



Peace Movement Aotearoa

PO Box 9314, Wellington 6141, Aotearoa New Zealand. Tel +64 4 382 8129
Email pma@xtra.co.nz Web site www.converge.org.nz/pma

NGO information for the Pre-Sessional Working Group of the Committee on Economic, Social and Cultural Rights

For consideration when compiling the List of Issues on the Third Periodic Report of New Zealand under the ICESCR

26 April 2011

Overview

1. This preliminary report provides an outline of some issues of concern with regard to the state party's compliance with the provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR, the Covenant). Its purpose is to assist the Committee on Economic, Social and Cultural Rights (the Committee) with its consideration of New Zealand's Third Periodic Report¹ (the Periodic Report) in this initial stage of the Pre-Sessional Working Group compiling the list of issues. There are four main sections:

A) Information on Peace Movement Aotearoa;

B) An overview of the situation in Aotearoa New Zealand:

- i)** developments since 2008,
- ii)** child poverty,
- iii)** justiciability of economic, social and cultural rights, and
- iv)** overall lack of protection for Covenant rights;

C) Indigenous peoples' rights:

- i)** Article 1, the right of self-determination,
- ii)** Articles 1, 2 and 15(1.a): the foreshore and seabed legislation,
- iii)** Articles 1 and 15(1.a): deep-sea drilling, and
- iv)** impact of New Zealand companies and government investments on indigenous communities in other parts of the world;

D) The Optional Protocol to the Covenant.

2. More detailed information will be provided on these and other issues in parallel reports from Peace Movement Aotearoa and other NGOs in advance of the Committee's consideration of the state party's Periodic Report next year.

3. We thank you for this opportunity to provide information to the Country Rapporteur and the Pre-Sessional Working Group compiling the list of issues on New Zealand.

A) Information on Peace Movement Aotearoa

4. Peace Movement Aotearoa is the national networking peace organisation, registered as an incorporated society in 1982. Our purpose is networking and providing information and resources on peace, social justice and human rights issues. Our membership and networks mainly comprise Pakeha (non-indigenous) organisations and individuals; and we currently have just under two thousand people (including representatives of eighty-three peace, social justice, church, community, and human rights organisations) on our national mailing list.
5. Promoting the realisation of human rights is an essential aspect of our work because of the crucial role this has in creating and maintaining peaceful societies. In the context of Aotearoa New Zealand, our main focus in this regard is on support for indigenous peoples' rights - in part as a matter of basic justice, as the rights of indigenous peoples are particularly vulnerable where they are outnumbered by a majority and often ill-informed non-indigenous population as in Aotearoa New Zealand, and because this is a crucial area where the performance of successive governments has been, and continues to be, particularly flawed. Thus the Treaty of Waitangi, domestic human rights legislation, and the international human rights treaties to which New Zealand is a state party, and the linkages among these, are important to our work; and any breach or violation of them is of particular concern to us.
6. We have previously provided NGO parallel reports to treaty monitoring bodies and Special Procedures as follows: to the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People in 2005²; to the Committee on the Elimination of Racial Discrimination in 2007³; jointly with the Aotearoa Indigenous Rights Trust and others, to the Human Rights Council for the Universal Periodic Review of New Zealand in 2008⁴ and 2009⁵; to the Human Rights Committee in 2009⁶ and 2010⁷; and to the Committee on the Rights of the Child in 2010⁸ and 2011⁹.
7. We are not in a position to send a representative to the Pre-Sessional Working Group, but are happy to clarify any information in this report if that would be helpful to the Committee.

B) An overview of the situation in Aotearoa New Zealand

(i) Developments since 2008

8. Following the change of government in late 2008, there have been a number of developments that are cause for considerable concern in relation to the state party's compliance with the Covenant. Rather than fulfilling its obligation to progressively realise Covenant rights, the state party has instead implemented a number of legislative and policy measures that have regressively eroded economic and social rights for a substantial proportion of the population.
9. In May 2010, the state party announced an increase in Goods and Services Tax (GST) from 12.5% to 15% as well as income tax cuts that primarily benefitted the better off sectors of society¹⁰. These changes took effect on 1 October 2010.

10. At the same time, the cost of basic necessities such as food, accommodation, electricity and fuel have been steadily rising:

“Prices of day-to-day food, groceries and accommodation are rising at almost their fastest rate in the past 20 years ... Statistics NZ will publish official Food Price Index figures on Friday, but our survey reveals the price rises are not just in food: petrol has gone up 17 per cent, cigarettes 24 per cent, and the skyrocketing cost of renting a house in Auckland has been front-page news. Yet statistics reveal wages and salaries increased only 1.7 per cent last year. And with unemployment also up, more people have to rely on a benefit to pay the bills.”¹¹

11. In an on-line poll associated with the article quoted above, 80% of respondents said that their income was not keeping up with their basic costs of living¹².

12. Earlier this month, the Council of Trade Unions pointed out that over the past year, prices increase included a 12.1% rise in the price of vegetables; an 8.8% increase in the price of milk, cheese and eggs; a 17.1% rise in the price of petrol; and a 6% price rise in the price of electricity. In the first quarter of this year alone, food prices rose by 1.2 percent, petrol by 9.7 percent, and other vehicle fuels (such as diesel) and lubricants by 13.7 percent.¹³

13. In addition, “early childhood education costs rose 11.7 percent in the year, fuelled by cuts in government funding rates, the largest rise ever recorded (the series began in December 1988). Tertiary education costs rose by 6.4 percent”.¹⁴

14. It should be noted that the level of social security payments - welfare benefits for the more than one million New Zealanders most in need - which are reviewed annually, rose by only 3.75% on 1 April 2011.¹⁵

15. Furthermore:

“There are thousands of workers and their families who have been struggling to make ends meet since the recession began three years ago ... The Government gave tax cuts to those on the highest incomes while putting up the tax on food and other essentials. This has made life even tougher for those on low incomes. Many are trying to get extra hours of paid work to help make ends meet while others are out of work, and many are resorting to foodbanks for support.

There were 158,000 people unemployed in December, another 110,000 jobless and on top of that, over 100,000 who wanted more work, making around 370,000 people needing jobs or more work. On top of that on 1 April workers’ right to a fair deal from their employers, including wage increases, was knocked by the government’s unfair changes to employment rights.”¹⁶

16. The changes to employment legislation, which came into effect on 1 April 2011, include weakened requirements on employers to follow proper processes when dismissing workers, a 90-day fire-at-will period when workers start a new job, and reduced rights for unions to access workplaces.¹⁷

17. As a consequence of the above, increasing numbers of people - in paid employment and on social security - are reliant on foodbanks for basic food necessities, and foodbanks around the country are reporting high increases in demand: for example, in Wellington one foodbank reported a 44% increase in the number of food parcels provided in the past three months¹⁸, and staff at two Rotorua foodbanks have reported they are providing triple the number of food parcels as they did three years ago¹⁹.

18. In response to a comment from the Prime Minister in February 2011 that “beneficiaries who resort to food banks do so out of their own “poor choices””, the Coalition to End Homelessness pointed out that it is in fact the restricted level of income for those reliant on social security that is the problem: ‘By the time they pay their rent, their power and their phone, they have \$24 a week for food and entertainment, and you can't live on that.’²⁰

19. In addition, there have been funding cuts to a wide range of public services and programmes, too numerous to detail here - for example, in education, including early childhood education (\$400 million²¹), adult education, and education for children with special needs; and in health, including services under the accident compensation scheme and family violence prevention programmes.

20. Finally in this section, in our comments on the state party’s draft Periodic Report, we pointed out that:

“While there are various facts and figures provided in relation to the various Covenant rights, they do not give a complete picture of the situation. For example, in the sections on the right to an adequate standard of living, to adequate food, and to adequate housing, there are no references to (for example) the level of demand for food banks, the level of fuel poverty due to high power prices, nor to the numbers of people living in overcrowded and sub-standard housing. In the section on the right to the highest attainable standard of physical and mental health, there is no reference to the ongoing problems with waiting lists, and the resulting delays in treatment which may have serious consequences for those reliant on public hospitals.”²²

21. We note that none of these were added to the Periodic Report before it was submitted to the Committee.

• **Questions for the list of issues:** We suggest the Committee seeks more information from the state party on its approach to economic and social rights since 2008; in particular, how it intends to ensure that there is no further regression in economic and social rights and that such rights are instead fully protected. In addition, a summary of all of the programmes where spending has been cut or reallocated would be useful for the Committee to gain an accurate picture of the current situation.

(ii) Child poverty

22. An estimated one in five children in Aotearoa New Zealand live in households with an income below the poverty line²³ - one third in a household with income from paid work, and two-thirds in households reliant on social security.²⁴ In 2009, the OECD reported that:

*"New Zealand government spending on children is considerably less than the OECD average. The biggest shortfall is for spending on young children, where New Zealand spends less than half the OECD average."*²⁵

23. New Zealand performed poorly in a number of indicators when ranked against the other OECD countries, for example, ranked 21st (out of 30) on material well-being for children, and 29th on health and safety.²⁶

- *Questions for the list of issues:* We suggest the Committee seeks more information from the state party about its efforts to reduce the level of child poverty since 2008, as well as an assessment of how the developments outlined in section B(i) above have impacted on children's enjoyment of Covenant rights.

(iii) Justiciability of economic, social and cultural rights

24. As noted by the Committee in 2003²⁷, economic, social and cultural rights are not generally justiciable in New Zealand which causes some difficulties in challenging the state party's lack of compliance with the Covenant. Legal challenges that are made with respect to violations of Covenant rights can take years to proceed and are opposed by the state party at each step along the way.

25. One example, related to child poverty, is the case brought by the Child Poverty Action Group²⁸ in 2004, regarding the discriminatory nature of the in-work tax credit (IWTC) - part of the Working for Families (WWF) package - which is available to working families but not to families on social security benefits. After four years of legal wrangling and attempts by government lawyers to stop the case²⁹, it was heard by the Human Rights Tribunal (HRT) in 2008. The HRT ruled that the IWTC package did constitute discrimination with significant disadvantage for the children concerned:

*"(192) We are satisfied that the WFF package as a whole, and the eligibility rules for the IWTC in particular, treats families in receipt of an income-tested benefit less favourably than it does families in work, and that as a result families that were and are dependent on the receipt of an income-tested benefit were and are disadvantaged in a real and substantive way." (Human Rights Tribunal, 2008)*³⁰

26. However, the HRT also found that the state party had proved this discrimination was justified; the Child Poverty Action Group has appealed this decision and the case will be heard in September 2011.

27. Another, but not the only, example of the lengthy process and opposition by the state party to court findings of discrimination in relation to economic and social rights, is a case brought five years ago by families contending that the Ministry of Health policy on care of persons with disabilities is discriminatory - parents caring for disabled adult children are not eligible for financial support, whereas carers not related to a person with disabilities are.

28. In January 2010, the Human Rights Tribunal ruled that the policy is discriminatory, and in response the state party appealed the decision in the High Court.³¹ In December 2010, the High Court ruled in favour of the families³², and in response, on 6 April 2011, the state party filed a notice of appeal against the High Court decision³³ - the appeal will be heard by the Court of Appeal at a date yet to be determined.

- ***Question for the list of issues:*** We suggest the Committee seeks more information from the state party on these, and other, cases brought against it in relation to its discriminatory practices around Covenant rights.

(iv) Overall lack of protection for Covenant rights

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

30. The state party's draft Periodic Report referred to this in relation to the Human Rights Act, part 1A³⁴, as follows:

"25. Where an enactment is found by the [Human Rights] Tribunal to breach part 1A, the remedy is a declaration of inconsistency. Other remedies are not available because BORA [Bill of Rights Act] is not supreme law and can be overridden by statute. Where a statutory regulation is found to be in breach of the Bill of Rights Act, the Tribunal can refer it to the High Court for a ruling that the regulation was invalidly made.

26. ... While a declaration will not affect the validity of the enactment or prevent the continuation of the action prompting the complaint, it requires the responsible Minister to table the declaration in the House of Representatives along with a report setting out the government's response."³⁵

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

"Under New Zealand's present constitutional structure, it remains open to Parliament to legislate contrary to the Bill of Rights Act and the other legislative protections set out above and so to the Covenant [International Covenant on Civil and Political Rights]. "³⁶

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

"7. The Committee reiterates its concern that the Bill of Rights Act 1990 (BORA) does not reflect all Covenant rights. It also remains concerned that the Bill of Rights does

not take precedence over ordinary law, despite the 2002 recommendation of the Committee in this regard. Furthermore, it remains concerned that laws adversely affecting the protection of human rights have been enacted in the State party, notwithstanding that they have been acknowledged by the Attorney-General as being inconsistent with the BORA. (art. 2).

*The State party should enact legislation giving full effect to all Covenant rights and provide victims with access to effective remedies within the domestic legal system. It should also strengthen the current mechanisms to ensure compatibility of domestic law with the Covenant.*³⁷

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

34. In any event, because parliament is able to enact legislation that violates even those rights which are included in the Bill of Rights Act, this means that there is essentially no possibility of effective remedy for any violation of human rights by the state party as required under the Covenant.³⁸

• ***Question for the list of issues:*** We suggest the Committee seeks more information from the state party on the lack of constitutional protection for Covenant rights and the lack of effective remedies for violations of such rights arising from Acts of Parliament and actions of the Executive.

C) Indigenous peoples' rights

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

36. There has been a persistent pattern of government actions, policies and practices which discriminate against Maori (collectively and individually), both historically and in the present day. This has resulted in a situation, as described by the Special Rapporteur on the Rights of Indigenous Peoples on his recent visit, for example, as: “the extreme disadvantage in the social and economic conditions of Maori people in comparison to the rest of New Zealand society” ... “which manifests itself across a range of indicators, including education, health, and income”.³⁹

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

37. Underlying this persistent pattern of discrimination has been the denial of the inherent and inalienable right of self-determination - the self-determination that was exercised by hapu and iwi Maori prior to the arrival of non-Maori; which was proclaimed internationally in the 1835 Declaration of Independence; the continuance of which was guaranteed in the

1840 Treaty of Waitangi; and, in more recent years, was confirmed as a right for all peoples, particularly in the shared Article 1 of the two international human rights Covenants and in the UN Declaration on the Rights of Indigenous Peoples.

38. Yet the state party does not refer to Maori in the section on Article 1 in its Periodic Report⁴⁰. In our comments on the draft Periodic Report, we remarked on this as follows:

"We find it extraordinary that there is no reference in this section to the right of self-determination of hapu and iwi Maori. As you will be aware, by virtue of this right they are entitled to freely determine their political status and to freely pursue their economic, social and cultural development - thus this clearly falls within the scope of the state party obligations the Committee will consider.

If, as can be assumed from the government's approach to the Declaration (referred to above)⁴¹, as well as their behaviour and public comments in relation to Maori in other arenas, the government does not recognise this right as applying to Maori, then a statement to that effect should be included in the Periodic Report. It would be useful for that to be accompanied by an explanation for this position, which is clearly incompatible with both human rights Covenants and other human rights instruments.

In addition, an explanation to the Committee as to why the government does not honour the Treaty of Waitangi with regard in particular to the guarantee of the continuance of tino rangatiratanga, which can be seen as somewhat analogous to the right of self-determination, would assist with fully informing Committee members of the government's position on indigenous peoples' rights."⁴²

39. There is a clear link between the denial of the right of self-determination to Maori, both historically and in the present day, and the extreme disadvantage in the social and economic conditions of Maori people in comparison to the rest of New Zealand society referred to above.

• ***Question for the list of issues:*** We suggest the Committee seeks an explanation from the state party as to why hapu and iwi Maori are not included in the section on Article 1 in the Periodic Report.

(ii) Articles 1, 2 and 15(1.a) : the foreshore and seabed legislation

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

41. The clearest example of this in recent times is the state party's enactment of the Foreshore and Seabed Act (the Act) in 2004 in response to the 2003 Court of Appeal ruling in *Ngati Apa et al* - the Act vested ownership of the "public" foreshore and seabed in the Crown, thereby extinguishing any Maori title and property rights, while private fee simple

title over foreshore and seabed areas remained unaffected. The discriminatory aspects of the Act have been outlined by, among others, the Committee on the Elimination of Racial Discrimination in 2005⁴³ and again in 2007⁴⁴, by the UN Human Rights Committee in 2010⁴⁵, and by the UN Special Rapporteur on the Rights of Indigenous Peoples in 2006⁴⁶ and 2010⁴⁷.

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

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

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

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

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

47. Of the 72 submissions to the Select Committee considering the Bill that came from marae, hapu, iwi and other Maori organisations, only one supported the Bill.⁴⁸ In addition, the Hokotehi Moriori Trust, on behalf of the Moriori people of Rekohu (Chatham Islands), supported the Bill only in so far as it repealed the Foreshore and Seabed Act and removed the Te Whaanga lagoon from the common coastal marine area. Regardless, the Bill was enacted on 24 March 2011.

• ***Question for the list of issues:*** We suggest the Committee ask the state party to explain what impact such discriminatory legislation will have on the economic, social and cultural rights of Maori; and how it meets the requirement on state parties to the Covenant to respect and protect "indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature", to "take measures to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources" and to "respect the principle of free, prior and informed consent of indigenous peoples in all matters covered by their specific rights".⁴⁹

(iii) Articles 1 and 15(1.a): deep-sea drilling

48. Another current example of state party breaches of both Article 1 and Article 15(1.a) relates to the state party awarding the Brazilian oil company Petrobras a five-year exploration permit for oil and gas in the Raukumara Basin in June 2010. The Raukumara Basin is a marine plain that extends 4 and 110 kilometres to the north-northeast of the East Coast of the North Island, located between the volcanically active Havre Trough to the west and the active boundary of the Pacific and Australian tectonic plates to the east. The permit covers 12,330 square kilometres.

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

50. Local iwi, Te Whanau a Apanui and Ngati Porou, did not give their consent to the exploration permit being issued or to the seismic survey⁵⁰ which they are strongly opposed to:

“This activity is being permitted in the rohe of Te Whanau a Apanui and Ngati Porou:

- a. Without our agreement or consent,*
- b. In the face of strong opposition,*
- c. Contrary to the acknowledged mana of our hapu,*
- d. Contrary to agreements either entered into or being concluded with the Crown,*
- e. Without assurances regarding environmental standards and protection,*
- f. In breach of the Treaty of Waitangi, and the Declaration of the Rights of Indigenous Peoples, and*
- g. Which detrimentally affects the lives, livelihoods and survival of the communities of Te Whanau a Apanui and Ngati Porou.”⁵¹*

51. The permit includes permission for Petrobras to drill an exploratory well and the local iwi are also strongly opposed to the possibility of an exploration well being drilled off their coast. The Deepwater Horizon oil and gas spill in the Gulf of Mexico last year - which has threatened the economic and cultural survival of local indigenous communities⁵² - was from an exploratory well at a depth of 1500 metres, whereas the proposed depth for drilling an exploratory well in the Raukumara Basin ranges from 1500 to 3000 metres. In addition, the Raukumara Basin sits on a major and active fault line, and there are frequent earthquakes in the area. It is therefore a particularly hazardous area to undertake any drilling activities in.

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

withdrew the exclusion orders that police officers, assisted by the navy, issued to boats in the vicinity of the Orient Explorer the previous week.

- ***Question for the list of issues:*** We suggest the Committee ask the state party for further information about the Petrobras exploration permit; and why the right of self-determination along with other economic, social and cultural rights of Te Whanau a Apanui and Ngati Porou have not been respected.

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

53. There are two further areas of concern that the Committee may wish to explore with the state party - the impact of New Zealand companies and of government investments. With regard to the first, so far as we are aware, the state party makes no attempt to assess the impact of New Zealand companies on indigenous communities overseas, nor are their overseas activities regulated in this regard.

54. One example of such a company is Rubicon, a “NZ-headquartered company”⁵³ forestry company. Rubicon was formed out of the separation of the Fletcher Challenge Group in 2001 - a Group that includes Fletcher Challenge Forests, extensively involved in pine plantations on Mapuche lands in Southern Chile during the 1980s and 1990s.

55. Of particular concern is Rubicon's one-third ownership (with International Paper and MeadWestvaco) of ArborGen, “the world's leading forestry biotechnology joint venture”⁵⁴, also known as the world's largest genetically modified tree company. They are involved, among other things, in eucalyptus trials in Brazil for the pulp and paper industry⁵⁵:

“According to Rubicon CEO Luke Moriarity, Brazil is ArborGen's "most important geography". ArborGen is working on "improved pulping" (i.e. low-lignin) Eucalyptus in Brazil they believe will be highly profitable since they are cheaper to turn into paper. (Moriarty, L. 2005)”.⁵⁶

56. Last year, ArborGen stated: “we have over 150 active field tests for biotechnology products and the largest number of regulatory approvals for field tests of biotechnology forestry products in the US and Brazil.”⁵⁷

57. As the Committee will be aware from the NGO parallel reports provided to assist with its consideration of Brazil's state party report in 2009, eucalyptus and other industrial tree plantations have had a devastating impact on indigenous peoples in Brazil (and elsewhere) in terms of loss of land, social and economic stress, loss of biological diversity, environmental degradation, pollution and drying up of waterways, human rights abuses against protesting communities, and so on.

58. Camila Moreno, an attorney and Global Justice Ecology Project staff consultant in Brazil, stated in 2009:

"In Brazil, eucalyptus plantations are known as 'green deserts' because they do not allow anything else to live" ... No understory plants, no wildlife, no communities - only eucalyptus trees can survive there. They are a disaster for Brazil, which is why there exists a large social movement against eucalyptus in Brazil and many hectares of plantations have been destroyed by communities".⁵⁸

59. With regard to the impact of government investments on indigenous communities in other parts of the world, one example is the operation of the New Zealand Superannuation Fund⁵⁹ (the Fund). It is an investment fund that was established under the Superannuation and Retirement Income Act 2001 to accumulate and invest government contributions to partially provide for the future cost of superannuation.

60. The Fund began investing in 2003, and its latest published equity portfolio, June 2010⁶⁰, includes many overseas corporations that have well-documented records in human rights and other abuses of indigenous peoples. To provide just four examples:

a) Exxon Mobil Corp: investment of \$25,335,737 as at June 2010. Issues with its operations include complicity in human rights violations at its liquid natural gas plant in Aceh⁶¹, destruction of land and livelihoods in Chad⁶², and its LPG pipeline project in Papua New Guinea which has been associated with negative environmental and social impacts including deforestation, marine and vegetation ecosystem damage, civil unrest about revenue and land owner rights, and health risks to indigenous communities.⁶³

b) Chevron Corp: investment of \$14,375,000. Issues with its operations include its attempts to evade responsibility for gross contamination in north-eastern Ecuador, including the intentional dumping of more than 19 billion gallons of toxic wastewater and 16.8 million gallons of crude oil spilt from the main pipeline into the forest, which had a devastating impact on indigenous communities there, as well as collusion with the Ecuadorian military to conceal evidence.⁶⁴ This resulted in a recent court decision against Chevron with a substantial amount of damages awarded to the indigenous plaintiffs.⁶⁵

c) Freeport McMoRan and Rio Tinto: investment of \$1,363,461 in Freeport McMoRan, plus an investment of \$7,822,633 in the Rio Tinto Group (\$3,472,462 in Rio Tinto Plc, Britain, and \$4,350,171 in Rio Tinto Ltd, Australia). Rio Tinto has a 40 per cent joint venture interest in the Freeport McMoRan Grasberg mine in West Papua.⁶⁶ Freeport "has an unparalleled record of human rights and environmental abuse" in relation to that mine⁶⁷ - it has created a 230 square kilometre barren wasteland of dumped mine tailings,⁶⁸ and the destruction of the local environment is visible from space.⁶⁹ The impact of the mine is particularly devastating for the indigenous Amungme and Kamoro people who have lost the traditional lands and aquatic resources that they rely on for survival, as well as being forcibly displaced from their homes and villages.⁷⁰ The Norwegian Pension Fund excluded Freeport (in February 2006)⁷¹, Rio Tinto Plc and Rio Tinto Ltd (in September 2008)⁷² from its investment portfolio because of concerns about the severe environmental impact of the Grasberg mine.

In 2005, the New York Times revealed that from 1998 through to 2004, Freeport gave Indonesian "military and police generals, colonels, majors and captains, and military units, nearly \$20 million (US). Individual commanders received tens of thousands of dollars, in

one case up to \$150,000, according to the documents.⁷³ That included payments to the Mobile Brigade, which has been associated with "numerous serious human rights violations, including extrajudicial killings, torture, rape, and arbitrary detention".⁷⁴

d) Barrick Gold: investment of \$2,396,257. Issues with its activities include serious human rights abuses and environmental degradation in, for example, Papua New Guinea⁷⁵. The Norwegian Fund excluded Barrick Gold from its investment portfolio in January 2009 because of concerns about the severe environmental impact of its activities in Papua New Guinea⁷⁶. Placer Dome (now owned by Barrick Gold) was one of the companies named in the information provided by the Western Shoshone under CERD's Early Warning and Urgent Action Procedure⁷⁷, and legal action has been underway since 2008 to prevent Barrick Gold mining activities in Western Shoshone territory.⁷⁸

- **Question for the list of issues:** We suggest the Committee seeks more information from the state party about the impact of the activities of New Zealand companies, and of government investments, on the enjoyment of Covenant rights by indigenous communities in other parts of the world; and what measures it has in place to minimise such impacts.

D) The Optional Protocol to the Covenant

61. In our comments on the state party's draft Periodic Report, we stated that it would be useful for the Periodic Report to provide some indication of the government's position on the Optional Protocol, but we note that this has not been included.

- **Question for the list of issues:** We suggest the Committee ask the state party to clarify its position on the Optional Protocol.

References

¹ Third periodic report submitted by states parties under articles 16 and 17 of the Covenant: New Zealand, 17 January 2011 (submitted April 2009), E/C.12/NZL/3

² 'Submission to the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People', 23 November 2005, at

<http://www.converge.org.nz/pma/CERD71-PMA1.pdf>

³ 'NGO Report to the Committee on the Elimination of Racial Discrimination', Peace Movement Aotearoa, 21 May 2007: Report at <http://www.converge.org.nz/pma/CERD71-PMA.pdf> - Annex 1 at <http://www.converge.org.nz/pma/CERD71-PMA1.pdf> - Annex 2 at <http://www.converge.org.nz/pma/CERD71-PMA2.pdf> and - Annex 3 at <http://www.converge.org.nz/pma/CERD71-PMA3.pdf>

⁴ 'Joint submission to the Universal Periodic Review of New Zealand: Indigenous Peoples' Rights and the Treaty of Waitangi', coordinated by Aotearoa Indigenous Rights Trust and Peace Movement Aotearoa, November 2008, at <http://www.converge.org.nz/pma/towupr09.pdf> Annex A at <http://www.converge.org.nz/pma/towupr09a.pdf>

⁵ Oral interventions and written statements made during 2009 are available at
<http://www.converge.org.nz/pma/nzupr09r.htm>

⁶ 'NGO information to the Human Rights Committee: For consideration when compiling the List of Issues on the Fifth Periodic Report of New Zealand under the International Covenant on Civil and Political Rights', 8 June 2009, at <http://www.converge.org.nz/pma/ccpr-pma09.pdf>

⁷ ‘Additional NGO information to the Human Rights Committee’, 5 March 2010, at <http://www.converge.org.nz/pma/ccpr-pma10.pdf>

⁸ ‘NGO information to the Committee on the Rights of the Child: Third and Fourth Periodic Reports of New Zealand under the Convention on the Rights of the Child and the Optional Protocol on the Involvement of Children in Armed Conflict’, August 2010, at <http://www.converge.org.nz/pma/pma-crc0810.pdf> and ‘NGO briefing to the Committee on the Rights of the Child’, October 2010, at <http://www.converge.org.nz/pma/pma-crc1010.pdf>

⁹ ‘NGO update to the Committee on the Rights of the Child’, January 2011, at <http://www.converge.org.nz/pma/pma-crc0111.pdf>

¹⁰ “Higher income earners get the biggest gain from these income tax cuts”, in Fact sheet - Personal tax cuts, New Zealand government, 20 May 2010, at <http://www.beehive.govt.nz/release/fact-sheet-personal-tax-cuts>

¹¹ ‘Cost of living spirals up’, New Zealand Herald, 6 March 2011, at http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10710467

¹² As at note above

¹³ As at note above

¹⁴ ‘Necessities and the government push up cost of living’, Council of Trade Unions, 18 April 2011, at <http://union.org.nz/news/2011/necessities-and-government-push-cost-living>

¹⁵ ‘Benefits, Superannuation increase from tomorrow’, New Zealand government, 31 March 2011, at <http://www.beehive.govt.nz/release/benefits-superannuation-increase-tomorrow>

¹⁶ ‘High price increases another blow for workers’, Council of Trade Unions, 18 April 2011, at <http://union.org.nz/news/2011/high-price-increases-another-blow-workers>

¹⁷ Fairness at work, Council of Trade Unions, at <http://fairness.org.nz/home>

¹⁸ ‘Food bank with no food’, One News, 21 April 2011, at <http://tvnz.co.nz/national-news/food-bank-no-4136586>

¹⁹ ‘Rotorua families turning to foodbank’, Daily Post, 27 March 2011, at

<http://www.rotoruadailypost.co.nz/local/news/rotorua-families-turning-to-foodbank/3945960>

²⁰ ‘Key ‘disconnected’ from average Kiwis - homeless coalition’, New Zealand Herald and NZPA, 17 February 2011, at http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10706938

²¹ See, for example, ‘Parents put heat on Govt over preschool cuts’, New Zealand Herald, 12 August 2010, at http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10665463

‘Early-childhood funding cuts miss point’, New Zealand Herald, 23 August 2010, at

http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10668107 and ‘Parents face \$80 a week fees shock’, New Zealand Herald, 1 December 2010, at

http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10691167

²² Feedback on the draft Third Periodic Report of New Zealand under the International Covenant on Economic, Social and Cultural Rights, Peace Movement Aotearoa, 7 October 2008, p 2

²³ See, for example, Concluding Observations: New Zealand, Committee on the Rights of the Child, February 2011, CRC/C/NZL/CO/3-4, para 42

²⁴ ‘Poverty, benefits and welfare reform: the position of children’, Dr John Angus, Office of the Children’s Commissioner, 25 March 2011, at

http://www.occ.org.nz/_data/assets/pdf_file/0017/8162/CC_KidsCanSchoolsConf_25032011.pdf

²⁵ *Doing Better for Children*, OECD, 2009, Country Highlights, New Zealand

²⁶ *Doing Better for Children*, OECD, 2009, Chapter 2: Comparative child well-being across the OECD

²⁷ Concluding Observations of the Committee on Economic, Social and Cultural Rights: New Zealand, 26 June 2003, E/C.12/1/Add.88

²⁸ <http://www.cpag.org.nz>

²⁹ See, for example, ‘Families assistance package on trial’, The Dominion Post, 2 June 2008, at <http://www.stuff.co.nz/dominion-post/469886>

³⁰ Quoted in ‘Our complicated tax credit system’, Susan St John, Child Poverty Action Group, at <http://www.cpag.org.nz/resources/current-articles/punitive-policies-hurting-families> For further information on income tax issues that directly impact on the enjoyment of Covenant rights by children, see ‘Level of inequality just not acceptable’, Susan St John, 29 January 2010, at http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10622873

³¹ See, for example, ‘Crown to appeal decision that carer parents should be paid’, New Zealand Herald, 22 January 2010, at http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10621674

³² See, for example, ‘Appeal on caregiver ruling disappoints commissioner’, NZPA, 23 December 2010, at http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10696187

³³ See, for example, ‘Families of disabled face MOH court action’, NZPA, 21 April 2011, at <http://www.stuff.co.nz/national/health/4915045/Families-of-disabled-face-MOH-court-action>

³⁴ For a description of part 1A, see Third periodic report submitted by States parties under articles 16 and 17 of the Covenant: New Zealand, para 32

³⁵ Draft Third Periodic Report of New Zealand under the International Covenant on Economic, Social and Cultural Rights, September 2008

³⁶ Replies to the List of Issues to be taken up in connection with the consideration of the Fifth Periodic Report of New Zealand, CCPR/C/NZL/Q/5/Add.1, 5 January 2010, p 3

³⁷ Concluding observations of the Human Rights Committee: New Zealand, 7 April 2010, CCPR/C/NZL/CO/5

³⁸ General Comment 9: The domestic application of the Covenant, Committee on Economic, Social and Cultural Rights, 12 March 1998, E/C.12/1998/24

³⁹ Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, Addendum: ‘The situation of Maori People in New Zealand’, 17 February 2011, para 57

⁴⁰ As at note above, para 28

⁴¹ At the time the draft Report was written, the state party remained steadfast in its opposition to the UN Declaration on the Rights of Indigenous Peoples, a position subsequently modified.

⁴² Feedback on the draft Third Periodic Report of New Zealand, p 3

⁴³ Decision 1 (66): New Zealand, Committee on the Elimination of Racial Discrimination, 11 March 2005, CERD/C/DEC/NZL/1

⁴⁴ Concluding Observations of the Committee on the Elimination of Racial Discrimination: New Zealand, 15 August 2007, CERD/C/NZL/CO/17

⁴⁵ Concluding Observations of the Human Rights Committee: New Zealand, 25 March 2010, CCPR/C/NZL/CO/5

⁴⁶ Report of Rodolfo Stavenhagen, the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: ‘Mission to New Zealand’, 13 March 2006, E/CN.4/2006/78/Add.3

⁴⁷ Report of the Special Rapporteur on the Rights of Indigenous Peoples, as at note 39 above

⁴⁸ Summary of Maori submissions on the Marine and Coastal (Takutai Moana) Bill 2010, Kaitiaki o te Takutai, 22 February 2011, at <http://www.converge.org.nz/pma/fs220211.pdf>

⁴⁹ General comment No. 21: Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), Committee on Economic, Social and Cultural Rights, 21 December 2009, paras 36 and 37

⁵⁰ See, for example, ‘Uphill battle against oil deal’, The Gisborne Herald, 18 June 2010, at <http://www.gisborneherald.co.nz/article/?id=17858> ‘Claim that drilling breaches Treaty’, The Gisborne Herald, 28 June 2010, at <http://www.gisborneherald.co.nz/article/?id=18074> ‘Ngati Porou miffed at back door oil deal’, Waatea News, 14 April 2011 at <http://www.waatea603am.co.nz/News/2011/April/Ngati-Porou-miffed-at-back-door-oil/default.aspx> and ‘Petrobras spill attitude concerns Horomia’, Waatea news, 15 April 2011, at <http://www.waatea603am.co.nz/News/2011/April/Petrobras-spill-attitude-concerns-H/default.aspx>

⁵¹ Presentation to Petrobras, Te Whanau a Apanui, 7 December 2010, at <http://www.octoberlaw.maori.nz/resources/Te%20Whanau%20a%20Apanui%20Presentation%20to%20Petrobras.pdf>

⁵² See, for example, ‘Gulf oil spill could push Pointe-au-Chien Indian tribe to the point of no return’, Washington Post, 5 June 2010, at <http://www.ienearth.org/news/Gulf-oil-spill-could-push-Pointe-au-Chien-Indian-tribe-to-the-point-of-no-return.html> and ‘Gulf Coast American Indian Tribes Host Leaders of Ecuador’s Indigenous Communities Devastated by Chevron Oil Contamination’, Rainforest Action Network and Amazon Watch, 25 June 2010, at <http://ran.org/content/gulf-coast-american-indian-tribes-host-leaders-ecuador%20indigenous-communities-devastated-c#ixzz1Kg0XMfS1>

⁵³ <http://www.rubicon-nz.com>

⁵⁴ As at note above

⁵⁵ Rubicon's activities in Brazil are outlined in 'Rubicon 2006 Review' (25 August 2006), at <http://www.scoop.co.nz/stories/BU0608/S00439.htm>

⁵⁶ Carman, N., Langelle, O., Perry, A., Petermann, A., Smith, D., JD, and Tokar, B (2006) Ecological and Social Impacts of Fast Growing Timber Plantations and Genetically Engineered Trees, at <http://www.forestethics.org/downloads/GETreereport.pdf>

⁵⁷ ‘Rubicon’s ArborGen plans US IPO’, NZPA, 4 October 2010, at

<http://www.stuff.co.nz/business/industries/4194462/Rubicons-ArborGen-plans-US-IPO>

⁵⁸ ‘Genetic Eucalyptus Trees Threaten Southern US’, Global Justice Ecology Project, 25 June 2009, at <http://www.towardfreedom.com/environment/1610-genetic-eucalyptus-trees-threaten-southern-us>

⁵⁹ <http://www.nzsuperfund.co.nz>

⁶⁰ <http://www.nzsuperfund.co.nz/files/FINAL%202010%20equity%20list.pdf>

⁶¹ See, for example - ‘Acehnese win right to sue Exxon Mobil’, 29 August 2008 at <http://www.abc.net.au/ra/programguide/stories/200808/s2350596.htm> ‘Exxon Human Rights abuse in Aceh’, 3 September 2008 at http://www.business-humanrights.org/Links/Repository/179048/link_page_view and ‘A Matter of Complicity? Exxon Mobil on Trial for its Human Rights Violations in Aceh’, 27 October 2008 at <http://www.ictj.org/en/news/features/2080.html>

⁶² See, for example, ‘US: World Bank raps Exxon over Chad’, 22 March 2007 at <http://www.corpwatch.org/article.php?id=14430>

⁶³ Pacific Environment’s Fact Sheet on Exxon Mobil’s Papua New Guinea LNG Project, 8 October 2010, at <http://lwgwatchpng.blogspot.com/2010/10/pacific-environments-fact-sheet-on.html>

⁶⁴ See, for example, ‘Chevron (CVX) in the Amazon – Oil Rights or Human Rights? Texaco’s legacy, Chevron’s responsibility’, Amnesty International USA, at <http://www.amnestyusa.org/business-and-human-rights/extractive/chevron-corp/page.do?id=1101670> and ‘Understanding recent developments in the landmark Chevron-Ecuador case’, Amazon Watch, Winter 2011, at <http://amazonwatch.org/assets/files/Chevron-Ecuador-Briefing-Winter-2011.pdf>

⁶⁵ See, for example, ‘Chevron Found Guilty In Landmark Trial; Plaintiffs Respond’, Amazon Watch, 15 February 2011, at http://indigenouspeoplesissues.com/index.php?option=com_content&view=article&id=8968:ecuador-chevron-found-guilty-in-landmark-trial-plaintiffs-respond&catid=53:south-america-indigenous-peoples&Itemid=75 and ‘Miami Herald Catches Chevron In Lie About Ecuador Well Site - Reporter Finds Oil Sludge In “Remediated” Pit’, Amazon Defense Coalition, 19 April 2011, at http://indigenouspeoplesissues.com/index.php?option=com_content&view=article&id=9950:ecuador-miami-herald-catches-chevron-in-lie-about-ecuador-well-site-reporter-finds-oil-sludge-in-remediated-pit&catid=53:south-america-indigenous-peoples&Itemid=75

⁶⁶ ‘Economic prosperity’, Rio Tinto 2010 Annual Report, at http://www.riotinto.com/annualreport2010/performance/economic_prosperity.html

⁶⁷ Letter to the NZ Super Fund re Freeport, Indonesia Human Rights Committee, 1 December 2006 at <http://www.converge.org.nz/pma/wp011206a.htm>

⁶⁸ As at note above

⁶⁹ See for example, ‘Freeport mine destruction ‘terrible’ sight from space’, 19 August 2006 at http://www.tewahanui.info/news/190806_wpFreeport.shtml

⁷⁰ As at note above

⁷¹ The Recommendation on the exclusion of Freeport McMoRan is at http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ethics_council/Recommendations/Recommendations/Recommendation-of-February-15-2006-on-ex.html?id=458186

⁷² The Recommendation on the exclusion of Rio Tinto Plc and Rio Tinto Ltd is at http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ethics_council/Recommendations/Recommendations/recommendation-of-february-15-2008-on-ex.html?id=526052

⁷³ ‘The Cost of Gold: The Hidden Payroll’, Jane Perlez and Raymond Bonner, 27 December 2005 at <http://www.corpwatch.org/article.php?id=12985>

⁷⁴ As at note above

⁷⁵ See, for example - ‘Placer Dome Admits to Killings at Porgera Mine in Papua New Guinea’, 8 April 2006 at http://www.miningwatch.ca/index.php?/Placer_Dome/Porgera_killings ‘Indigenous Leaders from Papua New Guinea, Chile Raise Serious Human Rights and Environmental Concerns Around Barrick Gold Operations’, 6 May 2009 at

http://www.miningwatch.ca/index.php?/porgera/tulin_campusano_parl ‘Mining Watch Appeals to UN over Human Rights Abuses Related to Barrick Mine in Papua New Guinea’, 8 May 2009 at http://www.miningwatch.ca/index.php?/porgera/porgera_urgent_appeal_to_un and ‘Barrick’s Dirty Secret: Testimony from Papua New Guinea’, August 2006, at

<http://s3.amazonaws.com/corpwatch.org/downloads/PNGtestimonies.pdf>

⁷⁶ The Recommendation on the exclusion of Barrick Gold is at

http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ethics_council/Recommendations/Recommendations/recommendation-of-august-14-2008-on-excl.html?id=543200

⁷⁷ Resulting in CERD/CUSA/DEC/1 Early Warning and Urgent Action Procedure Decision 1 (68): United States of America, 11 April 2006.

⁷⁸ See, for example, ‘Legal Action Against Barrick Gold in Nevada’, 2 January 2009 at http://www.miningwatch.ca/index.php?/Barrick/Shoshone_legal_action ‘Case profile: Barrick Gold lawsuit (re Western Shoshone tribes, USA)’, Business and Human Rights Resource Centre, 2008 - 2011, at http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/Barrick_GoldlawsuitreWesternShoshonatribesUSA and ‘Groups file motion for mine shutdown’, Elko Daily Free Press, 5 February 2010, at http://elkodaily.com/news/local/article_2bf6d945-3e05-5b28-b723-cf258aa76360.html