

# Universal Periodic Review of New Zealand

## 32<sup>ND</sup> Session of the Working Group on the UPR, January/February 2019

**Joint Stakeholders Report Coordinated by the Human Rights Foundation of  
Aotearoa New Zealand**



**Jointly submitted by:** Human Rights Foundation of Aotearoa New Zealand; Action for Children and Youth Aotearoa; Asylum Seekers Support Trust; Auckland Coalition for the Safety of Women and Children (comprising Auckland Sexual Abuse HELP, Auckland Women's Centre, Eastern Women's Refuge, Homeworks Trust, Inner City Women's Group, Mental Health Foundation, Mt Albert Psychological Services, North Shore Women's Centre, Rape Prevention Education Whakatu Mauri, SHINE Safer Homes in New Zealand Everyday, Women's Health Action Trust, Women's Centre Rodney); Auckland Refugee Family Trust; Auckland Resettled Community Coalition; Auckland Regional Migrant Services; Backbone Collective, CAB Language Connect; Child Poverty Action Group; Justspeak; New Zealand Red Cross; Peace Movement Aotearoa; WagePeaceNZ

and

**Supported by:** The New Zealand Centre for Human Rights Law, Policy and Practice

See Annex 1, p.11 for more details on those organisations.

**Word count: 5596**

## A.BACKGROUND AND FRAMEWORK

### I.Scope of international obligations

1. Despite several UPR recommendations to do so, New Zealand has not ratified the CRMWF or the CED, despite indicating that it supported the recommendation in relation to the latter at the 2014 UPR (2<sup>nd</sup> cycle). Nor has ILO Convention 87 been ratified.<sup>i</sup>
2. Also, New Zealand has not ratified the OP-ICESCR or the OP-CRC, again as recommended several times during the last UPR.
3. Nor has New Zealand made the optional declaration in Article 14 of the ICERD, despite the recommendations to do so by its Committee in August 2007 and 2017, and at the 2014 UPR.
4. **Recommendations:**
  - **Ratify the CRMWF and CED as well as OP-ICESCR and OP-CRC and the core ILO conventions.**
  - **Make the optional declaration in Article 14 ICERD.**

### II.Constitutional and legislative framework

#### *Economic, social and cultural rights and civil and political rights omitted from the NZBORA*

5. Despite recommendations from the CESCR<sup>ii</sup> and both UPRs<sup>iii</sup> New Zealand has not yet formally incorporated all economic, social and cultural rights into the domestic legal framework. It argues that these rights are already protected by individual statutes. However, there are major advantages in a statement of commitment to ESC rights as being on a par with civil and political rights and equally justiciable, particularly in the light of the new Government's stated reforms in the area of ESC rights – it will have the added advantage of providing a single framework for the Government's reforms, based on international human rights law which New Zealand has accepted as legally binding.
6. The New Zealand Bill of Rights Act 1990 (NZBORA) includes most, but not all, those civil and political rights in the ICCPR. NZBORA should be amended to include ESC rights, a right to privacy, a right to a remedy and a right to a sustainable and healthy environment<sup>iv, v</sup>.

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

7. The NZBORA can be subordinated to an ordinary statute.<sup>vi</sup> Parliament has at times exercised its supremacy to override NZBORA, contrary to its international obligations.<sup>vii</sup> The NZBORA should be granted supreme status to over-ride rights-infringing legislation. Similarly the Human Rights Act 1993 (HRA) should be amended so that it over-rides a contrary statute.
8. The NZBORA should also be procedurally entrenched, for example by requiring a 2/3 majority in Parliament for amendment.
9. **Recommendations:**
  - **Incorporate all rights enshrined in international human rights instruments to which New Zealand is a party into domestic law to ensure these rights are enforceable in New Zealand courts.**
  - **Establish the NZBORA and the Human Rights Act 1993 as over-riding ordinary statutes.**
  - **Procedurally entrench the NZBORA.**

#### *Right to a remedy*

10. During New Zealand's UPR in 2009, the National Report stated, in relation to the right to a remedy for human rights violations, that "individuals who consider that any of their rights under the NZBORA have been infringed can bring an action against the Government. A number of remedies are available, including the ability to award damages or compensation and to exclude evidence obtained in breach of a right guaranteed by the BORA".<sup>viii</sup> However, at this very time, the Government's Attorney General was arguing in the courts that this right to a remedy<sup>ix</sup> did not apply to breach of the NZBORA by the judiciary, a claim that was eventually upheld by the Supreme Court.<sup>x</sup>
11. **Recommendation**
  - **That the NZBORA be amended to provide an explicit right to a remedy for breach of the NZBORA, including by the judiciary.**

#### *The Status of the Treaty of Waitangi 1840*

12. New Zealand received several recommendations to strengthen the constitutional status of the Treaty of Waitangi, and address Maori concerns regarding the Treaty settlement process. However, the former Government shelved the recommendations of the Constitutional Review. As recommended by CERD<sup>xi</sup> and the CESCR<sup>xii</sup>, steps must be taken - in partnership with representative Maori institutions - to debate and implement the Review and the proposals in the Matike Mai Aotearoa report regarding the role of the Treaty in the constitutional arrangements.

13. New Zealand received several recommendations to strengthen the process for strengthening the constitutional process surrounding the Treaty of Waitangi and addressing Māori concerns regarding the Treaty settlement negotiation process. However, the former Government shelved the recommendations of the Constitutional Review. As recommended by the Special Rapporteur on the Rights of Indigenous Peoples and Independent Iwi Working Group on Constitutional Transformation, Matike Mai Aotearoa, the Treaty of Waitangi should be given a higher status in domestic law.<sup>xiii</sup>

**14. Recommendation:**

- **Review and where appropriate implement the recommendations of the Constitutional Review and provide for appropriate constitutional or legislative recognition be given to the Treaty of Waitangi/Te Tiriti o Waitangi.**

### III. Institutional and human rights infrastructure and policy measures

#### *Appointment of Human Rights Commissioners*

15. At its 2014 UPR, New Zealand received a recommendation (Ukraine) to “*Consider participation of the Parliament in a human rights commissioner’s appointment process*”.<sup>xiv</sup> The Government of the day did not accept the recommendation. Human Rights Commissioners are currently appointed entirely by the Executive. Some appointments have been controversial, undermining both the ability of these Commissioners to fulfill their responsibilities and the credibility of the Commission itself. The appointment process for National Human Rights Institutions (NHRIs), like the Human Rights Commission (HRC), should aim to appoint independent-minded Commissioners as the Paris Principles make clear.<sup>xv</sup>

16. The Human Rights Select Committee recommended below could be involved in the appointment process, or as recommended by a recent Review of the NZHRC by a Judge: “consideration be given to whether the Commissioners of the HRC should be officers of Parliament, similar to the Ombudsman, Auditor-General and Office of the Parliamentary Commissioner for the Environment”.

**17. Recommendation:**

- **Establish a Human Rights Commissioner appointment process that provides for the involvement of Parliament, for example by a Parliamentary Select Committee on Human Rights.**

#### *Children’s Commissioner*

18. Government is consulting on “Strengthening independent oversight of the Oranga Tamariki system and of children’s issues in New Zealand”. The Commissioner can advocate for children in state care and those under plans with Oranga Tamariki, but cannot advocate for children who are part of either Care of Children Act or Domestic Violence proceedings<sup>xvi</sup> so there is no independent oversight and/or safe complaints mechanism for children who are tangled up (often for their whole childhood) in cases before the Family Court.

**19. Recommendation:**

- **Ensure any moves to strengthen the Children’s Commissioner advance the rights of all children, be based on wide consultation with those working with and for children, and children themselves, and strengthen the Office’s independence.**
- **Enable the Commissioner to provide independent oversight for children who are involved in Family Court proceedings.**

#### *Human Rights Review Tribunal*

20. The Human Rights Review Tribunal determines claims under human rights, information privacy principles and patients’ rights legislation. With a large escalation in workload in recent years, more unrepresented parties and the Chair having to hear and produce all decisions, the Tribunal now faces huge delays. In a recent submission, the Chair stated that “for most parties, the Tribunal has ceased to function.”

**21. Recommendation:**

- **Urgently amend the legislation to allow for the appointment of several deputy chairpersons.**
- **Adequately fund the Tribunal to ensure that claims are determined expeditiously.**

#### *Establishment of a Parliamentary Human Rights Select Committee and other legislation and policy oversight mechanisms*

22. Although New Zealand has a longstanding commitment to the development of international human rights standards, those international standards are generally not given adequate consideration in public policy and legislative decision making.

23. New Zealand has to date ignored the recommendation at the last UPR<sup>xvii</sup> and from several treaty bodies to establish a Parliamentary Human Rights Select Committee.

24. The HRC has prepared a so-called Human Rights National Plan of Action, although in reality it is simply a monitoring mechanism. Like the previous NHRAP prepared by the HRC, it has not been adopted by the Government and is not, therefore, a *national* Plan.<sup>xviii</sup>

25. **Recommendations:**

- **Establish a Parliamentary Select Committee for Human Rights.**
- **In cooperation with civil society, establish mechanisms, including a Government supported and funded National Human Rights Action Plan, to independently monitor, against robust human rights indicators, the government's implementation of ratified human rights treaties and UPR recommendations.**
- **Develop and implement a human rights education strategy as envisaged by the World Programme for Human Rights Education (2005), and as recommended in 2003 and 2011 by the UNCROC Committee, to ensure that young people and those responsible for supporting them, know their human rights; that development of policy and legislation is informed by a human rights approach; and decision making is consistent with New Zealand's human rights obligations.**

## **B. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS**

### **Administration of justice, including impunity, and the rule of law**

#### *Age of criminal responsibility and juvenile detention facilities*

26. New Zealand did not accept the recommendation from the first UPR that the age of criminal responsibility in New Zealand meet relevant international standards.<sup>xix</sup> This, despite the CRC Committee repeatedly recommending that New Zealand raise the minimum age of criminal responsibility to at least 12 years of age (from 10 years), in line with the Committee's General Comments.<sup>xx</sup>

27. In its most recent Comments and Recommendations, the CRC Committee expressed disappointment with the 2010 amendments to section 272 of the Children, Young Persons, and Their Families Act.<sup>xxi</sup> The Committee also noted that whilst the youth justice system in New Zealand claims to implement a restorative justice approach, in practice the approach is a punitive one.<sup>xxii</sup>

28. Due to overcrowding youth justice facilities are at capacity and consequently children are being held in police custody cells.

29. **Recommendations:**

- **Raise the age of the youth justice system to include 18-19-year olds.**
- **Address discrepancies in age of criminal responsibility and sentencing provisions for young people charged with murder or manslaughter and raise the minimum age of criminal responsibility.**
- **Amend relevant legislation to adopt an emphasis on restorative justice, rather than punitive measures, for youth offenders.**
- **More targeted approach to reduce the number of Māori and Pasifika young people in the Youth Court, including in the provision of culturally specific diversion programmes and changes to Family Group Conference process to ensure these are appropriately delivered for all families.**

#### *Prisoners' right to vote*

30. The government introduced legislation in 2010 to prohibit any prisoners from voting in elections regardless of the seriousness of their offending or the length of their imprisonment. This is in breach of New Zealand's obligations under the ICCPR and NZBORA and was passed despite the Attorney-General's finding of inconsistency with NZBORA.<sup>xxiii</sup>

31. The UN HRC has stated that, where the deprivation of a citizen's right to vote is based on the conviction for an offence, the period of deprivation should be "proportionate to the offence and the sentence".<sup>xxiv</sup>

32. **Recommendation:**

- **Amend the law to ensure that restrictions on prisoners' right to vote are reasonable and proportionate.**

#### *Growth of prison population*

33. There are pressures on the prison system with the prison numbers reaching 10,700 this year<sup>xxv</sup> resulting in violations of human rights and further exacerbation of mental illnesses.

34. Nearly all (91%) people in prison in NZ have a lifetime diagnosable mental illness or substance-use disorder, 62% diagnosed in the past 12 months.<sup>xxvi</sup> Often, the Department of Corrections will use solitary confinement in the name of prisoner management, health, and safety. People who are exposed to these horrible conditions, especially for long periods of time, come out of them with irreparable mental and physical damage. Rather than promoting wellness and good order in the prison, it increases the risk that prisoners will hurt themselves and others.<sup>xxvii</sup>

35. Due to overcrowding, the Department of Corrections has resorted to extending its use of double bunking. 14 out of 19 New Zealand prisons practice double bunking. In 2016, 29% of prisoners were double bunked.<sup>xxviii</sup> In 2018 Chief Ombudsman publicly noted his disappointment in double bunking at Arohata Upper Prison for women.<sup>xxix</sup>

36. The over incarceration of Māori is evident and the 20-year corrections-led approach to the reduction of Māori reoffending has been largely ineffective and is alien to Māori thinking. The pairing of tikanga Māori with Western cognitive behavioural approaches has not made any significant difference to Māori overrepresentation.<sup>xxx</sup>

**37. Recommendations:**

- **Investment in alternatives to incarceration and a focus on decarceration.**
- **Expand the use of therapeutic and alternative courts, like the alcohol and other drug court in Auckland, which are more effective at addressing the causes of offending.**
- **Remove the use of solitary confinement for punishment, prisoner management, or to manage mentally and physically unwell people.**
- **Step up efforts, in consultation with Māori communities, to address and prevent discrimination against members of the Māori communities in the criminal justice system and, in particular, the high rate of incarceration.**

*Remand*

38. The Bail Amendment Act 2013 made it tougher for defendants convicted of serious offences to be granted bail. The Act increased the number of situations where a defendant would be subject to a “reverse burden of proof”, having to prove that they are not a risk if released on bail. For the offences of murder, class A drug offences, and a number of other specific offences, the reverse burden of proof now applies.

**39. Recommendations:**

- **In order to reduce moral and fiscal pressures and avoid the need for prison expansion, the recent changes to bail should be:**
  - **applied as was originally intended i.e. only for serious and violent crime;**
  - **implemented to cater for insecure housing such as hostels or campgrounds;**
  - **reviewed with a view to repeal, as given the violent and criminogenic nature of prisons it is inappropriate to be imprisoning increasing numbers of people, particularly when not convicted of a crime.**
- **Repeal the Bail Amendment Act, with specific urgency around the strong preference for bail for young people.**

*Police powers*

40. New Zealand is one of the few remaining countries where there is no general arming of the police. Following the controversial introduction of the Taser stun gun, multiple use of which recently resulted in the death in custody of a mentally ill person despite its promotion as a non-lethal option, the 2014 UPR (2<sup>nd</sup> cycle) recommended that New Zealand *consider relinquishing the use of electric taser weapons by the police.*<sup>xxxi</sup>

41. The Police have established a Community Tactical Options Reference Group to liaise over the complex issues relating to the use of force by the Police, including Tasers. We firmly support this initiative, which is now exploring how to deal with situations when police engage with someone who is distressed because of an active mental illness – a group greatly over-represented in Taser and firearm use statistics, as in the tragic death referred to above.

**42. Recommendation**

- **Encourage the Police to strengthen the mandate of the Police Community Tactical Options Reference Group and embed the consultations with this group in policy and operational development in relation to the use of force (and Tasers in particular) and the over-representation of people with mental health disabilities.**

*Police Pursuits*

43. Deaths of drivers, passengers and innocent bystanders resulting from Police pursuits of fleeing drivers have reached epidemic proportions. In some Australian States, where such pursuits for traffic offences and stolen cars are banned, crashes, deaths and injuries are much lower. New Zealand police chase between 2000 and 2500 vehicles every year – three times as many as in Victoria, which has a population of a million more, and seven times as many as Queensland, with a roughly similar population.<sup>xxxii</sup>

44. A review of Police pursuits is underway by the Independent Police Conduct Authority and the Police. However, civil society should also be involved, given the wide-ranging effect of such pursuits on the community.

**45. Recommendation:**

- **That civil society be meaningfully included in the current review of Police pursuits by the IPCA and the Police.**
- **Freedom of religion or belief, expression, association and peaceful assembly, and the right to participate in public and political life.**

46. Although New Zealand has agreed that judicial oversight and procedural guarantees are essential in counter-terrorism legislation,<sup>xxxiii</sup> the government declined to make any amendments following the UPR (2<sup>nd</sup> cycle) and the recommendation made that it *ensure that its counter-terrorism legislation as well as the national designation for terrorists groups are in full compliance with the legal safeguards enshrined in the ICCPR.*<sup>xxxiv</sup> Sections 22 and 38 of the Terrorism Suppression Act 2002 (TSA) continue to respectively authorise the Prime Minister to designate a group as “terrorist” or “associated terrorist” using classified information in making the designation, breaching several sections of NZBORA.<sup>xxxv</sup>

47. The wider implications of greater surveillance need considering, especially in at risk communities, including feelings of alienation, paranoia and disengagement with law enforcement, all of which are entirely counter-productive. The large increases in government funding for the security intelligence agencies, NZ police, and NZ Customs would be of greater use if accompanied by comparable assistance to at risk communities.

48. **Recommendations:**

- **Clarify the definition of “terrorist” and repeal section 22 of the Terrorism Suppression Act to ensure that those designated as “terrorists” are able to have that designation reviewed fully by the Courts.**
- **Amend section 38 to enable “classified security information” to be disclosed to defendants or their representatives or to special counsel designated for the purpose.**
- **Re-evaluate the allocation of security funding, to add a focus on at risk communities.**

## Rights of migrants and refugees including those seeking asylum

### *Immigration (Mass Arrivals) Amendment Act*

49. The Immigration (Mass Arrivals) Amendment Act 2013 made radical changes in the name of “enhancing New Zealand’s ability to deter people-smuggling to New Zealand” and to “enable the effective and efficient management of a mass arrival of illegal migrants”.<sup>xxxvi</sup> The Act establishes a definition of ‘mass arrival group of 30 people’<sup>xxxvii</sup> and imposes upon this group mandatory detention, a restriction on judicial review and a limitation on family reunification rights, among other human rights breaches.<sup>xxxviii</sup>

50. The Human Rights Committee has previously noted that in order for detention to be lawful under Article 9(1), it must pursue a legitimate objective that is determined to be necessary.<sup>xxxix</sup> In the light of New Zealand’s obligations under the Universal Declaration of Human Rights (UDHR) and the Refugee Convention, both of which guarantee a person’s right to seek asylum,<sup>xl</sup> seeking to deter asylum seekers amounts to pursuing an unlawful objective.

51. **Recommendation:**

- **Repeal the Immigration (Mass Arrivals) Amendment Act 2013**

### *Refugees seeking asylum*

52. Currently refugees seeking asylum are detained at Mount Eden Corrections Facility in situations where they generate security concerns. They are held with the general remand population and there have been regular instances of violence and intimidation from other remand prisoners.<sup>xli</sup>

53. Where a refugee seeking asylum has arrived on false documents and their real identity cannot be verified, or if their visa has expired before they apply to renew it, they may not be granted a work visa or their work visa may not be renewed while their claim or appeal is in process. The person is somehow expected to live in the community and support themselves, despite having neither legal ‘work rights’ or the ability to access benefits.<sup>xlii</sup>

54. There are very few support services that cater to the needs of refugees seeking asylum. The specific support services (namely Asylum Seekers Support Trust and RASNZ) do not receive government funding for their work in this area. Refugees seeking asylum should be able to access housing, food, psychological and language support from trained professionals, and be supported to access other entitlements. Services need to be funded to provide this care, so the need can be properly met.

55. **Recommendations:**

- **Minimise the use of prisons to detain asylum seekers as per the Refugee Convention, and ensure that those who are detained have ready access to appropriate lawyers, health providers and support groups.**
- **Increase approval for work visas in New Zealand for asylum seekers.**
- **Fund asylum support services so they are able to deliver support for asylum seekers in the areas of accommodation, psychological support and other essential needs.**

### *Education Access for Children of Asylum seekers*

56. Student visas can only be granted to children of refugee or protection status claimants and child victims of people trafficking.<sup>xliii</sup> No visa can be granted to children of overstayers.

57. According to the Operational Manual issued by Immigration New Zealand, children of asylum seekers (and those seeking complementary protection) have access to free primary and secondary school education.<sup>xiv</sup> This ensures compliance with the ICESCR. However, unlike quota refugees, tertiary students who are asylum seekers (or protection applicants) do not have access to subsidised fees until they become residents. As a result, these asylum seekers are disadvantaged in their efforts to receive a higher level education, owing to these high tuition fees, while their cases are being determined (this can be a lengthy process). Moreover, even after the grant of the refugee status, tertiary education cannot be accessed until residence is granted. This process can take a year or more.

**58. Recommendation:**

- **Include children of over-stayers with a visa process on its way as a third category of children who could obtain a visa.**
- **Facilitate access to higher level education similarly for children of asylum seekers.**

*Access to Health for non-resident children*

59. Although New Zealand reported to the Committee on the Rights of the Child that it will withdraw its reservation to UNCROC about being able to "distinguish as it considers appropriate in its law and practice between persons according to the nature of their authority to be in New Zealand including but not limited to their entitlement to benefits and other protections described in the Convention" this has not happened.<sup>xv</sup>

60. There are concerns that non-resident children are missing out on important health care even though some limited free coverage is available, such as for children of refugee claimants.<sup>xvi</sup>

61. New Zealand has agreed to ICESCR, CEDAW, CERD and CRPD which all include the right to health without such a reservation. So the rights that non-resident children enjoy under these treaties are being routinely violated.

**62. Recommendation:**

- **Withdraw the reservation to UNCROC and do not distinguish between persons according to the nature of their authority to be in New Zealand**

*Off-shore detention Centres*

63. In February 2013, New Zealand made an arrangement with Australia by which New Zealand will resettle 150 of Australia's refugees per year. The 150 refugees will form part of the New Zealand UNHCR quota which is now being incrementally raised from 750 to 1500 by 2020, a step we support.

64. However, the arrangement with Australia fails to meet New Zealand's international obligations under the 1951 Refugee Convention as it denies asylum seekers the right to claim protection in New Zealand and excludes them from New Zealand's justice system.

**65. Recommendation:**

- **Renegotiate the 2013 Queenstown arrangement, stipulating clearly that New Zealand will not participate in Australia's offshore detention centres and wishes them closed. Reiterate New Zealand's offer to resettle at least 150 Australian refugees from Nauru and Manus Island. Withdraw the annual offer to take 150 of Australia's refugees in perpetuity.**

**Equality and non discrimination**

*Domestic and sexual violence*

66. Domestic and sexual violence remain a major impediment to women's equality in New Zealand, the first country to give women the right to vote (1893), New Zealand has the highest rate of domestic violence in the developed world. New Zealand is yet to formally recognise violence against women as a gross breach of women's and children's human rights and ensure that women and children have a right to safety and to be free from gender-based violence, coercive control, and exposure to domestic and sexual violence.

67. All political parties need to commit to a long-term collaboration to end gender-based violence against women and children regardless of which party/s is in power. An evidence-based approach with a well-trained and resourced workforce is required.

68. Policies to address these issues have often been ineffectual, counter-productive and not evidence-based, for example the practice of Family Court Judges and other Court professionals<sup>xlvii</sup> applying the internationally discredited concept of parental alienation which is jeopardising the safety of many women and children.

**69. Recommendations:**

- **Develop, in collaboration with domestic and sexual violence service providers and users, an integrated system for domestic and sexual violence where all agencies and individuals directly or indirectly involved operate as one system to end gender-based violence against women and children.**

- **Ensure policies and practice standards make it clear that non evidence-based concepts such as parental alienation must not be applied by the Family Court in cases of violence and abuse.**
- **Undertake a Royal Commission of Inquiry into reported widespread systemic failures in the way the Family Court is responding to cases of violence and abuse.**
- **Invite the Special Rapporteurs on Violence Against Women and Child Protection to conduct a country visit to New Zealand.**

#### *Rights of Children*

70. In Aotearoa/NZ, especially for the indigenous Māori, children's rights are understood within the context of whanau and family.. Individual and collective human rights in international rights instruments such as the UNCROC and the UNDRIP develop and support inherent tāngata whenua rights of tamariki (children) and rangatahi (youth) Māori. These rights are also inherent in Te Tiriti o Waitangi 1840 that obliges the Crown to protect the rights of Maori to the possession of their own taonga (whatever is precious in their culture) and to enjoying the same rights as British subjects.
71. Maori pēpē (babies), tamariki and rangatahi experience considerable inequities compared with Pākehā (non-Maori). These result from the disproportionate impacts of the socio-political and economic environments that drive poor health and wellbeing outcomes.
72. Since 2013 there has been increased policy focus on children, particularly those who are risk of violence and abuse or who are living in poverty. Currently Aotearoa/NZ has many opportunities to embed children's rights into law, policy and wider society. The increased focus on children in a number of government department's underscores what has been a perennial challenge for Aotearoa/NZ; lack of coordination and cohesion on child policy and regulation across government. For example the social service and health systems remain distinct.
73. **Recommendation:**
- **The child wellbeing strategy be based on children's rights, including under Te Tiriti o Waitangi, and developed in close cooperation with children, their whānau, hapu and iwi, families and communities to;**
    - **improve understanding and implementation of children's rights, particularly the rights of pēpē, tamariki and rangatahi Māori as tāngata whenua,**
    - **promote children's best interests and respect for the inherent dignity of each child, including their participation, as citizens, in their communities and wider society,**
    - **encourage more co-ordinated and cohesive work for children across government through:**
      - ❖ **systematic use of children's rights to analyse and monitor laws, policies and practices and their impact on all children's lives,**
      - ❖ **increased training on children's rights and child impact assessments.**
74. In its April 2018 report *Building Blocks: Building the foundations for implementing the Children's Convention in Aotearoa* the Children's Convention Monitoring Group (CMG) called on the Government to invest in the infrastructure needed to ensure the Children's Convention is embedded in Aotearoa.<sup>xlviii</sup>

75. **Recommendation:**

- **Implement the recommendations of the CMG.**

#### **Right to privacy, marriage and family life**

##### *Government Communications Security Bureau and Related Legislation*

76. The Government Communications Security Bureau (GCSB) is one of NZ's two major intelligence agencies. The GCSB Act 2003 makes it clear that the agency has a very specific objective – the monitoring of 'foreign communications' and 'foreign organisations and persons', in the interests of NZ's national security.
77. Under relevant legislation, the agency has been given the authority to access the 'information infrastructures (eg IT systems) and intercept the private communications of both NZ citizens and permanent residents in potentially a wide range of circumstances. This is of real concern to many civil society members who fear that this breaches New Zealanders' right to privacy and their right not to be free from unwanted surveillance.<sup>xlix</sup>

78. **Recommendation:**

- **Remove the authority of the GCSB to spy on New Zealand citizens and permanent residents**

#### **Right to social security and to an adequate standard of living**

## *Child poverty*

79. In New Zealand, 270,000 children and young people are affected by poverty. The human rights to health, education, social security and to a safe and secure upbringing for those children are seriously compromised. Despite the 2009 UPR (1<sup>st</sup> cycle) recommendation that New Zealand should “take targeted action to eliminate the socio-economic disparities that persist among its population”,<sup>i</sup> child poverty in New Zealand has not been addressed adequately.
80. Through the In Work Tax Credit, 230,000 of the poorest children are discriminated against on the basis of their parents’ work status. This In Work Tax Credit is the subject of a CPAG challenge in the Court of Appeal.
81. **Recommendations:**
- **Affirm the principle of equality of treatment of all low income children in the tax benefit system and extend the In Work Tax Credit to all low income families**
  - **Immediately implement certain recommendations of the Experts Advisory Group’s report on Solutions to Child Poverty.<sup>ii</sup>**
  - **In particular, enact child poverty legislation to ensure the proper and regular measurement of child poverty, the periodic setting of government targets to reduce child poverty, the setting of child poverty-related indicators and targets for selected indicators and the annual reporting to Parliament of progress towards the achievement of the designated targets.**

## *Right to Housing*

82. The principal barrier to the right to quality housing is the high price of housing and rents compared to wages. Nearly 70% of children in poverty live in state housing or private rentals. For families who are renting, the problem is threefold: house rents are high and increasing, the quality of many rental properties is substandard and deteriorating, and the rental market provides few rights and protections for renters.
83. The International Monetary Fund’s house price-to-rent ratio shows New Zealand has one of the widest gaps between prices and incomes. Low incomes and high rents cause families to share homes resulting in overcrowding, increasing the risk of infectious diseases. Children are particularly vulnerable to prolonged exposure to poor housing. Damp housing aggravates respiratory conditions in both adults and children.
84. **Recommendations:**
- **Develop a national action plan to address the housing crisis in a systematic and considered manner that includes a social housing plan that is based on realistic forecasts for future demand for social housing, targeted to areas of high need, and that budgets are allocated to fund this plan over at least a ten-year period.**
  - **Overhaul the Residential Tenancies Act to improve renters’ rights through ensuring more secure tenure, access to effective advocacy, support in disputes with landlords, protections against excessive rent increases and guarantees to decent quality housing through a comprehensive warrant of fitness programme.**

## **Right to development and environmental issues**

### *Right to a safe and healthy environment*

85. Although New Zealand received no recommendations about environmental or climate change issues in the 2009 or 2014 UPR, there have since been major international initiatives including the Paris Agreement on Climate Change.
86. The right to a healthy environment is a precondition upon which all other rights rest. A life of dignity cannot be enjoyed without the ecosystem services provided by the natural environment. This fundamental basis for life needs to be recognised by governments worldwide.<sup>iii</sup>
87. **Recommendation:**
- **Legally recognise the right to a safe and healthy environment, for example in the NZBORA.**

### *Climate change*

88. New Zealand’s new climate law, the Zero Carbon Act, must take a rights-based approach to climate change consistent with the Paris Agreement. It should set a long-term goal that is consistent with limiting warming to 1.5 degrees. To do otherwise would be inconsistent both with the Paris Agreement and with the human rights of many peoples worldwide especially those in small island states.
89. Further, climate change has a disproportionate impact on indigenous peoples. The Zero Carbon Act must therefore specifically recognise te Tiriti o Waitangi and provide for particular tangata whenua (indigenous) engagement, to ensure that it respects the rights of indigenous people.
90. **Recommendation**

- **Adopt a rights-based approach to climate change consistent with the Paris Agreement by passing a Zero Carbon Act that sets a long-term goal consistent with limiting global warming to 1.5 degrees, and that specifically provides for the protection of indigenous peoples' rights.**

### *Right to Water*

91. In 2010 the United Nations General Assembly adopted an important statement on the human right to water and sanitation but New Zealand abstained from the statement.
92. The quality and quantity of New Zealand's freshwater has declined over the reporting period while its population has increased. The government's lack of action to address the violation of the rights to health and/or to life of current and future populations, and the rights in relation to the loss of biodiversity put its citizens in potential future jeopardy.
93. Further, there are complex issues of ownership that arise in relation to Māori customary claims to water resources.
94. **Recommendation**
- **Address, as a matter of urgency, issues concerning the availability, affordability, quality and safety of water in New Zealand and due recognition of Māori water rights.**
  - **Adopt the UN General Assembly statement on the human right to water.**
  - **Legally recognise the right to water as a human right and take action to protect it.**

### **Consultation**

95. Finally, we note that the State is expected to undertake "broad consultation process at the national level with all relevant stakeholders." <sup>liii</sup> However, New Zealand's draft National Report has just been released with the stipulation that comments are limited to 500 words – a ridiculously short word length that can only indicate that the State has no intention of engaging in genuine consultation.
96. **Recommendation**
- **That New Zealand meet the expectations of relevant HRC resolutions and undertake broad and meaningful consultations over UPR National Reports.**

## **ANNEX 1: LIST OF ORGANISATIONS**

### **Action for Children and Youth Aotearoa**

ACYA is a coalition of non-governmental organisations, families and individuals promoting the rights and wellbeing of our children and youth through education and advocacy based on evidence and Aotearoa New Zealand's human rights commitments. ACYA was founded in 1996. ACYA's principal work is the production and publication of Aotearoa New Zealand's Alternative NGO (non-governmental organization) Report to the UNCROC Committee on Aotearoa's implementation of UNCROC.

### **Auckland Coalition for the Safety of Women and Children**

The Coalition was developed in 2006 to strategise and work toward achieving the ultimate goal of safety for women and children in Auckland. The Coalition's mission is to progress a gender and intersectional analysis of the underlying determinants of violence against women and children and the policy and practice responses to the issue.

The Coalition has undertaken a number of innovative activities including a competition for young people to make a video for you-tube on violence against young women and a community development programme involving small businesses making a commitment to speaking out against violence. It makes frequent representations to Government on matters concerning preventing and responding to sexual and domestic violence.

Members:

- Auckland Sexual Abuse HELP
- Auckland Women's Centre
- Eastern Women's Refuge
- Homeworks Trust
- Inner City Women's Group
- Mental Health Foundation
- Mt Albert Psychological Services
- North Shore Women's Centre
- Rape Prevention Education Whakatu Mauri
- SHINE Safer Homes in New Zealand Everyday
- Women's Health Action Trust
- Women's Centre Rodney

### **Auckland Refugee Family Trust**

ARFT aims to ensure that refugees who live in Auckland and have family members approved for emigration to New Zealand are not prevented from being reunited because of a lack of travel funds. Many refugees in New Zealand are alone or separated from family members who remain in unsafe situations overseas. They are desperate about the safety and survival of those left behind and are unable to settle well until they are reunited. Trust funds are granted to refugee applicants - as funds permit - whose immediate family members have been assessed and approved by New Zealand Immigration Service as having a valid case for reunification.

### **Auckland Resettled Community Coalition**

ARCC is a grassroots, non-profit organisation led by former refugees for former refugees in the Auckland region. ARCC is currently made up of 20-member communities from 15 different countries including: Afghanistan, Burma, Burundi, Democratic Republic of the Congo, Eritrea, Ethiopia, Iraq, Rwanda, Kurdish, Somalia, South Sudan, Sudan, Sri Lanka, Palestine, Uganda and Tamil.

### **Auckland Regional Migrant Services**

ARMS actively enables and supports the full integration and participation of migrants and resettled families communities in Aotearoa/New Zealand through coordination, community networking, specialist services and informed advocacy.

### **Asylum Seekers Support Trust**

The overarching goal of the ASST is to help create a New Zealand where Asylum Seekers and Convention Refugees are welcomed, supported and thriving. We do this by providing emergency housing and other critical humanitarian support from a qualified social worker who gives advice and practical assistance based on assessment of individual need. ASST also advocates strongly for legal and compassionate treatment of our clients and all those who come to our shores seeking a safe and peaceful life

### **CAB Language Connect**

CAB Language Connect is a free multi-lingual service providing information and advocacy on a wide range of issues including immigration, employment, housing, income support, education, health and wellbeing and much more.

### **Child Poverty Action Group**

Child Poverty Action Group (CPAG) is an independent charity working to eliminate child poverty in New Zealand through research, education and advocacy. In a country like New Zealand, with ample resources, child poverty could be eliminated completely. It's all about Choice. Everyone agrees children need the right conditions to grow into healthy adults. Children thrive when they have the basics: nutritious food; a warm, safe home; medical attention if they are sick and a good education. Sadly, too many children in New Zealand don't have the basics. CPAG speaks out on behalf of the 270,000 children in New Zealand whose meagre standard of living compromises their health, education and well-being. CPAG works to protect children from needless poverty, because a child's potential is a terrible thing to waste.

### **Human Rights Foundation of Aotearoa New Zealand (HRF)**

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, and have prepared several 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.

### **New Zealand Centre for Human Rights Law, Policy and Practice**

The New Zealand Centre for Human Rights Law, Policy and Practice was established as of 1 January 2012 by the Dean of the Faculty of Law at the University of Auckland. It is a Centre of the Department of Law, with initial funding from the Faculty of Law and the University of Auckland. However, as the name indicates, we aim to be a resource for the country as a whole (and indeed the wider Asia Pacific region) and also to be multi-disciplinary: the legal framework for human rights law is only one aspect, and developing effective policies and encouraging human-rights compliant practices is also of central importance. The establishment of the Centre is intended to provide a focal point for research, education, community-service, and a range of human rights activities in New Zealand and the wider Asia Pacific region. The Centre is composed of academic members from various universities in New Zealand (both in law faculties and in other disciplines) and others involved in human rights research and activities.

### **New Zealand Red Cross**

NZ Red Cross improves the lives of vulnerable people by mobilising the power of humanity and enhancing community resilience

### **Peace Movement Aotearoa (PMA)**

Peace Movement Aotearoa is the national networking peace organisation in Aotearoa New Zealand, an NGO registered as an incorporated society in 1982. Promoting respect for, and the realisation of, human rights is a key aspect of our work because of the crucial role human rights have in creating and maintaining peaceful societies. We have provided twenty-two reports, submissions and interventions to human rights treaty monitoring bodies, and to Special Procedures and mechanisms of the Human Rights Council since 2005.

### **Refugees as Survivors**

RASNZ works to address issues of traumatic events that impact refugees' health and initial settlement in New Zealand by providing holistic mental health and wellbeing support throughout each person's journey.

### **WagePeaceNZ**

WagePeaceNZ was created by journalist Tracey Barnett in 2015 as an umbrella awareness and advocacy voice for refugee and asylum seeker issues in New Zealand and the region.

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- <sup>i</sup> In fact, amendments to labour legislation following the last UPR further weakened the right to collective bargaining, although we acknowledge that the new administration intends to overturn that legislation
- <sup>ii</sup> E/C.12/NZL/CO/4: Justiciability of the Covenant rights
5. The Committee is concerned that in the light of the New Zealand Bill of Rights, economic, social and cultural rights do not enjoy equal status with civil and political rights. It is further concerned that:
- (a) Covenant provisions are still not fully incorporated into the State party's domestic legal order, despite the recommendations made by the Constitutional Advisory Panel in 2013;
- <sup>iii</sup> See 2<sup>nd</sup> Cycle Recommendation 33 (in thematically clustered recommendations). *Incorporate economic, social and cultural rights in the Bill of Rights Act (Ukraine)* and similar recommendations 27, 28, 31, 32
- <sup>iv</sup> See paragraphs 84 – 87 of this report
- <sup>v</sup> While the incoming administration has indicated its intention to amend NZBORA to provide a statutory power for the senior courts to make declarations of inconsistency under the Bill of Rights Act, and to require Parliament to respond, which we welcome, this does not address the inclusion of those other rights mentioned above.
- <sup>vi</sup> Even though, under s 6 of the NZBORA, it is preferred that other legislation be given a meaning consistent with the rights enshrined in the Act, s.4 allows an explicit over-riding by a contrary statute, regardless of its curtailment of fundamental rights.
- <sup>vii</sup> For example, the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 enacted a blanket disenfranchisement of all prisoners, despite the Attorney General advising under section 7 that this was inconsistent with NZBORA (see Christopher Finlayson *Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Electoral (Disqualification of Convicted Prisoners) Amendment Bill* (J4, published by Order of the House of Representatives, 2010) - see the New Zealand Public Health and Disability Amendment Bill (No 2) 2013 (118-1)
- <sup>viii</sup> A/HRC/WG.6/5/NZL/1 Paragraph 24
- <sup>ix</sup> The right to monetary compensation was established in *Simpson v Attorney General* [1994] 3 NZLR 667 (Baigent's Case)
- <sup>x</sup> *Attorney General v Chapman* [2011] NZSC 110
- <sup>xi</sup> Committee on the Elimination of Racial Discrimination (CERD), CERD/C/NZL/CO/21-22, 22 September 2017, para 13(a)
- <sup>xii</sup> Committee on Economic, Social and Cultural Rights (CESCR), E/C.12/NZL/CO/4, 1 May 2018, para 9(a)
- <sup>xiii</sup> Report of Matike Mai Aotearoa, the Independent Iwi Working Group on Constitutional Transformation, January 2016 - [www.converge.org.nz/pma/iwi.htm](http://www.converge.org.nz/pma/iwi.htm)
- <sup>xiv</sup> 45. Consider participation of the Parliament in a human rights commissioner's appointment process (Ukraine)
- <sup>xv</sup> Paris Principles see United Nations General Assembly Resolution A/RES/48/134
- <sup>xvi</sup> See s18 of the Children's Commissioner legislation
- <sup>xvii</sup> See, for example, 2<sup>nd</sup> Cycle Recommendation 46. *Sharing the recommendation by some treaty bodies, establish a parliamentary human rights select committee (Turkey)*
- <sup>xviii</sup> In accordance with the *Paris Principles*, the Commission's law should be amended to transfer the responsibility for a NHRAP to the Government, while retaining the HRC's responsibility to monitor the plan
- <sup>xix</sup> A/HRC/12/8 Page 19 Recommendation 48. *Raise the age of criminal responsibility so that it complies with relevant international standards (Czech Republic);*
- <sup>xx</sup> Human Rights Commission *Rights of Children and Young People: Human Rights in New Zealand 2010* (9 December 2010) at 247; *Committee on the Rights of the Child* CRC/C/SR.1588 and 1589 LVI (2011)
- <sup>xxi</sup> Committee on the Rights of the Child CRC/C/SR.1588 and 1589 LVI (2011)

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- xxii *Idem*
- xxiii Christopher Finlayson, above note vi
- xxiv Office of the High Commissioner for Human Rights General Comment No. 25: The Right to Participate In Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25) (12 July 1996)
- xxv *Budget 2018: Corrections gets boost to cope with fast-growing prison population* (17 May 2018)  
[https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12053110](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12053110)
- xxvi Office of the Prime Minister's Chief Science Advisor. *Using evidence to build a better justice system: The challenge of rising prison costs* (29 March 2018)  
<http://www.pmcsa.org.nz/wp-content/uploads/Using-evidence-to-build-a-better-justice-system.pdf>
- xxvii Ti Lamusse. *Solitary Confinement in New Zealand Prisons* (January 2018)  
<https://esra.nz/wp-content/uploads/2018/01/Solitary-Confinement-in-New-Zealand-Prisons.pdf>
- xxviii <https://fyi.org.nz/request/3699/response/12283/attach/3/Response%20C76660.pdf>
- xxix Ombudsman slams double-bunking at Arohata Upper Prison after torture inspection (22 March 2018)  
<https://www.stuff.co.nz/national/crime/102508043/ombudsman-slams-doublebunking-at-arohata-upper-prison-after-torture-inspection>
- xxx McIntosh, Tracey, and Kim Workman. "Māori and Prison." *The Palgrave Handbook of Australian and New Zealand Criminology, Crime and Justice*. Palgrave Macmillan, Cham, 2017. 725-735. [https://link-springer-com.ezproxy.auckland.ac.nz/content/pdf/10.1007%2F978-3-319-55747-2\\_48.pdf](https://link-springer-com.ezproxy.auckland.ac.nz/content/pdf/10.1007%2F978-3-319-55747-2_48.pdf)
- xxxi 2<sup>nd</sup> cycle Recommendation 132. *Consider relinquishing the use of electric Taser weapons by the police (Namibia)*
- xxxii In Queensland, 11 people died in pursuits in the decade to 2010. In New Zealand in just five years, from 2007-2011, 33 people died. Queensland moved this year to all but ban pursuits because of the unacceptable risk to public safety. Tasmania, which banned pursuits in 1999, says it has not resulted in any increase in road or other crimes, despite claims that "anarchy" would ensue.
- xxxiii *Human Rights Council* Response of the Government of New Zealand to Recommendations in the Report of 11 May 2009 of the Working Group on the Universal Periodic Review (A/HRC/12/8), A/HRC/12/8/Add.1 (2009) at [46]-[47]
- xxxiv 2<sup>nd</sup> cycle recommendation 155. *Ensure that its counter-terrorism legislation as well as the national designation for terrorist groups are in full compliance with the legal safeguards enshrined in the ICCPR (Iran (Islamic Republic of))*. See also 2<sup>nd</sup> cycle recommendation 154. *Ensure that the new legislation on surveillance of communications by the intelligence service complies with international law, particularly with the principle of proportionality (Switzerland)*
- xxxv NZBORA, above n 1, ss. 17 and 18
- xxxvi At s.1
- xxxvii Each of whom must fall within one or more of the following classes of persons (as listed in s 115(1)(a)-(f) of the Immigration Act). See Immigration Amendment Act 2013 s 5.
- xxxviii s.12
- xxxix *A v Australia* at [9.4]-[9.5]
- xl See Article 14 of the Universal Declaration of Human Rights and Article 31(2) of the Refugee Convention
- xli Also, limitations on visitation make it difficult for lawyers to access clients, for services such as Refugees as Survivors NZ (RASNZ), let alone other more informal networks of support such as community members.
- xlii This contributes enormously to further marginalisation and poorer mental health – in particular higher rates of suicidal intentions.
- xliii Under paragraph U10-special categories of the Immigration New Zealand Operation Manual,
- xliv *Immigration New Zealand Operational Manual*, above n 16, at [U10.1.1]

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- <sup>xlv</sup> NZ's third and fourth report to UNCRC at <http://www.msd.govt.nz/documents/what-we-can-do/children-and-young-people/uncroc-in-nz-3rd-and-4th-periodic-report-full-doc.pdf> especially para 1.6
- <sup>xlvi</sup> [http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.NZL.CO.3-4\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.NZL.CO.3-4_en.pdf) - see Para 8 and 9
- <sup>xlvii</sup> See *Out of the Frying Pan and into the Fire – Women's Experiences of the NZ Family Court*. Backbone Collective 2017, Figure 5 p.23<sup>1</sup>
- <sup>xlviii</sup> The CMG identified ten areas where improvements need to be made to enable implementation of the UNCROC.
- <sup>xliv</sup> The individual's right to privacy is a fundamental human right recognised in the United Nations International Covenant on Civil and Political Rights 1966 (Article 17); which the NZ Government ratified in 1978. The High Court has recently held that the tort of intrusion upon seclusion is a part of NZ law (*C v Holland* [2012] NZHC 2155).
- <sup>1</sup> 1<sup>st</sup> cycle recommendation 26 *Continue to take targeted action to eliminate the socio-economic disparities that persist among its population, including those affecting Māori, Pacific, Asian and other groups (Turkey)*
- <sup>li</sup> Office of the Children's Commissioner, Final Report: *Solutions to Child Poverty* on [http://www.occ.org.nz/publications/child\\_poverty](http://www.occ.org.nz/publications/child_poverty)
- <sup>lii</sup> Of the 193 United Nations member states, 153 are legally obliged to uphold the right to a healthy environment, whether through their constitution, constitutional case law, domestic legislation, regional treaties and/or regional court decisions. Another 25 UN member states have signed the non-binding Male Declaration, bringing to 92% the states that recognise the right to a healthy environment. Unfortunately, this does not include New Zealand.
- <sup>liii</sup> A/HRC/RES/5/1