

Human rights education

188 Although there is some explicit reference in the English-medium curriculum to human rights, and many social studies teachers in particular teach about human rights, there is no human rights education strategy as urged in the World Programme for Human Rights Education, no shared understanding of its place as part of the right to education, and no real policy support.

Recommendations

189 **As with other sections of this report emphasis has been concentrated on proposed policies. The HRF again recommends that the Committee establish a timetable for reporting on progress on these proposed wide-ranging reforms in realising the right to education at all levels.**

190 **On all these issues, including the rights of children with disabilities, the HRF also endorses the report and recommendations of CPAG/ACYA pp.12 to15.**

PART C GOOD PRACTICES

Question 25: Please provide information on good practices and policy formulation and implementation developed by the State party during the reporting period that have effectively contributed to the realisation of economic, social and cultural rights of marginalised and disadvantaged individuals and

groups. Please indicate how the Committee's previous concluding observations (E/C.12/NZL/CO/3) have been taken into account in developing such practices.

National Action Plan (NAP)

191 Responsibility for the development of a NHRAP currently rests with the Human Rights Commission (HRC), by a 2001 amendment to the Human Rights Act 1993. The HRC developed an earlier plan but this was not adopted by the Government. The result was that the plan had no budget attached to meet the cost of implementation and much of it was not implemented.

192 The HRC has now prepared an on-line resource, an interactive National Action Plan for Human Rights (NAP).¹²³ However, while this may prove to be a useful tool for the Government's human rights transparency, it has neither a robust reporting system nor a budget, because the Commission is not the implementing body and has no budget for this purpose.

193 The development of the NAP by the Commission, while in accordance with the amendment to its mandate in 2001, has confused its role, which is to monitor the implementation of human rights, not to actually implement them. Any implementation plan should be the Government's. The Human Rights Act 1993 needs amending accordingly. The result of all this is that the Government has no plan to implement the Concluding Observations of Treaty Bodies, including those relevant to ICESCR.

Recommendations

¹²³ NZ Human Rights Commission "New Zealand Human Rights National Plan of Action 2015-2019" (30 June 2015) NZ Human Rights <<http://npa.hrc.co.nz/#/>>.

194 **The HRF recommends that the Committee encourage the Government to take responsibility for the NAP and that the HRA 1993 be amended accordingly**

Appointment of Human Rights Commissioners

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

196 Appointments to the majority of NHRIs around the world and in the Asia Pacific region in particular involve not just the Executive but also Parliament, via a range of mechanisms. In the Maldives, for example, a Parliamentary Committee scrutinises proposals by the President and recommends appointments. In India and Bangladesh, an Appointments' Committee includes the Speaker and the Opposition. Indonesian Commissioners are appointed by Parliament itself, with no involvement of the Executive. In Fiji, the President is required by law to consult with the Leader of the Opposition before making an appointment. All these

processes contribute to more transparency and a broader scrutiny of the skills, qualifications and experience of the candidates. One option would be to involve a Parliamentary Human Rights Select Committee, as also recommended.

197 During New Zealand’s Universal Periodic Review in January 2014 the Government of Ukraine recommended that New Zealand:

- a. "Consider participation of the Parliament in a human rights commissioner's appointment process" (Ukraine)
- b. However, this recommendation was not accepted by New Zealand. New Zealand’s response was:
- c. “45: The Human Rights Commission is an independent Crown entity. The Crown Entities Act 2004 specifies appointment by the Governor-General.”

198 The response does not address the issue of independence of the appointment process, since the Governor General acts only on Cabinet directives - i.e. at the behest of the Executive. The point of Ukraine’s recommendation was to involve not just the Executive, but also Parliament, in the appointment process.

Recommendation

199 **The HRF recommends the establishment of a Human Rights Commissioner appointment process that provides for the**

involvement of Parliament, possibly as one responsibility of a Parliamentary Select Committee on Human Rights.

Ratification of other international human rights instruments

200 It is essential that New Zealand incorporate all rights enshrined in international human rights instruments to which New Zealand is a party into domestic law, as this will ensure these rights are enforceable in New Zealand courts.

201 New Zealand has not ratified the following International Conventions: the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (CRMWF) and the Convention against Enforced Disappearances (CED). Nor has the International Labour Organisation (ILO) Convention 87 (one of the 8 'fundamental' ILO conventions) been ratified: proposed amendments to labour legislation by the new Government do not extend to support for sympathy or political strikes.

202 The Government has still not indicated its intention to make the optional declaration in Article 14 (individual complaint procedure) of the International Convention on the Elimination of Racial Discrimination (ICERD), despite the recommendation to do so by the Committee on the Elimination of all Forms of Racial Discrimination (CERD) in August 2007 and in both UPR reviews in 2009 and 2014.

Recommendation

203 **The HRF recommends that the New Zealand Government work towards the ratification of the CRMWF and the CED and the**

making of the Optional Declaration under ICERD Article 14; and endorses the recommendation of the report of the CTU as to the ratification of the CRMWF (see paragraphs 6.10-6.13) ILO Convention 87.

A rights-based approach to climate change

Overview

204 The Committee has highlighted the importance of taking a rights-based approach to climate change issues.¹²⁴ As the Committee has noted in several Concluding Observations, climate change threatens several substantive rights under the Covenant, including the right not to be deprived of one’s own means of subsistence (art 1), to an adequate standard of living including food and adequate housing (art 11), to water (arts 11-12), and to the enjoyment of the highest attainable standard of physical and mental health (art 12).

205 The Committee has highlighted the need for parties to take adequate action to reduce their emissions and consider the adverse human rights impacts of fossil fuel extraction.¹²⁵

206 In addition, the Committee has particularly highlighted the further disproportionate negative impacts of climate change on indigenous peoples’ rights, and recommended that parties should “put in place effective mechanisms to guarantee consultation” of affected indigenous peoples “to enable them to exercise their rights to an informed decision” and to “harness the potential of their traditional

¹²⁴ See for example General Comment no 14 with respect to climate change impacts on the right to water (E/C.12/2000/4 (CESCR 2000)).

¹²⁵ CESCR Concluding Observations on Russia (E/C.12/RUS/CO/6 (CESCR, 2017)).

knowledge and culture”.¹²⁶ Parties should “address the impacts of climate change on indigenous peoples more effectively while fully engaging indigenous peoples in related policy and programme design and implementation”.¹²⁷

207 Climate finance plays an important role in securing international cooperation to fully realise the rights outlined in the Convention, and particularly the right to self-determination. While the Committee has not yet gone so far as to recommend that a state party take a rights-based approach to climate finance, the Committee in 2016 asked Germany to detail its proposed contributions to the Green Climate Fund and progress towards compliance with its Paris Agreement obligations.

208 The Committee on the Rights of the Child and Committee on the Elimination of Discrimination Against Women have each expressed concern about the threats posed by climate impacts on Pacific states and the resultant displacement (internally or internationally) of Pasifika people.¹²⁸ It is important that states protect the rights of persons displaced by climate change.

The New Zealand experience

209 Previous New Zealand governments have neither fully recognised nor acted to address the serious human rights concerns posed by climate

¹²⁶ CESCR Concluding Observations on Australia (E/C.12/AUS/CO/4 (CESCR, 2009)).

¹²⁷ CESCR Concluding Observations on Canada (E/C.12/CAN/CO/6old (CESCR, 2016)). See also Russia 2017 CESCR, Finland (E/C.12/FIN/CO/6 (CESCR, 2014)). See also CRC Concluding Observations on Tuvalu (CRC/C/TUV/CO/1 (CRC, 2013)).

¹²⁸ CEDAW Concluding Observations on Tuvalu (CEDAW/C/TUV/CO/3-4 (CEDAW, 2015)) and CEDAW Concluding Observations on Vanuatu (CEDAW/C/VUT/CO/4-5 (CEDAW, 2016)).

change, particularly with respect to tangata whenua (that is, indigenous peoples) and Pasifika communities.¹²⁹

210 New Zealand's emissions continue to rise, and are projected to reach 27% above 1990 levels by 2020.¹³⁰ However, the recently-elected government has pledged to set a target of net zero emissions by 2050 and pass a 'Zero Carbon Act' to establish a non-partisan Climate Commission. It is too early to tell whether the new government and these ambitious policies will achieve sufficient reductions to meet New Zealand's Paris Agreement obligations.

211 That said, it is crucial that this legislation implements a rights-based framework. The New Zealand government is currently recruiting commissioners for an interim climate commission, and intends to establish a permanent Climate Commission in early 2019.

212 Human rights issues relating to climate change mitigation, adaptation, and impacts have not been recognised in law or considered by the New Zealand Human Rights Commission. The interplay between the Climate Commission and Human Rights Commission will therefore be important.

213 Given New Zealand's relative wealth, geographic location and high Pasifika population, climate finance plays an important role in New Zealand's international cooperation to fully realise the rights under the Covenant. New Zealand has not to date taken a rights-based approach to climate finance. It has preferred bilateral over multilateral vectors for

¹²⁹ The Committee on the Rights of the Child has expressed concern about the disproportionate impact of climate change on children's health, with particular reference to Maori and Pasifika children.

¹³⁰ Climate Action Tracker 'New Zealand' (Climate Analytics, Ecofys, NewClimate Institute) <<http://climateactiontracker.org/countries/newzealand.html>>.

the delivery of climate finance, and repeated changes in the reporting of climate finance flows have made it difficult to determine to what extent this climate finance is new and additional. There have been suggestions that this climate finance has been tied to political or diplomatic ends.

214 Further concerns arise as a result of Tokelau's status as a dependent territory of New Zealand. Tokelau is highly climate vulnerable, and its rights to self-determination are at risk given their lack of independent representation at the UNFCCC. The 1,500 citizens of Tokelau are New Zealand citizens, as well as being sometime-recipients of New Zealand climate finance. New Zealand may need to take further steps to ensure the people of Tokelau are able to realise their rights under the Covenant.

CTU

215 It is welcome that the new New Zealand government has pledged to create a new category of immigration visa for persons displaced by climate change (otherwise called climate migrants).

Recommendations

216 **In light of the issues outlined above, we recommend that the Committee:**

- a. recommend that New Zealand specifically provide for indigenous people's participation in the Climate Commission and in any other decision-making under the Zero Carbon Act;**
- b. question New Zealand on its performance of its climate finance obligations, and, if the answers are not**

- satisfactory, recommend that it adopt a rights-based approach to climate finance; and
- c. commend New Zealand on its commitment to create a new category of immigration visa and recommend that it ensure that affected Pasifika communities (in New Zealand and overseas) are able to fully participate in the design of this new visa scheme.

217 SUMMARY OF RECOMMENDATIONS

IN RELATION TO THE FOLLOWING QUESTIONS WE RECOMMEND THAT:

QUESTION 1

The Justiciability of Economic, Social and Cultural Rights

211 The HRF recommends that the Committee:

- a. reiterate its recommendation to New Zealand to incorporate the ICESCR directly into domestic law;
- b. recommend that a range of ESC rights be included in the NZBORA, including rights to work, social security, health, housing, water, food, education, environment and cultural life.
- c. recommend that New Zealand ratify the OP-ICESCR.

218 The HRF reiterates its recommendations to the Constitutional Review Panel that the NZBORA be granted supreme status to override rights-infringing legislation, and that it be procedurally entrenched (requiring passage of any amendment by a 2/3

majority). Further we strongly suggest that mechanisms for monitoring compliance with the NZBORA be further improved – for example by extending the section 7 review of Bills by the Attorney General to Supplementary Order Papers.

- 219 The HRF recommends that the NZBORA be amended to provide an explicit right to an effective remedy for breach of the NZBORA including by the judiciary.

QUESTION 2

The Comprehensive and Progressive Agreement on Trans Pacific Partnership (CP-TPP)

- 213 HRF endorses recommendations that negotiations take place under conditions of openness, including the regular release of draft negotiation texts to the public; furthermore, that negotiation mandates be voted on by Parliament – including the consideration of public submissions – before the start of future trade and investment negotiations. That also allows for independent economic, health, human rights and environmental impact assessments to be taken into account.

QUESTION 3

The Enjoyment Of Economic, Social And Cultural Rights By Disadvantages And Marginalised Groups

- 214 The HRF endorses the reports and recommendations of PMA, and CPAG/ACYA

QUESTION 4

Combatting different types of violence for groups such as women and girls

215 The HRF recommends that the Committee urge the New Zealand government to:

- a. implement a sustained programme of public education similar to road safety campaigns to reduce the culture of violence in New Zealand against women and children.**
- b. formulate a comprehensive multi-faceted plan for responding to and preventing violence against women and children. This must include an integrated system where all agencies and individuals who are either directly or indirectly involved operate as one system with shared understandings of the dynamics of gender-based violence.**
- c. pilot such an integrated system in a smaller geographical area so it can be adequately funded, carefully monitored, reviewed and key lessons shared in other areas.**
- d. ensure that the equally complex subject of sexual violence, which receives far less attention, is given equal priority. This will require formulating an integrated system which should include the following;**
 - i. reviewing the effectiveness of relationship and sex education in all schools and making appropriate changes if required;**
 - ii. implementing a social media-based public education programme for young people promoting**

a culture of consent and respect in personal relationships;

- iii. ensuring that all agencies that respond to victims of sexual violence are properly funded so that they can recruit and retain fully qualified and expert staff, provide timely crisis and therapeutic responses to all victims, manage the administrative demands of government funding contracts and participate in advocacy and public education programmes;**
- iv. researching and implementing initiatives to ensure that the Police and justice system are responding fairly and sensitively to crimes of sexual violence.**

The HRF also endorses the recommendations of the report of CPAG/ACYA, p 5

ARTICLE 1(2)

QUESTION 5

Implementation of the recommendations of the Waitangi Tribunal

216 The HRF endorses the recommendation of the report of Peace Movement Aotearoa

ARTICLE 2(1)

QUESTION 6

Information on the public consolidation budget for sectors relevant to the Covenant rights, particularly with regard to employment, social security, health and education.

217 **The HRF endorses the recommendation of the report of Peace Movement Aotearoa**

QUESTION 7

Please provide information on the measures taken to ensure that private companies respect ESC rights throughout their operations, including when operating abroad.

220 **Accordingly, the HRF recommends that the Committee raise the issue of the Government's position as regards such ETOs, including its data collection of the acceptance by locally-based MNEs of any voluntary standards and its processes for addressing any violations of ESC rights by such MNEs abroad.**

221 **The HRF also recommends that the Committee enquire as to the New Zealand Government's position on proposals in General Assembly resolutions to make MNEs directly responsible under international law for such violations.¹³¹**

ARTICLE 2(2)

QUESTION 8

Provide information and statistical data on the enjoyment of economic, social and cultural rights by persons with disabilities.

222 **The HRF endorses the report of CPAG/ACYA at pp. 9,10,14 as regards the rights of children with disabilities**

QUESTION 9

¹³¹ For the text of the UN Resolution see: <http://unsr.vtaulicorpuz.org/site/images/docs/un/2014-a-hrc-res-26-9-en.pdf>

Please indicate to what extent asylum seekers, refugees and their reunified family members are able to enjoy their rights under the Covenant

- 21 The HRF recommends that the Committee request a report as to the governments' intentions as regards to increasing the refugee quota.**
- 22 The HRF recommends that the Committee request an interim report on measures undertaken to address the difficulties of refugees in accessing ESC rights.**
- 23 The HRF recommends that the Committee request a report as to measures taken to address barriers preventing asylum seekers from accessing ESC rights**
- 24 The HRF recommends that the Committee encourage the New Zealand Government to support or adopt measures to ensure that all refugee claimants have the right to work in New Zealand while their claims for refugee and protected person status are being determined.**
- 25 The HRF recommends that the Committee encourage the New Zealand Government to support or adopt measures to ensure that all refugee claimants have meaningful access to healthcare services, including mental health services, and support for torture and trauma by qualified professionals.**
- 26 As per the HRF report to the Committee in 2012 the HRF reiterate the recommendation that the New Zealand Government amend the**

current laws to allow refugee and protection applicants who have attained permanent residency to be eligible immediately for Housing New Zealand accommodation upon receipt of refugee status.

ARTICLE 3

QUESTION 10

Indicate whether the implementation of the Gender Equality Declaration has helped to accelerate women's access to decision-making positions in the public and private sectors. Please provide an assessment of the remaining obstacles to the achievement of gender equality.

223 The HRF recommends that the Committee encourage the New Zealand government to support or adopt the following measures:

a. The government and public sector must continue to play a leading role in promoting and reporting on gender diversity. Reporting comprehensively on and achieving gender diversity should be included in the key performance indicators of all public sector CEOs.

132

b. The government should ensure that at least 50% of new appointments to public sector boards are women.

c. Serious consideration be given to legislative measures requiring businesses of a certain size to produce and implement equal employment opportunity programmes with minimum mandatory requirements

¹³² The Hon Julie Ann Genter, Minister of Women, has recently proposed that the KPIs of public sector CEOs include reporting on and achieving pay equity. We applaud the introduction of such a measure.

including measurable targets. There is a wealth of literature on producing such programmes and the most effective measures. Businesses that do not comply could face sanctions, including fines.

- d. The local government sector, including local authorities, should also be required by legislation to implement and report on appropriate equal employment opportunity programmes with measurable targets. Section 40 of the Local Government Act 2002 requires local authorities to prepare a local governance statement that includes information on “equal employment opportunities policy.” This is too general and contains no sanctions for inadequate programmes or policies. It is time for New Zealand to be serious on promoting and achieving equity for women at all levels of the workforce.
- e. The achievement of gender equality needs to take into account the impact of ‘multiple discrimination’ as an obstacle for the achievement of gender equality for all women in Aotearoa New Zealand.

ARTICLE 6

QUESTION 12

Please provide information on the impact of measures taken to promote adequate employment for women, Māori, persons with disabilities and young persons.

224 The HRF endorses the recommendations of the CTU report at section 5

ARTICLE 7

QUESTION 13

Please report on steps taken to address the prevalence of insecure-work arrangements and on how the right to just and favourable conditions of work is realized.

225 The HRF endorses the recommendations of the CTU report at section 6

QUESTION 14

Please explain to what extent the various minimum wage rates enable a decent living for workers and their families. Please provide information, including statistical data, on households whose members are in paid employment but whose incomes are below the poverty line.

226 The HRF endorses the reports of CPAG/ACYA at p 7 and the CTU at section 6

QUESTION 15

Please provide information on the extent of discrimination on the ground of sex, race or other status, as well as on bullying and sexual harassment in the workplace, and elaborate on the effectiveness of prevention measures taken and of avenues of remedies for victims.

227 The HRF endorses the report of the CTU at section 6

ARTICLE 8

QUESTION 16

Trade Union Rights: Please describe how the Employment Relations Amendment Act affects collective bargaining arrangements and what protections remain for new employees and young people who may be disadvantaged by the changes.

228 The HRF also endorses the report of the CTU at section 7

ARTICLE 9

QUESTION 17

Update the Committee on measures taken to ensure that ongoing welfare reforms do not further disadvantage the most marginalized individuals and groups, as well as on social assistance measures in place for those no longer entitled to insurance-linked benefits.

229 The HRF recommends that the Committee urge the New Zealand Government to:

- a. Review the design of family income support and welfare benefits, income tests, the archaic view of relationships and the harsh sanctions in place so that the social welfare system is focussed on helping those in need, rather than on reducing benefit numbers and reducing costs.**
- b. Set benefits at liveable levels. This will reduce the complicated system of third tier support and relieve the hardship of many beneficiaries.**

- c. Index all benefits to wages or inflation so they are increased each year like New Zealand superannuation.**
- d. Simplify and rewrite the purposes of the Social Security Act 1964 so its principal object is, one again, to help those in need so that all citizens can enjoy basic economic and social rights and live in dignity.**
- e. Begin an immediate review of all MSD cases before the courts and all enforcement by MSD of alleged beneficiary debts and seriously consider a moratorium on further enforcement action while the review is completed.**
- f. Consider writing off all debts owed by beneficiaries to WINZ. The total figure is approximately \$200 million. In the 2015 budget, the previous government announced it would write off up to \$1.7 billion in child support penalties. Between 2008 and 2014, Inland Revenue wrote off \$5 billion in tax debt.¹³³**
- g. Close the tip line people can call in to report on benefit fraud. Many allegations of fraud are made maliciously by former partners or are motivated by personal disputes. They add to the administrative burden of already overworked staff.**
- h. Increase the amount beneficiaries can earn (it is currently \$100 a week) before their benefits are abated. This assist beneficiaries transition to work and enables them to maintain work experience and skills while in receipt of a benefit.**

¹³³ www.catrionnamaclennan.co.nz/blog/welfare-reform-15-point-plan

- i. Repeal the law that applies a sanction of between \$22 and \$28 a week levied against parents who cannot or will not name the other parent in law. These sanctions apply 97.7% to women and 52% to Maori.¹³⁴ Some women do not wish to name the father because of an abusive or violent relationship – they should not be penalised for doing so.**
- j. Consider making entitlements to benefits individual rather than basing them on relationship status. This would reduce intrusive and complex investigations into the status of a person’s relationship. In the alternative, simplify the definition of ‘relationship in the nature of marriage’ to reduce the intrusive investigations into highly personal matters. For example, a new beneficiary who enters into an intimate relationship may be entitled to retain their benefit until they marry, or enter into a civil union or are in a de facto relationship for, say, three years.**
- k. Transform the culture of WINZ so that every staff member is required to treat beneficiaries fairly and respectfully and ensure that beneficiaries receive all the assistance to which they are entitled.**
- l. Abolish the BRCs and replace them with an independent body to deal with decisions about benefits. Consider establishing a Social Security Ombudsman.**

QUESTION 18

¹³⁴ See fn 16 above.

Please indicate to what extent the protection of the right to social security, the right to an adequate standard of living, and the best interests of the child are taken into account in decision-making processes regarding benefit sanctions under the Social Security Act 1964.

230 The HRF endorses recent efforts by the NZ Human Right Commission to ensure that the rewriting of social security legislation includes a commitment to ensure that decision-makers have regard to the welfare and best interests of any child.

The HRF also endorses the report of CPAG/ACYA at p 7

ARTICLE 11

QUESTION 19

Please update the Committee on the poverty threshold applied in the State party. Please also provide updated statistical data on poverty, disaggregated by age group, ethnicity, household size and family status. Please provide information on obstacles to reducing child poverty in the State party.

231 The HRF recommends:

- a. that the Committee recommend that the Government take note of reports of the Office of the Commissioner for Children, CPAG and the Salvation Army;**
- b. that the Committee ask for an interim report on the progress of the Government's initiatives to address child poverty and growing inequality in New Zealand**

The HRF also endorses the report and recommendations of CPAG/ACYA at pp.3 and 9 and the CTU at section 9.

QUESTION 20

Please provide information on measures taken to respond to the reported increase in the number of families resorting to food banks.

232 The HRF endorses the report and recommendations of CPAG/ACYA at p 10 and of the CTU at section 9

QUESTION 21

Please provide updated information and disaggregated statistical data on the gaps in the realization of the right to adequate housing in the State party in terms of affordability, habitability and security of tenure, and on the existing challenges to decrease those gaps, in particular with reference to the long waiting list for social housing.

233 The HRF recommends that the Committee (1) recommend that the Government draw up a national action plan to address what is regarded by many as a housing crisis in a systematic and considered manner; (2) request that the Government present an interim report on its actions to address these housing crises.

234 On the effect of these housing issues, particularly on children, see further the report and recommendations of CPAG/ACYA at pp.10 and 11, which the HRF endorses.

ARTICLE 12

QUESTION 22

Please provide information on the impact of measures taken to ensure the right to physical and mental health of, and improved health outcomes for, Māori and Pasifika people.

235 See the report and recommendations of CPAG/ACYA at pp 11 and 12, which the HRF endorses.

QUESTION 23

Please update the Committee on the impact of privatisation of water distribution on the availability and affordability of water. Please inform the Committee of measures taken to address freshwater pollution from agriculture and the impact thereof.

236 The HRF recommends that the Committee ask to be kept informed on a regular basis as to how the New Zealand government is addressing:

- a. pressing issues concerning the availability, affordability, quality and safety of water in New Zealand;**
- b. the recognition of Māori water rights.**

ARTICLES 13 AND 14

QUESTION 24

Please provide statistical data on the educational outcomes from children from disadvantaged and marginalised households, disaggregated by gender, ethnicity and family status. Please provide information on support to households that may not be able to afford the indirect costs of schooling so as to ensure that access to education, including to secondary education, is not impaired due to such costs.

237 As with other sections of this report emphasis has been concentrated on proposed policies. The HRF again recommends

that the Committee establish a timetable for reporting on progress on these proposed wide-ranging reforms in realising the right to education at all levels.

238 On all these issues, including the rights of children with disabilities, the HRF also endorses the report and recommendations of CPAG/ACYA pp.12 to15.

QUESTION 25

Implementation developed by the State party during the reporting period that have effectively contributed to the realisation of economic, social and cultural rights of marginalised and disadvantaged individuals and groups. Please indicate how the Committee's previous concluding observations (E/C.12/NZL/CO/3) have been taken into account in developing such practices.

239 The HRF recommends that the Committee encourage the Government to take responsibility for the NAP and that the HRA 1993 be amended accordingly.

240 The HRF recommends the establishment of a Human Rights Commissioner appointment process that provides for the involvement of Parliament, possibly as one responsibility of a Parliamentary Select Committee on Human Rights.

241 The HRF recommends that the New Zealand Government work towards the ratification of the CRMWF and the CED and the making of the Optional Declaration under ICERD Article 14; and endorses the recommendation of the report of the CTU at para.2.7 as to the ratification of ILO Convention 87.

Two additional issues

Article 2(2) The rights of older persons

The HRF recommends that:

242 **Given the growing number of people over 50 who still need to work in order to enjoy an adequate standard of living there is a need for the New Zealand Government to introduce stringent sanctions designed to deter employers and potential employers from discriminating older employees and job applicants.**

243 **There is also an urgent need for a Public Inquiry into age discrimination. Such an inquiry should focus on the extent of the problem in New Zealand, the lack of transparency in relation to hiring decisions, and ways in which hiring decisions can be made more transparent.**

244 **The New Zealand Government should increase (if necessary, means-tested) the NZS entitlement provided to older New Zealanders who are currently experiencing financial hardship and is available to those who are likely to experience such hardship in the future.**

245 **In order to help older people, their families and advisors to quickly identify the range of Benefits, Subsidies Allowances and Grants that are, or may be, available to them, a separate Senior Citizens' Benefits, Subsidies Allowances and Grants Act should be enacted which sets out those benefits in one place. Similarly, a**

single regulation about benefits, subsidies and grants should also be promulgated with a title such as the Senior Citizens' Benefits, Subsidies Allowances and Grants Regulation.

246 Information about the Act and Regulations could then be consolidated on a single website containing all the supporting information (including application forms and practical advice about how to meet the eligibility criteria for each type of benefit or other form of assistance) relevant to the forms of financial support contained in the suggested Act and Regulations. This initiative should also be supported by the provision of trained and free advocates who can assist older people to navigate their way through the labyrinth of application processes and to represent them in their dealings with the agencies who handle pensions and benefits.

247 The benefits of adopting this suggested solution are that it would:

- d. Support the Government's Ageing in Place policy by demonstrating that the Government is serious about providing "older person friendly" support to those who wish to remain in their own homes;**
- e. Greatly assist family members and support persons for older people to easily identify the forms of benefits and other assistance for which older people are entitled to apply;**
- f. Enhance New Zealand's good reputation as a champion of human rights (especially ESC rights) and a respecter of the rights of older people by removing barriers that have the**

potential to impede easy access by older people to information about benefits and assistance for which they are, or may be, eligible.

248 In order to contain, control and reduce the level of elder abuse in New Zealand the Government should provide a far greater level of financial support to the elder abuse network by:

- d. Developing specialist, well-resourced and nationwide groups of police units that focus exclusively on (a) investigating instances of elder abuse that are criminal in nature, and (b) ensuring that those proven to be responsible for such crimes are held responsible for their conduct;**
- e. Ensuring that the amount of funds made available to agencies who support the victims of elder abuse is increased to a level which allows those agencies to employ many more staff and thereby increase their capacity to identify and assist the police with their task of effectively combating elder abuse in New Zealand both now and in the future;**
- f. Supporting a law change which will make it a criminal offence for those who are aware of actual or suspected cases of elder abuse to fail to report what they know or suspect to the police.**

249 **There should be an independent inquiry into the way in which waiting lists for elective surgery have been manipulated by successive Governments with a view to enacting a law to make it illegal to artificially dilute waiting list numbers by deliberately excluding from those lists, many people in genuine need of that surgery.**¹³⁵

250 **The Government needs to take urgent steps to genuinely reduce the size of the elective surgery waiting list (if necessary by using the some charitable organizations that carry out simple operations (eg, the Fred Hollows Foundation for cataract surgeries).**

Climate Change

251 **The HRF recommends that the Committee:**

- a. recommend that New Zealand specifically provide for indigenous people's participation in the Climate Commission and in any other decision-making under the Zero Carbon Act;**
- b. question New Zealand on its performance of its climate finance obligations, and, if the answers are not satisfactory, recommend that it adopt a rights-based approach to climate finance; and**

¹³⁵ One other issue that needs to be monitored is the Parliamentary Bill called The End of Life Choice Bill, **which** proposes to give people with a terminal illness or a grievous and irremediable medical condition the option of requesting assisted dying. Under no circumstances should the Bill (especially if it is enacted) be used to justify an argument that elderly people with terminal illnesses or grievous medical conditions should be encouraged to end their lives and thereby decrease the number of people on hospital waiting lists.

c. commend New Zealand on its commitment to create a new category of immigration visa and recommend that it ensure that affected Pasifika communities (in New Zealand and overseas) are able to fully participate in the design of this new visa scheme.

APPENDIX

ADDITIONAL INFORMATION ON THE RIGHTS OF OLDER PERSONS

Additional item under Article 2(2): the Rights of Older Persons

216 It is well-known that the number of New Zealanders living past the age of 65 is growing and will continue to grow over the coming years. Statistics New Zealand has made the following long term projections for New Zealand's ageing population:¹³⁶

217 Increasing numbers and proportions of the population at the older ages:

- d. The population aged 65+ (0.70 million in 2016) has a 90 percent probability of increasing to 1.32–1.42 million in 2043, and to 1.62–2.06 million in 2068.
- e. The proportion of the population aged 65+ (15 percent in 2016) has a 90 percent probability of increasing to 21–26 percent in 2043, and 24–33 percent in 2068.
- f. The population aged 85+ (83,000 in 2016) has a 90 percent probability of increasing to 239,000–284,000 in 2043, and to 333,000–467,000 in 2068.
- g. Population growth will slow as New Zealand's population ages and the gap between the number of births and deaths narrows.

¹³⁶ For more detailed information see http://archive.stats.govt.nz/browse_for_stats/population/estimates_and_projections/NationalPopulationProjections_HOTP2016.aspx.

218 This trend requires the New Zealand Government to take comprehensive and proactive measures:

- h. To deal with the many current and ongoing problems and challenges that result from the increasing number of New Zealanders living to an advanced age; and
- i. To ensure that their ESC rights are fully recognised and protected.

Problems and challenges impacting the ESC rights of older New Zealanders

219 Those problems and challenges include: age discrimination, elder abuse, some pensioners experiencing financial hardship, barriers preventing older people from ascertaining the social security assistance to which they are potentially entitled, and the impact on the right to health of older people stemming from the manipulation by successive Governments of the waiting lists for operations and medical treatment.

Age discrimination in employment

220 In the context of employment it is (with certain specific exceptions)¹³⁷ under the Human Rights Act 1993 it is unlawful to discriminate against people on the grounds of their age.¹³⁸

221 In spite of this prohibition, many older New Zealanders struggle to find work that is compatible with their qualifications, skills and experience. This is because there is widespread discrimination in the job

¹³⁷ For example it is permissible, in the context of employment matters, to treat a person differently on the grounds of age, in cases where: (a) “being of a particular ... age is a genuine occupational qualification for the position or employment” (Human Rights Act 1993, s 27(2)); (b) “being of a particular age or in a particular age group is a genuine occupational qualification for that position or employment, whether for reasons of safety or for any other reason” (Human Right Act 30(1). See also (and to similar effect) s 106 of the Employment Relations Act 2000 and C Breen and M Bedggood “Rights to Equality and Non- discrimination” in M Bedggood, K Gledhill and I McIntosh eds *International Human Rights Law in Aotearoa New Zealand* (Thomson Reuters, Wellington, 2017) at 293-297.

¹³⁸ Human Rights Act 1993 s 21(1)(i)

market against people over the age of 50. A 2016 article in the *New Zealand Herald* states that:¹³⁹

“... a significant number of people in the over-50 age group who've fallen through "the glass trapdoor" - having left or lost employment, they've found it difficult if not impossible to get back into the workforce.”

222 In the context of the employment market, age-related discrimination can be overt on the part of employers and potential employers.¹⁴⁰

223 “According to the Human Rights Commission's Equal Employment Opportunities Commissioner, "Forty per cent of workers experienced age-related discrimination over the last five years, commonly manifested in the form of withholding interesting tasks or promotion, and bullying.”

224 The commission receives 60-90 complaints a year along the lines of: "an employer has declined to employ him, saying, 'I thought you were younger. You wouldn't be able to handle it. You're too old', or 'We're looking for young, fresh-out-of-uni types'."

225 The Commissioner also says that instances of discrimination are almost certainly under-reported.

¹³⁹ Paul Little “Another brick in the wall: Why no one over 50 can land a job” (19 November 2016) http://www.nzherald.co.nz/lifestyle/news/article.cfm?c_id=6&objectid=11749304.

¹⁴⁰ Paul Little “Another brick in the wall: Why no one over 50 can land a job” (19 November 2016) http://www.nzherald.co.nz/lifestyle/news/article.cfm?c_id=6&objectid=11749304. See also S Bell and J McGregor “Human Rights Law and Older People” in K Diesfeld and I McIntosh (eds) *Elder Law in New Zealand* (Thomson Reuters, Wellington, 2014) at 188-190.

226 Unconscious bias can also be a significant barrier for older job applicants:¹⁴¹

"It's like racism. It's in people's subconscious. You can't prove it's happening. But senior people who are young don't like having older people who might be more knowledgeable under them."

227 Older job applicants are often subjected to more subtle discrimination, which takes the form of filtering them out of the job applicant market before they get a chance to be interviewed.

As one job seeker over the age of 50 put it:¹⁴²

"You don't get to the interview stage," "I think they look at your CV and think, 'They couldn't have done a lot of that' or 'How old is she to have done all that?'"

228 Moreover, a number of recruitment agencies in New Zealand have adopted the practice, before they interview job applicants, of demanding to see their passports, and evidence of identify and their right to work in New Zealand. This practice, which is common amongst New Zealand's recruitment agencies, gives them the ability to discriminate against job applicants on the grounds of age because they can ascertain their age by looking at their passport and/identity papers,¹⁴³ and potentially exclude older people from being considered for jobs before they have had to

¹⁴¹ Paul Little "Another brick in the wall: Why no one over 50 can land a job" (19 November 2016) http://www.nzherald.co.nz/lifestyle/news/article.cfm?c_id=6&objectid=11749304.

¹⁴² Paul Little "Another brick in the wall: Why no one over 50 can land a job" (19 November 2016) http://www.nzherald.co.nz/lifestyle/news/article.cfm?c_id=6&objectid=11749304.

¹⁴³ See Human Rights Commission Getting a job *An A to Z for employers and employees Pre-employment guidelines* (July 2008) at 3 and Human Rights Commission Job Application Questions at <https://www.hrc.co.nz/enquiries-and-complaints/faqs/job-application-questions/> which states that "employers should not generally ask questions about:

- age – unless it is necessary for the purposes of the *Minimum Wages Act* or the *Sale of Liquor Act*
- date of birth"

opportunity to be evaluated on the basis of their qualifications, skills and experience. This practice allows recruiters to get around the general prohibition against asking job applicants questions about their age and date of birth. It also puts them in a position to discriminate against older job applicants in breach of s 22(2) of the Human Rights Act 1990.¹⁴⁴

Article 11- Right to an adequate standard of living

Pensioners in financial hardship

229 The New Zealand pension (NZS) is paid fortnightly at the following rates:¹⁴⁵

Fortnightly payments	Before tax	Taxed at 'M' (if you have no other income)
Single, living alone	\$900.20	\$780.40
Single, sharing	\$827.20	\$720.36
Married, civil union or de facto couple (both partners qualify)	\$681.60 each	\$600.30 each
Married, civil union, or de facto couple* (only one partner qualifies)	\$645.56 each	\$570.56 each

230 The findings of a recent Household Incomes Report show that a small number of older New Zealanders, who rely on NZS as their sole or

¹⁴⁴ That section provides:

It shall be unlawful for any person concerned with procuring employment for other persons or procuring employees for any employer to treat any person seeking employment differently from other persons in the same or substantially similar circumstances by reason of any of the prohibited grounds of discrimination.”

¹⁴⁵ See <https://www.workandincome.govt.nz/eligibility/seniors/superannuation/payment-rates.html>.

primary income, either experience financial hardship, or can be expected to do so within the next decade:¹⁴⁶

231 There is high dependence on NZS for most: for example, around 60% of singles and 30% of couples report less than \$100 pw per capita from non-government sources.

232 The small group (4-8%) that does have financial challenges are, unsurprisingly, those who rent and have little other than NZS for income.

233 Declining mortgage-free home ownership for the cohorts approaching “retirement”, and elevated low income rates (AHC) for older working-age adults living on their own suggest that this small group (4-8%) may grow in coming years.

234 This finding is in line with the Commission for Financial Capability's research in which 18% of people aged over 55 reported that they struggled to make ends meet.

235 Given these statistics, it follows that the amount of NZS received by some older New Zealanders needs to be substantially increased (even if eligibility for the increase needs to be means tested). Such an increase would help to ensure that pensioners who have no other source of income will not be forced to ensure the indignity of living in financial hardship. At a minimum, this group of pensioners should be paid enough

¹⁴⁶ Ministry of Social Development's Household Incomes Report and companion report using Non-Income Measures: Headline Findings, 21 July 2017. See also <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/monitoring/household-incomes/>.

to ensure they can purchase and consume wholesome and healthy food and afford to live in warm, dry healthy homes.

236 Older people who depend on the New Zealand pension as their sole or primary source of income are also disadvantaged in comparison with those who have access to private superannuation and other post retirement sources of funds (ie, extra funds generated from rental income or selling assets accumulated prior to retirement). Those who depend on NZS as their sole or primary source of income have paid tax into the NZS fund for many years and they should not be penalised in their later years for failing to be part of New Zealand's cohort of wealthy older people.

Recommendation

237 The New Zealand Government needs to ensure that a means tested increase in NZS entitlement is provided to older New Zealanders who are currently experiencing financial hardship and is available to those who are likely to experience such hardship in the future.

Article 9 - Barriers obstructing some older people from easily accessing information about supplementary benefits

238 There is a wide range of benefits and other forms of financial assistance available to older New Zealanders. These forms of financial assistance can provide invaluable support for those older people wishing to stay in their own homes, or who need other forms of support to enable them to live with dignity in their later years.

239 Over the last decade, the NZ government has acknowledged this phenomenon by developing the “Ageing in Place” policy to drive a range of initiatives to assist older people to remain living in their own homes for as long as possible.¹⁴⁷ These initiatives include the provision of healthcare assistance to, and various forms of support for, older people living in their own homes. In addition, there are a range of benefits, allowances and subsidised services provided to older people by government agencies and the District Health Boards.¹⁴⁸

240 However, as McIntosh points out in *Elder Law in New Zealand*:¹⁴⁹
“ ... the task of successfully applying for [any of the types of financial assistance or other support available to older people in New Zealand] could well be daunting for some older people because:

- a. most of the information about them is located in diverse places on the websites and pamphlets of the government agencies that administer them;¹⁵⁰

¹⁴⁷ See the Ministry of Social Development’s website at <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/planning-strategy/positive-ageing/>.

¹⁴⁸ See M Duggal “Health Services for Older People” in Diesfeld and McIntosh eds *Elder Law in New Zealand* (Thomson Reuters, Wellington, 2014) at 199-216 and I McIntosh “Pensions and Benefits” in Diesfeld and McIntosh eds *Elder Law in New Zealand* (Thomson Reuters, Wellington, 2014) at 217-271.

¹⁴⁹ I McIntosh “Pensions and Benefits” in Diesfeld and McIntosh eds *Elder Law in New Zealand* (Thomson Reuters, Wellington, 2014) at 270.

¹⁵⁰ Here is a small selection of the diverse and fragmented sources of information about benefits potentially available to older New Zealanders: <https://www.workandincome.govt.nz/products/a-z-benefits/index.html>; <http://www.transport.govt.nz/land/the-total-mobility-scheme/>; New Zealand Transport Agency Total Mobility around New Zealand: a user’s guide to the Total Mobility scheme in the different regions around New Zealand (October 2015); Ministry of Social Development Services for Seniors (SUPE100 – SEP 2017); <https://www.workandincome.govt.nz/eligibility/seniors/superannuation/applying-for-new-zealand-superannuation.html>; <https://www.msf.gov.sg/policies/Helping-the-Needy-and-Vulnerable/Supporting-Vulnerable-Elderly/Pages/Services-and-Programmes-for-Elderly.aspx>; Electricity Authority Guideline on arrangements to assist vulnerable consumers (version 2.1, 24 March 2011); <https://www.workandincome.govt.nz/eligibility/seniors/extra-financial-help-you-may-need.html>; <https://www.health.govt.nz/your-health/services-and-support/disability-services> ; <https://www.workandincome.govt.nz/providers/health-and-disability-practitioners/health-and-disability-related-benefits.html#null>; <https://www.workandincome.govt.nz/products/a-z-benefits/disability-allowance.html#null>; Ministerial Direction on Redirection of Benefit Payments (17 March 2015);

- b. most of these benefits require applicants to meet stringent eligibility criteria, and it may difficult for some older people to locate the evidence needed to support their applications;¹⁵¹
- c. older people may be unwell or distressed when the need to apply for these funds arises; and
- d. the legislative schemes relating to each of them are complex and virtually impossible for those who do not have Internet research skills and the legal training to interpret and understand what they find.”

241 Another major source of this problem is that much of the information about the financial assistance to which older people are, or may be, entitled to is buried amongst the provisions and schedules of the Social Security Act 1964, and the various regulations made under that Act. It is difficult to accurately and quickly identify which provisions in

<https://www.workandincome.govt.nz/eligibility/health-and-disability/medical-alarms.html>;
<https://www.workandincome.govt.nz/map/legislation/welfare-programmes/special-needs-grants-programme/index.html>; <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/statistics/statistical-report/statistical-report-2008/hardship-assistance/lump-sum.html>;
<https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/statistics/benefit/2017/benefit-fact-sheets-december-2017.pdf>; Ministry of Social Development Advance Payment of Benefits Ministerial direction (25 May 1999, unofficial consolidated version as at 1 April 2015); <https://www.govt.nz/browse/tax-benefits-and-finance/benefits/emergency-benefit/>; Ministry of Social Development Direction in Relation to Emergency Benefit and Benefits on Ground of Hardship (8 October 1998, unofficial consolidated version as at 15 July 2013); Energy Efficiency and Conservation Authority “Warm Up New Zealand: Healthy Homes” <https://www.energywise.govt.nz/funding-and-support/funding-for-insulation/>; Ministry of Health High Use Health Card (HP5947, June 2014); Ministry of Health Long-term Residential Care for Older People: What you need to know (brochure, 1 July 2012); <https://www.health.govt.nz/our-work/life-stages/health-older-people/long-term-residential-care>; <https://www.workandincome.govt.nz/products/a-z-benefits/residential-care-subsidy.html>; Ministry of Health Needs Assessment and Support Services of Older People: What you need to know (Booklet, May 2011) and see <https://www.health.govt.nz/publication/needs-assessment-and-support-services-older-people-what-you-need-know>; Department of Internal Affairs “Rates Rebate Scheme” <https://www.dia.govt.nz/Services-Rates-Rebate-Scheme-Index> >.

¹⁵¹ See for example: <https://www.stuff.co.nz/business/97216324/its-tough-to-beat-aged-care-subsidy-means-test> and I McIntosh “Pensions and Benefits” in Diesfeld and McIntosh eds *Elder Law in New Zealand* (Thomson Reuters, Wellington, 2014) at 239-266.

the Act and which regulations made under the Act apply to older persons seeking financial assistance.

242 For example (and this is a very simple example in comparison with the detective work that is required to locate the correct statutory provisions and regulations relevant to some benefits) the information about assistance available to older people buried within the following parts and provisions of the Act:

Accommodation supplement (Part 1K of the 1964 Act)

Disability Allowance (Part 1O of the 1964 Act)

Funeral Grants (Part 1J of the 1964 Act)

Emergency Benefits (Part 1 G of the 1964 Act)

Temporary Additional Support (Part 1 L of the 1964 Act)

Special Needs Grant (s 124(1)(d) of the 1964 Act)

Advance payment of benefit (s 82(6) of the 1964 Act)

Regulations providing for issue and use of entitlement cards (s 132A of the 1964 Act)

Residential care loan scheme (s 153 of the 1964 Act)

Long-term residential care in hospital or rest home (Part 4 of the 1964 Act)

Special Disability Allowance (s 69C(5) of the 1964 Act)

243 There is an urgent need for the Government to ensure that older people, and their families and advisors are given the best possible assistance to enable them to “navigate their way around New Zealand’s ... benefits regime”¹⁵². At present the difficulty of navigating through

¹⁵² See I McIntosh “Pensions and Benefits” in Diesfeld and McIntosh eds *Elder Law in New Zealand* (Thomson Reuters, Wellington, 2014) at 220.

that myriad of sources of information about various aspects of that regime effectively obstructs older people (and those who want to assist them access the benefits to which they are potentially entitled) from readily accessing information about the forms of state funded financial assistance that would enable them to enjoy a decent standard of living. This barrier to obtaining that information undermines the very purpose for which these benefits were created.

244 Given the ever-increasing size of NZ's elderly population a fragmented approach to the delivery of benefits and other services (and to the delivery of information about them) to older people is no longer acceptable.

Recommendation

245 In order to help older people, their families and advisors to quickly identify the range of Benefits, Subsidies Allowances and Grants that are, or may be, available to them, a separate Senior Citizens' Benefits, Subsidies Allowances and Grants Act should be enacted which sets out those benefits in one place. Similarly, a single regulation about benefits, subsidies and grants should also be promulgated with a name such as the Senior Citizens' Benefits, Subsidies Allowances and Grants Regulation.

246 Information about the Act and Regulations could then be consolidated on a single website containing all the supporting information (including application forms and practical advice about how to meet the eligibility criteria for each type of benefit or other form of assistance) relevant to the forms of financial support contained in the suggested Act and Regulations. This initiative should also be supported by the provision of

trained and free advocates who can assist older people to navigate their way through the labyrinth of application processes and to represent them in their dealings with the agencies who handle pensions and benefits.

- 247 The benefits of adopting this suggested solution are that it would:
- a. Support the Government's Ageing in Place policy by demonstrating that the Government is serious about providing "older person friendly" support to those who wish to remain in their own homes;
 - b. Greatly assist family members and support persons for older people to easily identify the forms of benefits and other assistance for which older people are entitled to apply;
 - c. Enhance New Zealand's good reputation as a champion of human rights (especially ESC rights) and a respecter of the rights of older people by removing barriers that have the potential to impede easy access by older people to information about benefits and assistance for which they are, or may be, eligible.

Article 12 - Issues impacting older peoples' right to health and the provision of the necessities of life

The problem of elder abuse

248 Elder abuse is a significant, growing and often almost invisible problem in New Zealand. Elder abuse has been defined by the United Nations and the World Health Organisation as: "a single, or repeated act, or lack of appropriate action, occurring within any relationship where

there is an expectation of trust which causes harm or distress to an older person”.

249 In New Zealand this kind of abuse has been found to take various forms including: Financial abuse which is the:¹⁵³“... improper or illegal use [by younger people who are often relatives of the victim] of money, property or other assets. Examples cited by Age Concern include:

- a. Unauthorised taking of money or possessions.
- b. Misuse of power of attorney.
- c. Failure to repay loans.
- d. Use of home and/or utilities without contributing to costs.
- e. Lottery and romance scams”.

250 Other forms of elder abuse encountered in New Zealand include neglect, failure to provide an elderly person with the necessities of life, and bullying behavior including physical and psychological abuse.¹⁵⁴

251 According to the Ministry of Social Development, the problem is common:¹⁵⁵ “As many as one in ten older people [ie, people over 65] in New Zealand will experience some kind of elder abuse. The majority of cases will go unreported.”

¹⁵³ See D Clement *Abuse of older people an epidemic in NZ society* 13 June 2015, http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11464389

¹⁵⁴ For a detailed account see T Baker “Legal Protections and Remedies for Elder Abuse, Neglect and Exploitation” and L Collins “Elder Abuse and Neglect Prevention” in Diesfeld and McIntosh eds *Elder Law in New Zealand* (Thomson Reuters, Wellington, 2014) at 477-507 and 509-530. See also https://www.ageconcern.org.nz/ACNZPublic/Services/EANP/ACNZ_Public/Elder_Abuse_and_Neglect.aspx?hkey=df8b9042-ce1e-4d3a-9fe5-861fc17d2ecf.

¹⁵⁵ <http://superseniors.msd.govt.nz/elder-abuse/>.

252 The extent of the problem has been highlighted in a 2015 report published by the Office for Senior Citizens (which is administered by the Ministry of Social Development) which found that:¹⁵⁶

- a. Around one in ten older people did report some form of abuse (most closely linked to vulnerability and coercion).
- b. There were significant differences between women and men. Across each measure, women experienced a greater sense of vulnerability, dependence and dejection. However men experienced higher levels of coercion.
- c. Older people who were divorced, separated or widowed felt considerably more sad and lonely, or were uncomfortable with someone in their family.
- d. Older Māori experienced a significantly greater level of abuse than non-Māori. Māori report being coerced more than 2.5 times the rate for non-Māori, meaning they are forced to do things they don't want to do and people take things from them without their permission.

253 Failure to address current levels of elder abuse is likely to have significant effects in the future. This is because the report shows statistically significant reductions in physical and mental health and wellbeing, as well as increases in loneliness and depression associated with elder abuse.

¹⁵⁶ Office for Senior Citizens *Towards gaining a greater understanding of Elder Abuse and Neglect in New Zealand* (Wellington, June 2015) at 5. This report is based on a longitudinal study into the problem: see C Waldegrave *Measuring Elder Abuse in New Zealand: Findings from the New Zealand Longitudinal Study of Ageing (NZLSA)* (Family Centre Social Policy Research Unit, Wellington, 2015).

254 Projections indicate that the number of older people experiencing elder abuse and neglect will increase significantly in the next 20 years, alongside a doubling of the 65 and over population.

255 There are forms of statutory redress for victims of elder abuse they include:

- a. sections of the Crimes Act 1961 which, in specified circumstances, make it a criminal offence for persons who care for, or have frequent contact with, vulnerable elderly people, to abuse or neglect, or allow others to abuse or neglect, those elderly people.¹⁵⁷

256 Provisions in:

- a. the Domestic Violence Act 1995 (which enable orders to be made to protect elderly people from abuse from those with whom they have a close personal relationship);
- b. the Health Practitioners Competence Assurance Act 2003 (which enables elderly people to lodge complaints about the competency of providers of health services);
- c. the Health and Disability Commissioner Act 1994 and Code of Health and Disability Services Consumers' Rights (which enables elderly people who are consumers of health or disability services to complain to the Health and Disability Commissioner if they believe that providers of those services have breach the Code);¹⁵⁸

¹⁵⁷ See the Crimes Act 1961, ss 150A, 151, 195 and 195A. For a detailed account of these sections see T Baker "Legal Protections and Remedies for Elder Abuse, Neglect and Exploitation" in Diesfeld and McIntosh eds *Elder Law in New Zealand* (Thomson Reuters, Wellington, 2014) at 478-484.

¹⁵⁸ For a detailed account of these sections see T Baker "Legal Protections and Remedies for Elder Abuse, Neglect and Exploitation" in Diesfeld and McIntosh eds *Elder Law in New Zealand* (Thomson Reuters, Wellington, 2014) at 484-501.

d. and the Protection of Personal and Property Rights Act 1988 (which are intended to provide elderly people who are donors of Enduring Powers of Attorney (EPAs) with protection with protection against abuse of those EPAs).¹⁵⁹

257 The effectiveness of these forms of redress is limited to cases where the elder abuse is reported to the police (or to lawyers who can seek protection orders under the Domestic Violence Act 1995) or complaints are made in relation to the Health Practitioners Competence Assurance Act 2003 and/or Health and Disability Commissioner Act 1994 and Code of Health and Disability Services Consumers' Rights. However, because much of the problem is hidden, the available statutory forms of redress do little to deter the amount of unreported elder abuse taking place in New Zealand.

258 The Government has, however, developed a nationwide network of services (led by Age Concern New Zealand and known as the EANP service)¹⁶⁰ designed to (a) provide confidential assistance to older people who are, or who at risk of abuse, and (b) raise public “awareness of elder abuse by providing education for aged care workers, community groups, families and anyone with an interest in the wellbeing of older people.”¹⁶¹

¹⁵⁹ L Collins “Elder Abuse and Neglect Prevention” in Diesfeld and McIntosh eds *Elder Law in New Zealand* (Thomson Reuters, Wellington, 2014) at 528.

¹⁶⁰ See https://www.ageconcern.org.nz/ACNZ_Public/EANP_contact_information.aspx and L Collins “Elder Abuse and Neglect Prevention” in Diesfeld and McIntosh eds *Elder Law in New Zealand* (Thomson Reuters, Wellington, 2014) at 511.

¹⁶¹ See https://www.ageconcern.org.nz/ACNZPublic/Services/EANP/ACNZ_Public/Elder_Abuse_and_Neglect.aspx

- 259 The service is also supported by other agencies which help to identify instances of elder abuse such as “health providers, the Police, lawyers, other community support organisations, and other non-Age Concern Elder Abuse and Neglect Prevention services.”¹⁶²
- 260 This service makes an invaluable contribution towards addressing the problem of elder abuse. However, given undoubted fact that many instances of elder abuse remain hidden and under reported and that scale of the problem is growing exponentially, the resources allocated by the New Zealand Government to combat it are clearly inadequate.¹⁶³ There is an urgent need to the New Zealand Government to allocate far more resources to the agencies tasked with dealing with it, if an increased number of cases of elder abuse are to be brought to light. What is needed is a better resourced and better coordinated response to the problem, backed by new legislation imposing strong penalties on all those who fail to report instances of elder abuse.

Recommendation

- 261 In order to contain, control and reduce the level of elder abuse in New Zealand the Government should provide a far greater level of financial support to the elder abuse network by:

¹⁶² See

https://www.ageconcern.org.nz/ACNZPublic/Services/EANP/ACNZ_Public/Elder_Abuse_and_Neglect.aspx#stopelderabuse. See also L Collins “Elder Abuse and Neglect Prevention” in Diesfeld and McIntosh eds *Elder Law in New Zealand* (Thomson Reuters, Wellington, 2014) at 522.

¹⁶³ For a information about the EANP service see Age Concern’s website at http://210.80.148.78/iMIS_Prod/ACNZ_Public/EANP_contact_information.aspx and L Collins “Elder Abuse and Neglect Prevention” in Diesfeld and McIntosh eds *Elder Law in New Zealand* (Thomson Reuters, Wellington, 2014) at 519-521

- a. Developing specialist, well resourced and nationwide groups of police units that focus exclusively on (a) investigating instances of elder abuse that are criminal in nature, and (b) ensuring that those proven to be responsible for such crimes are held responsible for their conduct;
- b. Ensure that the amount of funds made available to agencies who support the victims of elder abuse is increased to a level which allows those agencies to employ many more staff and thereby increase their capacity to identify and assist the police with their task of effectively combating elder abuse in New Zealand both now and in the future;
- c. Supporting a law change which will make it a criminal offence for those who are aware of actual or suspected cases of elder abuse to fail to report what they know or suspect to the police.

Article 12 - Hospital waiting lists and older people

262 New Zealand's public health system provides older citizens with taxpayer-funded access to a wide range of services delivered by the public health system.¹⁶⁴ However, many older people who depend on the services provided by the public health system often have to wait a considerable length of time (months or even years) to receive the elective surgery that they need. Indeed it has recently been revealed that many people (including elderly people) have deliberately been left off

¹⁶⁴ See M Duggal "Health Services for Older People: The Role of the District Health Boards" in in Diesfeld and McIntosh eds *Elder Law in New Zealand* (Thomson Reuters, Wellington, 2014) at 199-216.

elective surgery waiting lists in order to make them appear shorter than they actually are.¹⁶⁵

263 For example in 2016 it was revealed that:¹⁶⁶

“Canterbury DHB are turning elderly people away from elective surgery without assessing them, even though they've been referred by medical specialists.”

264 The following statistics (reported in 2016) on hospital waiting lists for elective surgery reveal the scale of this problem:¹⁶⁷“According to the research – conducted on behalf of the Health Funds Association of New Zealand and the New Zealand Private Surgical Hospitals Association – waiting times for surgery had increased significantly. The wait for a publicly-funded surgery had leapt by 80 days since 2013, to 304 days. About 350,000 adult New Zealanders had some form of elective surgery each year. A further 280,000 were told they needed surgery, but only 110,000 were placed on the waiting list.”

265 This manipulation of waiting list numbers by successive New Zealand Governments and Health Boards not only breaches affected elderly peoples’ ability to enjoy “the highest attainable standard of physical and mental health”.

¹⁶⁵ See M Northcott *Thousands left off surgery waiting lists suffering indefinitely - study* (24 March 2017) available at <https://www.stuff.co.nz/national/health/90770259/thousands-left-off-surgery-waiting-lists-suffering-indefinitely--study>, S Kirk *Who is missing out on surgery? Government releases first figures of 'phantom waiting list'* (March 7 2016) available at <https://www.stuff.co.nz/national/politics/77566630/Who-is-missing-out-on-surgery-Government-releases-first-figures-of-phantom-waiting-list?cid=app-iPhone>.

¹⁶⁶ See A Stewart *'Human scandal' as Christchurch elderly refused access to surgeries* (7 January 2006) available at <https://www.stuff.co.nz/national/health/75696751/Human-scandal-as-Christchurch-elderly-refused-access-to-surgeries>.

¹⁶⁷ A Stewart *174,000 Kiwis left off surgery waiting lists, with Cantabrians and Aucklanders faring worst* (11 April 2016) available at <https://www.stuff.co.nz/national/health/78698068/174-000-Kiwis-left-off-surgery-waiting-lists-with-Cantabrians-and-Aucklanders-faring-worst>.

266 The problem is well illustrated as follows:¹⁶⁸ “The city's elderly warn a "human scandal" is looming, with hundreds being refused elective surgeries and the CDHB struggling to cope with demand. More and more elderly people ... are being refused elective surgery in Canterbury. Four Christchurch friends are furious after each being sent a letter refusing assessment for their ailments "due to the number of people with a greater level of need".

267 ... Colleen Beaton waited three years for a shoulder replacement. "The doctor said 'I can put your name down on the waiting list, but you'll never get in'." An operation on her hand went by the wayside after surgery was refused. "I went to see the surgeon and she didn't even look up when I came in, she just said 'we don't do hands'." Then, her right knee began deteriorating, but a surgeon told her it was not bad enough to be operated on.”

268 This problem not only breaches older people’s right to health but it is also false economy.

269 As one commentary put it in 2016:¹⁶⁹“... [this] was another case of growing global unmet need, where Western society deemed elective surgery too expensive and moved toward people paying for surgery themselves.

¹⁶⁸ A Stewart *'Human scandal' as Christchurch elderly refused access to surgeries* (7 January 2006) available at <https://www.stuff.co.nz/national/health/75696751/Human-scandal-as-Christchurch-elderly-refused-access-to-surgeries>.

¹⁶⁹ See A Stewart *'Human scandal' as Christchurch elderly refused access to surgeries* (7 January 2006) available at <https://www.stuff.co.nz/national/health/75696751/Human-scandal-as-Christchurch-elderly-refused-access-to-surgeries>.

270 The "flawed" model was especially detrimental for elderly ... where preventative care and elective surgery was far more cost-effective than forcing them into full-time care.”

271 To date changes of Government have done little to change this well entrenched and unfortunate state of affairs. It is to be hoped that the current Government will take broad ranging and swiftly implemented measures to put an end to the manipulation of waiting lists and to the length of time that older people in particular have to spend wait for elective surgery.

Recommendation

272 There should be an independent inquiry into the way in which waiting lists for elective surgery have been manipulated by successive Governments with a view to enacting a law to make it illegal to artificially dilute waiting list numbers by deliberately excluding from those lists, many people in genuine need of that surgery.¹⁷⁰

273 The Government needs to take urgent steps to genuinely reduce the size of the elective surgery waiting list (if necessary by using the some charitable organizations who carry out simple operations (eg, the Fred Hollows Foundation for cataract surgeries).

¹⁷⁰ One other issue that needs to be monitored is the Parliamentary Bill called The End of Life Choice Bill which proposes to give people with a terminal illness or a grievous and irremediable medical condition the option of requesting assisted dying. Under no circumstances should the Bill (especially if it is enacted) be used to justify an argument that elderly people with terminal illnesses or grievous medical conditions should be encouraged to end their lives and thereby decrease the number of people on hospital waiting lists.

If these steps are not taken then the waiting list scandal is set to continue in New Zealand for many years to come.