

## End of Mission Statement

### Visit of the Special Rapporteur on the right to adequate housing to New Zealand

Leilani Farha

Wellington, 19 February 2020

#### Introduction

*“We are a people in our own land, having to look for somewhere to stay. It’s as though they pulled us from the roots of our whenua and plonked us in town, upside down. People, children, feet in the air. Who am I? Where am I from? Mental health, suicide. Assimilation doesn’t work for indigenous people. They’re taking lives. We’re not living the life we were created for.”*

Resident of Kaitaia, February 2020

1. Any attempt to understand whether the right to housing is enjoyed in Aotearoa New Zealand and whether governments are meeting their human rights obligations in this regard, requires recognition and understanding of the Treaty of Waitangi (Te Tiriti o Waitangi) as a source of rights and expectations for all New Zealanders.
2. It necessitates an exploration of New Zealand’s ongoing history of colonization, land dispossession, forced assimilation, and racism and the contemporary consequences of these forces on and for Māori. It also requires the development of an understanding of how these inform and shape a wider range of contemporary dynamics across New Zealand society tied up in issues of cross- and bi-cultural exchange, or in the division of labour in the economic system and of authority in public governance, for example.
3. Throughout my visit, I heard beautiful articulations by Māori of their deep physical and spiritual connection to their lands as home. I learned of their ongoing state of homelessness that is integrally linked to the existential and actual disruption of this connection as a result of colonial governance.
4. This is a dark shadow that hangs over the country – a shadow which I consider mostly shared between Māori and non-Māori which cannot be lifted without a significant shift in relations between the Crown and Māori. Such a shift may already be underway, but it must be led by Māori in accordance with the principle of free, prior, informed consent as a baseline, and it must be rooted in kaupapa Māori and Māori understandings and interpretations of Te Tiriti.
5. I believe that the current government in Aotearoa New Zealand is taking steps in this direction. Given that the Māori language and Māori principles are finding their way into housing policies and programmes, coupled with the assurances I received during my visit, it seems to me that the central government understands that Te Tiriti should form the basis of any housing related policy or program.

6. Many of these policies and the commitment of resources to support them are in their initial stages – how they are implemented will be determinative of whether the Crown is ready to cede power, resources, and leadership to Māori, allowing for their true self-determination.

### **Positive Steps Toward the Progressive Realization of the Right to Housing**

7. I was warmly welcomed by government officials, residents, researchers and civil society organizations who were generous in their sharing of information and are clearly concerned with the housing crisis in Aotearoa New Zealand. I had the pleasure to visit Auckland, Christchurch, Kaitia and Wellington. What follows are my preliminary observations and recommendations. A more comprehensive report will be presented to the Human Rights Council in early 2021.

8. The Government of Aotearoa New Zealand has recognized that there is a housing and homelessness crisis in the country and is actively engaging with civil society, experts, community housing providers, homeowners, tenants and Māori to address this crisis. Several positive steps include:

- The recent announcement of the [Aotearoa New Zealand Homeless Action Plan 2020-2023](#).
- The planned [reform of the Residential Tenancies Act](#) that aims to increase security of tenure for people in rental accommodation.
- The phasing in of [Healthy Homes Standards](#), targeting the approximate 200,000 rental households living in unhealthy or substandard accommodations.
- The development of Kāinga Ora's Accessibility Policy, which has committed to ensuring that at least 15% of new houses meet universal design standards, and that the rest meet as many universal design standards as possible.

9. I recognise that many of these Government initiatives may not be perfect and may ultimately be insufficient in ensuring the right to housing is enjoyed and respected by all in Aotearoa New Zealand. However, they represent important measures in the right direction, and I want to commend the Government of Aotearoa New Zealand for taking the courage to begin to address the homelessness and housing crisis. From my interactions with many stakeholders in this country, it is clear that ending homelessness and resolving the housing crisis is a commitment that is less about the government of the day, and more about the health of the nation. This must remain a priority regardless of political agendas.

10. In addition to these Government initiatives, the Waitangi Tribunal's<sup>1</sup> housing and social policy inquiry will hear claims and grievances on behalf of various whānau, hapū and iwi from across the nation. Māori face a much higher risk of living in inadequate housing or homelessness than many others and continue to experience the long term-impact of forced displacement leading to social and community

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<sup>1</sup> Set up by the Waitangi Act 1975, the Waitangi Tribunal is a permanent commission of inquiry that makes recommendations on claims brought by Māori relating Crown actions, which breach the promises made in the treaty of Waitangi.

disintegration. I welcome the Tribunal's inquiry as an opportunity to ensure justice, restoration and compensation for past and ongoing injustices under the Treaty.

### **The Housing Crisis is a Human Rights Crisis**

11. As noted, it is widely recognized including within government that there is a housing crisis in New Zealand and that it is being experienced most acutely by particular groups including: Māori, Pacific Peoples and other ethnic communities, persons with disabilities, single-parents (particularly single mothers), youth and children, and those living in poverty.

12. What is less recognized is that the housing crisis in Aotearoa New Zealand is, in fact, a human rights crisis. The housing conditions – high rates of homelessness, inaccessible housing stock, unaffordability and escalating rents, substandard conditions including overcrowding, a lack of security of tenure for tenants, and lack of social, affordable, and community housing for those in need, alongside an abundance of unaffordable family dwellings available for homeownership - are all inconsistent with the enjoyment of the right to housing.

13. While New Zealand has ratified various international human rights treaties obliging all bodies exercising government authority to respect, protect and fulfill the right to adequate housing, there is insufficient expression of this right in law, in related policy and programmes, and in their implementation. These conditions would never have arisen to this extent had housing been fully understood, recognized and implemented by Governments as a human right and a social good rather than as an asset for wealth accumulation and growth over the last decades.

### **The Right to Housing and International Human Rights Law**

14. Under international human rights law, the right to housing means much more than four walls and a roof. It is the right to live in peace, security and dignity, and to equality and non-discrimination with respect to housing.

15. According to the Committee on Economic, Social and Cultural Rights – the UN body responsible for monitoring State compliance with economic, social and cultural rights, including the right to housing – the characteristics of housing adequacy include: security of tenure, affordability, access to services and infrastructure, habitability, accessibility, location and cultural adequacy. Homelessness is a prima facie violation of the right to housing, and inconsistent with States commitments under Target 11.1 of the Sustainable Development Goals, which require States to ensure access for all to adequate, secure and affordable housing within the next decade. Forced eviction – the permanent or temporary removal of individuals and households from their homes and lands against their will – is considered a gross violation of human rights and evictions into homelessness are also a violation of the right to housing.

16. If successive Governments of New Zealand had ensured over the last several decades that every housing related legislative and policy decision had as its aim the promotion of the right to housing, it is clear that the country would not be confronting a housing crisis.

## **The Treaty of Waitangi and the right to housing**

17. The right to adequate housing in New Zealand cannot be fully understood without considering its roots in the Treaty (Te Tiriti) which creates rights, obligations, and expectations for all New Zealanders. This persists in particular in the relationship between Māori and the Crown but additionally in recognising the role of the Treaty in founding the New Zealand State and the rights of inhabitants.
18. The right to housing is also seen as interdependent with and indivisible from the rights and legal principles set out in the United Nations Declaration on the Rights of Indigenous Peoples, including the rights to self-determination, to freely determined political status, to pursue economic, social and cultural development, and to free, prior and informed consent.
19. The right to adequate housing is extremely important in targeting improved housing outcomes for Māori. While the Treaty offers a promise of shared prosperity for inhabitants, and a promise of equal outcomes for Māori as citizens, the human right to adequate housing provides a new set of measures and expectations speaking to what that prosperity and equality should look like.
20. Outcomes flowing from the Treaty are poor in many respects. In addition to the above, the Treaty promises the retention of all assets and treasures in Māori hands. These parts of the Treaty have been breached in significant ways, especially historically, have apparent causal links to modern housing experiences and outcomes for Māori.
21. Māori suffer some of the worst housing outcomes in the country. The Maori, who represent 16.5 per cent of the national population according to the 2018 census, are disproportionately represented amongst homeless populations, experience a higher rate of disability than non-Māori (32 per cent of the total population when adjusted for age),<sup>2</sup> they have some of the lowest median weekly incomes, they represent 60% of those who receive Emergency Housing and Special Needs Grants for short term emergency accommodation, and they make up 36 per cent of social housing tenants. Māori are four times more likely to live in overcrowded housing conditions than people of European heritage. Homeownership rates for Māori in 2018 were 43% as compared to 63% for the general population. Importantly, these are known and accepted figures representing common characteristics of New Zealand society and as such they demand renewed attention and urgent action.
22. The right to housing extends to all in New Zealand and there are inherent risks in separating out data on housing rights into ethnic or racial groups. However, the figures above forcefully lead to the conclusion that significant targeted action is in fact required urgently to meet the current housing needs of Māori as a means to both promote human rights and restore Te Tiriti rights.
23. It is also true that meeting the housing needs of the most disadvantaged is a meaningful way to approach the right to housing and wellbeing more broadly. An over-arching strategic approach through a human rights-based strategy would imply a taking up of these challenges at a level above policy.

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<sup>2</sup> Stats NZ, 'He hauā Māori: Findings from the 2013 Disability Survey' [http://archive.stats.govt.nz/browse\\_for\\_stats/health/disabilities/He-haua-Māori-findings-from-2013-disability-survey/disability-amongst-Māori.aspx](http://archive.stats.govt.nz/browse_for_stats/health/disabilities/He-haua-Māori-findings-from-2013-disability-survey/disability-amongst-Māori.aspx)

24. New Zealand has a separate housing strategy for Māori housing (He Whare Ahuru), which covers the period 2014-2025. This strategy references the human right to housing but does not encompass the broader spectrum of necessary elements required of a human rights-based housing strategy.<sup>3</sup> Also, the Ministry of Housing and Urban Development has issued its 'strategic intentions' for 2019-2023, which also covers some normative content of the right, but is not comprehensive enough to qualify as a rights-based housing strategy.<sup>4</sup> The Kāinga Strategic Action Plan in Auckland is also noted as an existing strategy referencing the human right to housing, but it is more focused on elevating the rights outlined in the Treaty of Waitangi, than human rights.

### **Housing as an investment and Speculation**

25. In Aotearoa New Zealand, many reasons have been given for the housing crisis including a lack of supply of affordable and accessible housing, a limited supply of public housing, and foreign speculative investment in residential real estate. While these factors have played a role, the crisis has its roots in a historic nearly exclusive focus on homeownership which, in more recent years and particularly since the Global Financial Crisis, has translated into housing having lost its function as a place to live, and instead it has become a speculative asset. Housing finance has morphed into consumer finance. Low interest rates, coupled with an under-developed rental housing system with weak tenant protections, have allowed housing speculation to continue in a relatively unbridled fashion.

26. In mid-2019, the total wealth of New Zealand households was almost \$1.6 trillion. Of this wealth more than 53% or nearly \$850 billion was wealth held in land and housing. Over the previous 10 years the value of wealth held in housing and land grew 91% or by more than \$400 billion, 80 per cent of which was from the appreciate in house values.<sup>5</sup> As it stands, close to 50% of banking system assets were residential property related loans.<sup>6</sup> Because there is no capital gains tax in the country, and because income earned from properties is taxed at a lower rate than income earned from other assets, property owners have reaped 'large, tax-free, windfall gains' creating inequality.<sup>7</sup>

27. Successive governments have sought to introduce greater controls aimed at reducing real estate speculation and curbing the effects of financialization. For example, in 2015, the previous Government introduced legislation, under the Taxation (Bright-Line Test for Residential Land) Act. The aim of this act was to deter property investors from engaging in housing speculation and/or 'flipping' houses. It requires

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<sup>3</sup> Ministry of Business, Innovation and Employment, 'He Whare Āhuru He Oranga Tāngata – The Māori Housing Strategy: Directions 2014 to 2025' <https://www.hud.govt.nz/assets/Residential-Housing/Māori-Housing/d492576716/He-Whare-Ahuru-He-Oranga-Tangata-The-Māori-Housing-Strategy.pdf>

<sup>4</sup> See, Ministry of Housing and Urban Development, 'Statement of Strategic Intentions 2019–23' online at: <https://www.hud.govt.nz/assets/About-HUD/af1670f260/HUD-Strategic-Intentions-2019-2023.PDF>

<sup>5</sup> Reserve Bank Key Household and Housing Statistics Table C.21

<sup>6</sup> Kay Saville-Smith, New Zealand's Transformation from Housing Finance to Housing Financialization, February 13, 2020.

<sup>7</sup> Somewhere to live, Helen Clark Foundation, p. 10

anyone who purchases a residential property and sells it on within five years<sup>8</sup> to pay income tax on any gains they make<sup>9</sup> (family homes are exempt).<sup>10</sup> This has curbed speculation to some extent.

More recently, the Overseas Investment Amendment Act (2018) was introduced. The Act bars non-residents from purchasing residential properties in New Zealand. There are some exemptions to this prohibition, in so far as overseas investors can apply for consent from the Overseas Investment Office to purchase land or housing for specific purposes. They must sell the houses on immediately, unless they are building 20 or more homes and intend to provide a shared equity, rent to buy or rental arrangement.<sup>11</sup> The Overseas Investment Amendment Act has been criticized as overreaching. In June 2018 only 3 per cent of residential properties in New Zealand were sold to foreigners,<sup>12</sup> and government officials have indicated that it has been difficult to assess the efficacy of the Act. The policy has also been accused of having been driven by racism, as speculation from Chinese investors was a key driver in introducing the legislation.<sup>13</sup>

### **Unaffordability of Housing**

28. Under international human rights law States are required to undertake measures to ensure access to housing that is affordable regardless of household income. Affordability must be based and measured on household income, not on market rates.

29. Until the late 1980s, various forms of financial assistance provided by the State allowed for low-income families to build or acquire homes that met their needs. However, over time this has been reduced to insignificant volumes, resulting in very few affordable houses for low-income families.<sup>14</sup> During the 1960s and 1970s approximately 30 per cent of all new builds were affordable for low-income families. By 2014, however, this had dipped to just five percent.

30. At the same time, housing costs have exploded. There has been a significant rise in median house prices over the past two decades. Between June 2001 and June 2019, prices rose by 234.3 per cent. Auckland is the most unaffordable area in New Zealand and has been regarded as severely unaffordable for the past 16 years. Between 2009 and 2017 median weekly rents increased by 38.7 per cent, while median weekly incomes only increased by 25.3 per cent during the same period, thus rents have outstripped incomes. While 31.3 percent of all tenants are spending over 30 per cent of their income on rent, for low-income households this number is over 50 per cent of their income.

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<sup>8</sup> The Act only required those selling properties after two years to pay income tax on their gains, but this increased to five years by the new Government in 2018, see, <https://www2.deloitte.com/nz/en/pages/tax-alerts/articles/extension-of-bright-line-test-to-five-years.html>

<sup>9</sup> Inland Revenue, 'Taxation (Bright-Line Test for Residential Land) Act 2015' online at: <https://www.classic.ird.govt.nz/technical-tax/legislation/2015/2015-111/leg-2015-111-ta-bright-line.html>

<sup>10</sup> Inland Revenue, 'Questions and answers: Bright-line rule' online at: <https://www.classic.ird.govt.nz/property/brightline-qa.html>

<sup>11</sup> See, <https://www.linz.govt.nz/overseas-investment/information-about-developing-residential-land/information-for-increasing-housing>

<sup>12</sup> Library of Congress, 'New Zealand: Bill Banning Foreigners from Purchasing Homes Passed' (19<sup>th</sup> August 2018)

<sup>13</sup> New Zealand Parliament, 'Overseas Investment Amendment Bill — Third Reading'.

<sup>14</sup> Kay Saville-Smith, Revitalising the Production of Affordable Housing for Productive, Engages and Health Lives, Building Better Homes, Towns and Cities, November 2019, p.3-6..

31. It might be noted that the Government is attempting to address this challenging situation by increasing the stock of public housing and providing various housing benefits for low-income households. This includes the Income Related Rent Subsidy (IRRS) which is provided to social housing tenants, and an Accommodation Supplement for a further 285,000 households. Total annual expenditure of the various housing related social transfers has increased to 2.5 billion NZD per annum, but the level of support beneficiaries receive is insufficient to protect low-income households from housing cost overburden or energy poverty.

32. As the private rental market is under-regulated, some benefits may actually have contributed to pushing up rental prices, offering home-owners an opportunity to maximize profits instead of making housing affordable for their tenants. In addition, there is insufficient take up of the social and housing benefits of those who are most marginalized, meaning that the complex range of State supports often fail to reach those whose right to adequate housing is most at risk.

#### **Lack of adequate social housing supply or state subsidized housing**

33. The Government has committed to building or buying 6,400 additional publicly owned social housing units between 2018 and 2022 - a rate of 1,600 per year in order to reduce the number of people on the social housing register, which has grown three-fold since 2016.

34. I welcome the efforts to expand the provision of decent social housing through the newly formed public housing provider Kāinga Ora. The Salvation Army, however, has estimated that future demand for social housing will require at least an additional 2,000 units to be built per annum over the next decade.<sup>15</sup> With this in mind, I recommend that rent-to-buy schemes are expanded, together with improved access to State insured mortgages for low-income households and those who experience difficulties in accessing home ownership financing. In addition to this, the Government should consider increasing its support for Community Housing Providers in order to significantly increase public housing stock and ensure that social housing responds to the specific needs of local communities. While the national public housing provider Kāinga Ora has received additional competencies to roll out quicker social housing, Community Housing Providers should also be able to complement and amplify State efforts to ensure community-based solutions to the housing crisis. Competition in the public housing sector is a healthy aspect of ensuring high quality, well maintained and responsive homes that go beyond the provision of a roof and four walls.

35. While I welcome the intention of the Urban Development Bill to facilitate construction of public and private housing, I am concerned about the lack of adequate legal provisions to ensure that urban development is socially inclusive and that local communities can participate in urban development and redevelopment in an effective and meaningful way. The draft legislation is, in my view, lacking adequate safeguards to ensure that urban development does not result in spatial segregation, neither does it respond to housing and social infrastructure needs which can be best identified by local residents and through housing and community needs assessments. Rights-based urban development, on the other

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<sup>15</sup> <https://www.salvationarmy.org.nz/sites/default/files/uploads/20170814spputakingstockreport.pdf>

hand, aims to prevent the economic or physical displacement of residents; offers decent and culturally responsive housing that is affordable for people of all ages and different income levels; is fully accessible for persons with disabilities; facilitates intergenerational cohabitation; is well serviced by transport, child care and medical services; and responds to prevailing and future household and family sizes.

## Homelessness

36. Aotearoa New Zealand has a broad definition of homelessness and includes people sleeping on the street, in temporary accommodation or sharing with other households. There is no recent data on homelessness. According to the 2013 census there were more than 41,000 individuals in New Zealand living in homelessness.<sup>16</sup> In recent years there have been rising demands for emergency and public housing which suggests this figure has likely increased<sup>17</sup> and it is believed there are a substantial number of people living in hidden homelessness.

37. The 2013 census provides a staggering picture of homelessness, showing that over 50% were under 25, with a quarter aged between 15 and 24.<sup>18</sup> 32% were Māori, though they only represent 15 per cent of the overall population; 29% were Pacific Peoples, and 43% were single parents.<sup>19</sup> Being a student or in paid employment provides no protection from homelessness, with 52 per cent of the homeless population working, studying or both.

38. According to more recent data obtained in a homelessness count in Auckland in 2018, over 45% of the homeless population was under 18 years old. 43% of those surveyed were Māori though they only represent 11% of the city's total population. Similarly, single-parents, particularly single mothers, Pacific Peoples, LGBTQI+, sex workers, and persons with disabilities were all disproportionately represented in the total number of individuals living in homelessness.<sup>20</sup>

39. I learned that many people avoid sleeping on the streets by living in their cars or campervans, and that some live in these conditions for many months, if not longer. I have been pleased to learn that many are able to do so without repercussion. The ability to sleep in a vehicle or tent without fear of criminalization is a human rights compliant position which I encourage, because persons who do not enjoy the right to adequate housing should not be persecuted or criminalized for resorting to the few elements they have to shelter themselves. Some cities, unfortunately, have been imposing fines,<sup>21</sup> making it increasingly difficult to live in a vehicle or camp without incurring fines.

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<sup>16</sup> Kate Amore, 'Severe housing deprivation in Aotearoa/New Zealand 2001-2013' He Kainga Oranga, University of Otago, Wellington 2016, p. 11.

<sup>17</sup> Natalia Sutherland, 'Who are NZ's homeless? Thousands of Kiwi kids and it could be getting worse, expert warns', 18 September 2018, available at:

<https://www.tvnz.co.nz/one-news/new-zealand/nzs-homeless-thousands-kiwi-kids-and-could-getting-worse-expert-warns>

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> See [www.aucklandhomelessnesscount.org.nz/](http://www.aucklandhomelessnesscount.org.nz/)

<sup>21</sup> See, [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12229461](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12229461)



40. One emergency response to homelessness has been to house people in motels. In Rotorua for example, 35 hotels catered solely to emergency housing beneficiaries in 2019. The amount of money being spent on this response to homelessness is significant. I was told by several motel residents that the government was paying over 4,000 NZD per week for this type of accommodation. Beyond cost inefficiencies, motels are an inappropriate response to homelessness, particularly for families or those requiring ongoing social support.

41. The Government is applauded for adopting, for the first time, a Homelessness Action Plan (2020-2023) the aim of which is to ensure that homelessness is prevented where possible, and that it be rare, brief and non-recurring. The Government has indicated that the action plan will assist 10,000 individuals experiencing, or at risk of experiencing, homelessness. The Action Plan foresees a partnership with Māori to deliver solutions for Māori and achieve Māori housing and wellbeing outcomes.

42. The Homelessness Action Plan includes a \$300 million (NZD) commitment to fund various activities including measures to reduce the use of motels as an emergency response to homelessness, and to increase short-term housing support by 1,000. The Government also announced that those using emergency housing services will pay 25% of their income to access accommodation. I encourage the Government to ensure that this fee-for-service arrangement include human rights-based provisions that would ensure no one ever be evicted or turned away from receiving such services for lack of sufficient funds, or that the fee-for-service in no way jeopardize access to food or other human rights.

43. I am concerned that despite these commitments, the Government will not be able to address homelessness at its current levels or prevent its continued occurrence. While the Action Plan includes a commitment to 'Housing first' - Government officials, service providers and advocates with whom I met indicated that without more affordable and accessible housing stock or without being able to access existing supply on a priority basis, it is impossible to roll-out a substantial national programme.<sup>22</sup>

44. Moreover, for 'housing first' to be successful in the Māori context requires that the model be developed and administered by Māori, as is for example being undertaken at Te Puea Memorial Marae. As I understand it, overall Māori iwi have not been provided the resources to provide such programming.

### **Discrimination**

45. Discrimination in the housing market is a significant problem. I heard from many Māori, Pacific Peoples and other racial minorities that tight rental markets allow discrimination to flourish, where landlords will repeatedly choose people of European descent over other racial groups making access to private rental accommodation very difficult. In Christchurch, I was told that anyone who is non-European is basically turned away from private accommodation in favour of white tenants. Between January 2016 and December 2019, the New Zealand Human Rights commission received 256 complaints regarding discrimination in the area of land, housing and accommodation. Of these complaints, 108 were classified as relating to grounds of race, colour, and/or ethnic or national origins. The pervasive discrimination

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<sup>22</sup> Ministry of Housing and Urban Development, Public Housing Quarterly Report, September 2019, p. 5.

tolerated in the rental market puts additional pressure on Housing First programmes that may have to rely on private rentals.

46. People living in homelessness also experience significant discrimination. I heard repeated references to their “anti-social behaviour” by government officials and within the general population. Māori living in homelessness indicated that they are often treated with disrespect and suspicion when trying to access services.

47. I also met with a number of persons with disabilities who indicated that public and private accommodation is rarely accessible. According to the 2013 Census, persons with disabilities make up 24 per cent of New Zealand’s population. However, it is estimated only 2 per cent of New Zealand’s housing stock is accessible – even though one in six people require home modifications.<sup>23</sup>

48. The legal principle of reasonable accommodation<sup>24</sup> appears not to be applied by landlords. For example, one resident who used a wheelchair said that for several years he had lived in a private rental that had stairs to the entrance. Another resident told me she had to shower at work because she could not access the bathroom in her house.

49. In addition to this, persons with disabilities face discrimination from landlords when applying for rental properties due to the perceived risk of property damage, and there appears to be a discrepancy between funding models, which provides different levels of home support and housing modifications based on the cause of disability. This calls into question the New Zealand Government’s obligation to progressively realise Articles 19 and 28 of the United Nations Convention on the Rights of Persons with Disabilities - the right to live in the community, and the right to an adequate standard of living and social protection. It was also concerning to learn that other than Kāinga Ora’s recent commitment to 15 per cent<sup>25</sup> new builds being built to universal design standards,<sup>26</sup> there has been very little commitment to universal design in government-led housing schemes, and that accessibility is not currently being considered under the Building Act reforms (2004).<sup>27</sup>

### **Christchurch Earthquake and Aftermath**

50. In 2010 and 2011, Christchurch and the wider Canterbury region were struck by a series of large earthquakes, causing 185 deaths and severe damage to the city, including 65,000 homes. Following the second earthquake on February 22, 2011, “Red Zones” were established in areas considered unsafe and uninhabitable due to earthquake, liquefaction and flooding risks, leading to the eventual demolition of approximately 6,500 homes. As a result, 20,000 people were believed to have been displaced. Many of

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<sup>23</sup> Paula Tesoriero, Disability Rights Commissioner, <https://www.stuff.co.nz/auckland/112717220/barrier-after-barrier-as-disabled-community-locked-out-of-housing>

<sup>24</sup> Article 2 – Definitions of the United Nations Convention on the Rights of Persons with Disabilities

<sup>25</sup> Kāinga Ora, ‘Kāinga Ora’s Accessibility Policy’, <https://kaingaora.govt.nz/tenants-and-communities/our-tenants/kainga-oras-accessibility-policy/>

<sup>26</sup> Ibid.

<sup>27</sup> Mandy Te, Accessibility and universal design not part of Building Act reforms, <https://www.stuff.co.nz/business/116625561/accessibility-and-universal-design-not-part-of-building-act-reforms>

these people settled far from the city centre in the north and south of Christchurch, meaning that not only did Red Zoned people lose their houses, but also their communities. Tenants living in rental accommodation were particularly impacted, having received no support to relocate and with very few affordable and accessible rentals available in the city. Following the earthquakes local and national governments implemented various measures to prevent, mitigate and respond to natural disasters, including a mandatory natural disaster insurance through a two-tiered system of State and private insurance. Even so, many residents experienced significant difficulties in accessing independent damage assessments in a timely manner that respected their human rights and dignity.

51. Many Red Zoned people I spoke to reported a high number of visits from experts contracted by public and private insurance providers, but noted that they had not received timely compensation for necessary damage repairs. Further concerns were also raised about the independence of the Finance and Insurance Ombudsman; the barriers residents experienced when bringing concerns before the Ombudsman; a readiness of contractors to complete cosmetic repairs that did not sufficiently reduce earthquake risk; the overall lack of State inspection of building standards; and inadequate support for residents dealing with complex and bureaucratic issues. Additionally, it was reported that compensation and insurance claims in privileged neighbourhoods were settled 2.5 times faster than in areas where disadvantaged populations lived.

52. It is my recommendation that the Government of New Zealand draws lessons learned from this unprecedented disaster to ensure a human rights-based approach is implemented in future disaster prevention and response. This should include measures to prevent homelessness in the aftermath of disasters, carrying out timely and non-discriminatory responses that allow affected tenants and homeowners to access affordable and accessible housing, while also ensuring that relocations are proximate to the communities in which residents were living in prior to the disaster. In doing so, the New Zealand Government will be aligning itself with international human rights standards relating to involuntary displacement.

### **Access to Justice**

53. The right to adequate housing cannot be realized if it cannot be claimed by a person or a community. As it stands in Aotearoa New Zealand the right to adequate housing is not enshrined in legislation and does not fall within the scope of the Bill of Rights Act (1990). The right to adequate housing must therefore be enshrined in appropriate domestic legislation including clear pathways to remedies under administrative, non-judicial and/or judicial review.

54. One area in which the human right to housing frequently arises is in the relationship between tenants and landlords. Tenancy disputes arising for or between tenants and landlords can be settled through the Tenancy Tribunal, and in some cases this avenue can protect tenants from arbitrary evictions and undue rental increases or other rights-oriented matters. In 2018 however, 85 percent of all cases brought before the Tenancy Tribunal were initiated by landlords against their tenants mostly for rental arrears. Making matters more difficult, tribunal cases and claimants are made public and this creates a

circumstance in which a tenant who takes a case may be identifiable to future landlords, and potentially be discriminated against as a result of attempting to exercise their rights. This illustrates that access to justice through this avenue may be unbalanced and this may systemically disadvantage tenants.

55. As many tenants are on fixed or short-term leases and under constant fear of their rental agreements being cancelled, they often abstain from initiating claims against their landlords despite the state of their accommodation. In general, consumer protection and legal aid for tenants is severely underdeveloped and underfunded in New Zealand. For example, in Auckland a city of 1.3 million inhabitants, the Auckland Tenant Association only has one professional on staff and the organization functions without any support from Auckland Council.<sup>28</sup>

56. As mentioned, the Government has initiated reforms of the Tenant Protection Act that will restore balance in the rights of the tenants vis-à-vis their landlord by increasing notice periods to 90 days, allowing only annual rent increases, and requiring that landlords provide justifications for cancelling tenancy agreements. While the reform is welcome, more will need to be done to improve the protection of the rights of tenants in Aotearoa New Zealand.

57. While New Zealand has ratified the International Covenant on Economic, Social and Cultural Rights, there are currently no legislated protections for economic, social and cultural rights, including the right to adequate housing, which are comparable to the protections of civil and political rights – robustly protected by the Bill of Rights Act. For example, while the Attorney General is required to assess whether new legislation tabled in Parliament is compliant with various civil and political rights, there is no obligation to assess compliance with the right to adequate housing or any other economic, social and cultural right.

58. I therefore echo the concern expressed by the Committee on Economic Social and Cultural Rights of the United Nations that “economic, social and cultural rights do not enjoy equal status with civil and political rights”. I recommend that the right to adequate housing be enshrined in legislation to render it justiciable in domestic courts and enable victims to have access to effective administrative or non-judicial remedies, as well as judicial remedies where necessary.<sup>29</sup>

59. Domestic courts have occasionally handed down rulings contradicting New Zealand’s human rights obligations. In *Lawson v Housing New Zealand* [1997] 2 NZLR 474, the court dismissed the application without considering whether putting the tenant in a situation of homelessness would pose risks to the life of the affected individual nor did it inquire whether the privatization and subsequent rent increase would comply with the right to adequate housing. The ruling ignored that New Zealand courts are according to international human rights law required to take human rights obligations into account to ensure State conduct is compliant with international human rights norms.<sup>30</sup>

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<sup>28</sup> The institutional underdevelopment of tenant protection in New Zealand is obvious if one compares that for example the tenant association of Cologne/Germany a city with 1.1 million inhabitants has seven offices and more than 66.000 contributing members. Its 48 staff provide every year more than 32.000 legal consultations that are free of charge for members. 97 percent of all cases brought by tenants to the attention of various tenant associations in Germany are successfully settled with home owners out of court.

<sup>29</sup> See CESCR, Concluding Observations, E/C.12/NZL/CO/4, para. 6.

<sup>30</sup> CESCR, General Comment no 9 on the domestic application of the Covenant, E/C.12/1998/24 in particular para 14 and 15.

60. New Zealand should also ensure protection of economic, social and cultural rights including the right to housing by ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
61. The New Zealand Human Rights Commission has attempted to fill the void in access to justice for violations of the right to housing by hearing cases of discrimination in the area of 'land, housing and accommodation'. This is only a partial response as it does not render the right itself justiciable.

### **Recommendations**

62. While the Government has a multi-sectorial and cross-agency approach to the housing crisis, it does not currently have a human rights-based housing strategy in place. Instead, the Government has adopted several independent policies for areas such as homelessness, Māori housing and social housing. Several sources have called on the government to develop and implement a human rights-based housing strategy linked to the SDGs and Agenda 2030, including the Committee on Economic, Social and Cultural Rights who recommended the adoption of a national strategy in its 2018 Concluding Observations to the Government.<sup>31</sup>
63. A comprehensive, human rights-based strategy should have at its base the Treaty of Waitangi, the Convention on the Rights of Persons with Disabilities, the United Nations Declaration of the Rights of Indigenous Peoples, particularly principles of free, prior and informed consent and self-determination.
64. A human rights-based housing strategy will require the Government to implement a national Housing First program that is inclusive and in keeping with the principles of Housing First. The program will require the government to ensure that all avenues are explored in order to secure long term housing options for those who most need it.
65. The right to housing, as set out in international human rights law, must be recognized in national legislation. National law implementing the right to housing should at minimum include a legal obligation of the State to provide suitable and accessible emergency housing to individuals and families at risk or in a situation of homelessness. It should also include a complete prohibition of any eviction that may result in homelessness. Evictions from primary residences should only be ordered after all alternatives have been explored jointly with the affected persons and ensuring that they have access to all social and housing benefits to which they are entitled. If evictions cannot be avoided, alternative affordable housing should be provided as proximate as possible to the place of residence.
66. I would like to commend the invaluable work of the New Zealand Human Rights Commission in promoting the right to housing, commenting on draft legislation and addressing discrimination in relation to the right to housing in the country. I recommend that the Commission is in the future able to include a fifth Commissioner for Indigenous Peoples Rights in Aotearoa New Zealand.

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<sup>31</sup> See CESCR, Concluding Observations, E/C.12/NZL/CO/4.

67. I encourage the New Zealand Human Rights Commission to use its existing statutory powers and functions, so far as possible, to provide dispute resolution for alleged breaches of the right to adequate housing in general, not just in relation to discrimination
68. New Zealand should ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which allows for individuals who have exhausted all domestic remedies the ability to submit complaints to the UN Body in charge of overseeing the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
69. National, regional and local governments should strengthen the capacity of Tenant Protection Associations so that they may be better equipped to provide legal advice, assist in out of court settlements of grievances with landlords, and if necessary support tenants in making applications before Tenancy Tribunals.
70. The capacity of the Tenancy Compliance Investigations Team should be enhanced and an independent service to inspect whether housing meets building, safety, health and accessibility standards should be established so that they may provide advice and support for private and public landlords to undertake necessary renovations, as well as to fine home owners that fail to undertake required works and adjustments.
71. Tenant protections should be further strengthened beyond the proposed reform of the Residential Tenancy Act. Protections must be included for security of tenure, regulating rent increases, providing for rental freezes in tight markets, and fortifying rules around short-term rental platforms. Innovative regulation could also provide incentives for making vacant housing units available to low-income households.
72. In order to avoid evictions resulting in homelessness, advice and financial support for tenants and home owners who have fallen are at risk of falling into arrears should be expanded. The implementation of this type of support would act as a cost-saving measure when compared to the public spending currently involved in placing individuals and families into emergency accommodations, as well as the long term social and health costs that accompany homelessness.
73. In regions lacking affordable housing, State and Community Housing Providers should be given priority to rent or lease a housing unit on the market to ensure that all people on waiting lists can be housed.
74. National, regional and local governments should refrain from implementing laws or by-laws that serve to criminalize homelessness, including living in cars, campervans, or tents.
75. If the Government is to address the financialization of housing, it must disrupt the current speculative system by implementing a Capital Gains Tax, regulating mortgage markets to limit the debt to income ratio, and introducing a progressive refinancing scheme for primary homes to limit the effects of negative equity that could result from changes to taxation and mortgage lending. Moreover, the Government must redirect efforts to provide alternative housing schemes for low-income and vulnerable

groups. This must also include targeted funding, finance and capacity building for iwi and Māori housing providers.

76. Legislation for Urban Development and Regeneration should ensure meaningful participation of residents, be fully compliant with the right to adequate housing. Inclusionary zoning must be introduced nationally to support communities and community housing providers.

77. The Government should incorporate universal design standards and obligations contained in the United Nations Convention on the Rights of Persons with Disabilities in all housing-related legislation, building standards, and policies, to ensure independent living of persons with disabilities and accessibility for its increasingly aging population.

78. The Government should ensure that housing and social benefits are sufficient to actually cover the cost of living for low-income households and reduce energy poverty so that they may be ensured a life of dignity. In the long term, expenditure should be redirected away from programs that are failing to realize the right to housing like the use of Motels as emergency shelter and subsidised developments that fail to deliver a net increase in affordable housing, towards supporting housing providers and developers committed to building and delivering decent affordable housing that service families and households.

79. In any future case of natural disasters, the Government should be ready to respond in a way that is compliant with human rights and does not result in homelessness or forced evictions.

80. The Government should also support, facilitate and provide financial resourcing to iwi, Rūnanga and Māori housing providers to self-determine their housing solutions.