



Assemblée générale

Distr. générale
28 avril 2021
Français
Original : anglais

Conseil des droits de l'homme

Quarante-septième session

21 juin-9 juillet 2021

Point 3 de l'ordre du jour

Promotion et protection de tous les droits de l'homme, civils, politiques, économiques, sociaux et culturels, y compris le droit au développement

Visite en Nouvelle-Zélande

Rapport de la Rapporteuse spéciale sur le logement convenable en tant qu'élément du droit à un niveau de vie suffisant, ainsi que sur le droit à la non-discrimination à cet égard, Leilani Farha*

Résumé

La Rapporteuse spéciale sur le logement convenable en tant qu'élément du droit à un niveau de vie suffisant ainsi que sur le droit à la non-discrimination à cet égard s'est rendue en Nouvelle-Zélande en février 2020. Elle a constaté que la Nouvelle-Zélande s'était dotée de plusieurs lois, politiques et programmes cruciaux pour la protection du droit à un logement convenable, mais elle a relevé avec préoccupation que cet État n'avait pas encore incorporé le droit au logement dans son ordre juridique interne sous une forme qui permette aux particuliers d'accéder à des recours utiles, par l'intermédiaire de mécanismes administratifs, non judiciaires ou judiciaires, en cas de violation de ce droit.

La Rapporteuse spéciale souligne que la crise du logement que traverse la Nouvelle-Zélande est une crise des droits de l'homme qui doit être réglée de toute urgence. La pénurie de logements abordables est un problème persistant et les gouvernements successifs ne sont pas parvenus à faire en sorte que le marché du logement réponde aux besoins de la population dans son ensemble, ce qui vaut en particulier pour les groupes à faible revenu. La Rapporteuse spéciale salue les efforts consentis par le Gouvernement pour prévenir le sans-abrisme et réduire le nombre de sans-abri, renforcer la sécurité d'occupation des locataires et augmenter l'offre de logements publics, mais regrette que la Nouvelle-Zélande ne se soit toujours pas dotée d'une stratégie générale en faveur du logement fondée sur les droits de l'homme et qu'elle n'ait pas encore adopté d'interdiction stricte des expulsions conduisant au sans-abrisme. Elle recommande au Gouvernement d'élargir l'offre de logements abordables destinés aux ménages à faible revenu en accroissant l'offre de logements publics, en renforçant le soutien aux fournisseurs de logements communautaires et en accordant des subventions à la construction de logements abordables. La spéculation immobilière doit être combattue par le rétablissement de l'équité sur le marché du logement, ce qui passe par une imposition adéquate et le renforcement de la protection des locataires.

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit, joint en annexe, est distribué dans la langue originale seulement.



La Rapporteuse spéciale estime que les politiques du logement doivent s'attaquer aux séquelles des injustices et des déplacements forcés dont des groupes de population ont été victimes dans le passé ainsi qu'à la discrimination que subissent actuellement les Maoris, les peuples du Pacifique et les personnes handicapées, et s'inspirer du Traité de Waitangi, de la Déclaration des Nations Unies sur les droits des peuples autochtones et de la Convention relative aux droits des personnes handicapées. Enfin, elle se félicite de l'introduction progressive de normes relatives à la salubrité de l'habitat et encourage le Gouvernement à aider les propriétaires à revenu modeste à rénover leur bien immobilier afin que chacun puisse vivre dans un logement qui soit conforme aux normes de l'Organisation mondiale de la Santé.

Annex

Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context on her visit to New Zealand

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I. Introduction

1. The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, Leilani Farha, visited New Zealand¹ from 10 to 19 February 2020 at the invitation of the Government. The visit took place shortly before the global coronavirus disease (COVID-19) outbreak. The Special Rapporteur commends the Government of New Zealand for having adopted several measures to prevent the spread of infection and to ensure security of tenure during the lockdown. The economic impact of the pandemic, however, poses additional challenges in ensuring the full realization of the right to adequate housing in New Zealand. The present report therefore also covers developments that occurred after the conclusion of the Special Rapporteur's visit, up to February 2021.

2. The Special Rapporteur thanks New Zealand for the invitation and its full cooperation during the visit. She was warmly welcomed by government officials, residents, researchers and representatives of civil society organizations who were generous in their sharing of information and are clearly concerned about the housing crisis in New Zealand. The Special Rapporteur visited Auckland, Christchurch, Kaitia and Wellington. She thanks all of the interlocutors, including government officials, mayors, lawyers, public and community housing providers and civil society representatives, for the fruitful discussions and the sharing of information. Particular thanks go to those individuals and families she met who were living in various degrees of inadequate housing or in situations of homelessness who shared their personal experiences with her.

3. The Special Rapporteur hopes that the report will provide further impetus to make the right to adequate housing in New Zealand a reality for all and enhance its protection.

II. Legal framework

A. International human rights law

4. New Zealand has ratified most international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights, which sets out the right to adequate housing in article 11. Pursuant to the Covenant, New Zealand has the obligation to progressively realize the right to adequate housing through appropriate measures, using the maximum available resources. The right to adequate housing should not be interpreted narrowly, for example as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. The following characteristics are necessary for housing to be adequate: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy.²

5. The right to adequate housing is part of the right to an adequate standard of living, which includes other rights, such as the rights to food, water and sanitation. Taken together, these rights essentially protect the right to life, which entails the right to live in dignity. If one cannot shelter from the elements in a decent and healthy home, life, health and security are at risk. The COVID-19 pandemic has underscored this.

6. Homelessness is a *prima facie* violation of the right to housing and contravenes other rights, such as the rights to life and to health. It is inconsistent with the commitments of New Zealand under target 11.1 of the Sustainable Development Goals, according to which States committed to ensure access for all to adequate, safe and affordable housing by 2030. In addition, under international human rights law, evictions into homelessness are violations of the right to housing.³

¹ At the national level, the Maori name for New Zealand – Aotearoa – is becoming increasingly accepted and widespread.

² See Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991).

³ Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997), para. 16.

7. The Special Rapporteur notes that New Zealand has not yet ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights or the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. Ratifying these two instruments would provide individuals who have exhausted domestic remedies the opportunity to submit complaints regarding alleged violations of social and economic rights and the rights of children, including the right to adequate housing.

B. Treaty of Waitangi and the right to housing

8. The right to adequate housing in New Zealand cannot be fully understood without considering the Treaty of Waitangi (Te Tiriti o Waitangi). This relates in particular to the relationship between Maori and the Crown, but the Treaty also needs to be recognized as a founding constitutional document of the State of New Zealand, establishing rights, obligations, expectations and responsibilities for all New Zealanders. Any attempt to understand whether the right to housing is enjoyed in New Zealand and whether national, provincial and local governments are meeting their human rights obligations requires a recognition of the Treaty as a source of rights and expectations for all New Zealanders.

9. Using the Treaty in a meaningful way necessitates an exploration of the State's history of colonization, land dispossession, forced assimilation and racism, and the contemporary consequences of these on and for Maori. It requires an understanding of how these developments have informed and continue to shape a wide range of contemporary dynamics across New Zealand society, which are tied up in issues of cross-cultural and bicultural exchange and the division of labour in the economic system and of authority in public governance.

10. Throughout her visit, the Special Rapporteur heard beautiful articulations by Maori of their deep physical and spiritual connection to their lands as home, despite the almost universal experiences of physical separation of Maori from their ancestral homes at the hands of various regulatory regimes between 1840 and today. This has given rise to and perpetuates an ongoing state of homelessness that is integrally linked to the existential and actual disruption of this connection as a result of colonization and, more specifically, colonial governance.

11. This is a dark shadow that hangs over the country – a shadow that must be understood as shared between Maori and non-Maori and that cannot be lifted without a significant shift in relations between the Crown and Maori, and by acknowledging that Maori have borne the greatest harm. Such a shift may already be under way, but it must be led by Maori in accordance with the principles of full and meaningful participation and free, prior, informed consent contained in the United Nations Declaration on the Rights of Indigenous Peoples. It must be rooted in *kaupapa Māori* (“a Maori way”) and Maori understandings and interpretations of Te Tiriti o Waitangi. The Special Rapporteur believes that the Government is taking steps in this direction. Maori language and principles are finding their way into housing policies and programmes, which suggests the Government may understand that Te Tiriti should form the basis of housing-related policy and programming.

12. 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 Maori, allowing for their true self-determination.

13. As the Special Rapporteur has set out in more detail in a recent thematic report,⁴ the right to housing is 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 determine political status, to pursue economic, social and cultural development, and to free, prior and informed consent.

14. The right to adequate housing is extremely important in ensuring improved housing outcomes for Maori. While the Treaty of Waitangi offers a promise of shared prosperity for inhabitants, and a promise of equal outcomes for Maori as citizens, the human right to

⁴ A/74/183.

adequate housing enshrined in the Universal Declaration of Human Rights and subsequent international human rights treaties can provide guidance as to what that prosperity and equality should look in terms of housing.

15. In addition to the above, the Treaty promises the retention of all assets and treasures in Maori hands. These parts of the Treaty have been breached in significant ways, especially historically. Causal links to the contemporary housing experiences of Maori are discussed in more detail below.

C. National legal framework

16. New Zealand has an unwritten constitution, which, in accordance with public law principles, comprises various written sources, such as certain acts of Parliament. Civil and political rights were included in the New Zealand Bill of Rights Act of 1990, which is among the documents considered to be part of the constitution. Economic, social and cultural rights, including the right to adequate housing, are not included in that Act or in any other constitutional act.

17. In the country's legal system, the economic, social and cultural rights enshrined in the International Covenant on Economic, Social and Cultural Rights cannot be directly enforced before local courts unless they have been transposed into domestic law. While the courts are bound to interpret national law in conformity with the country's international obligations, the absence of an express reference to economic and social rights in the New Zealand Bill of Rights Act poses barriers to access to justice for potential violations of the right to adequate housing. Thus New Zealand has an uneven approach to human rights, whereby some rights (civil and political) are enforceable and other rights (socioeconomic) are not. The logical extension of this is a hierarchical system of rights protection that serves to favour some interests over others and entrenches inequality.

18. It should be noted that New Zealand has, through section 21 of the Human Rights Act of 1993, comprehensive non-discrimination legislation that prohibits discrimination by public and private actors on the grounds of sex; marital status; religious or ethical belief; colour; race; ethnic or national origin, which includes nationality and citizenship; disability; age; political opinion; employment status; family status; or sexual orientation. Section 53 of the Act explicitly prohibits discrimination in the areas of land, housing and accommodation. For example, a property owner cannot turn down a potential tenant because of his or her religion, disability or sexual orientation. Section 12 of the Residential Tenancies Act of 1986 also makes it unlawful for anyone to discriminate on those grounds when granting, renewing, changing or ending a tenancy.

19. Despite the Human Rights Act, the legal protection of the right to adequate housing remains relatively weak. In the absence of any national law or constitutional provision setting out the right to adequate housing, the right can be established only indirectly, through legislation and regulations that establish particular services, protections, entitlements or standards in the field of housing, such as the Public and Community Housing Management Act, the Residential Tenancies Act and building regulations. These laws contain important protections, but only cover some of the specific aspects related to the right to adequate housing, not the right itself. For example, the Public and Community Housing Management Act specifies who can access social housing, the Residential Tenancies Act provides a certain degree of security of tenure to renters, while the purpose of building regulations is to make consented buildings habitable and structurally secure. Comprehensive legal protection covering all aspects of the right remains lacking in the country's current legal order.

20. In 2013, the independent Constitutional Advisory Panel recommended that the Government explore options for amending the New Zealand Bill of Rights Act by adding economic, social and cultural rights, property rights and environmental rights to it. The Government has so far indicated that it is not planning to embark on such a project.⁵ In March 2018, the Committee on Economic, Social and Cultural Rights expressed its concern that social, economic and cultural rights were still not fully incorporated into the State's domestic

⁵ E/C.12/NZL/4, para. 8.

legal order, and recommended that the Government ensure that all human rights – economic, social and cultural, as well as civil and political – have equal status.⁶

D. National housing policy

21. The Government must be commended for having conducted a stocktaking exercise whereby it has identified a number of housing issues facing the country, such as inadequate responses to homelessness, a lack of affordable housing, widespread inadequate housing conditions, decreasing homeownership rates, housing insecurity for Maori and Pacific peoples and insufficient protection of tenants.⁷

22. The Government has recognized that there is a housing and homelessness crisis in the country. In its Statement of Strategic Intentions for 2019–2023, the Ministry of Housing and Urban Development does not shy away from the challenges New Zealand is facing, stating that “the poor performance of New Zealand’s housing market is well recognized” and noting that “much of New Zealand’s existing housing stock is old, cold and damp, particularly in the private rental market. Poor quality housing has ongoing impacts on physical and mental health for families and individuals.”⁸

23. According to the Government, the undersupply of housing, driven by uncompetitive land markets and high infrastructure, development and building costs, is contributing to high house prices relative to income. In the view of the Government, this has led to increasing rates of homelessness, declining homeownership (particularly for Maori and Pacific peoples), increasing rents and a shortage of rental properties in urban centres and an increasing need for government housing assistance.⁹ The Special Rapporteur welcomes such frank assessments, as they provide an opportunity for addressing them.

24. The Special Rapporteur would also like to acknowledge several positive steps taken by the Government:

(a) The adoption of the Aotearoa/New Zealand Homelessness Action Plan: Phase One 2020–2023, published in February 2020;

(b) The adoption of the Māori and Iwi Housing Innovation Framework for Action;

(c) The efforts of the Government to end rough sleeping throughout the country in the context of the COVID-19 response, by making over 1,000 emergency places available in motels with the commitment to keeping those requiring those places housed until long term-housing options are identified for them;

(d) The prohibition of any rent increases between 26 March 2020 and 25 September 2020 and restrictions on tenancy terminations between 26 March 2020 and 25 June 2020, and the introduction of new rules allowing rent increases only once per year;¹⁰

(e) The adoption of the Residential Tenancies Amendment Act of 2020, which included reform aimed at increasing security of tenure for people in rental accommodation;

(f) The phasing-in of healthy homes standards, targeting a significant number of rental households living in unhealthy or substandard accommodations;¹¹

(g) The development of the Accessibility Policy 2019–2022 of the public housing provider Kāinga Ora, which has committed to ensuring that at least 15 per cent of new houses

⁶ E/C.12/NZL/CO/4, paras. 5–6.

⁷ Alan Johnson, Philippa Howden-Chapman and Shamubeel Eaqub, *A Stocktake of New Zealand’s Housing* (New Zealand, 2018).

⁸ Statement of Strategic Intentions for 2019–2023 (February 2019), p. 6.

⁹ Ibid.

¹⁰ See www.hud.govt.nz/residential-housing/covid-19-rent-freeze-and-tenancy-terminations/.

¹¹ See www.hud.govt.nz/residential-housing/healthy-rental-homes/healthy-homes-standards/.

meet universal design standards, and that the rest meet as many universal design standards as possible;¹²

(h) The development of guidelines on the human right to a decent home by the New Zealand Human Rights Commission.¹³

25. The Special Rapporteur recognizes that many of these initiatives may not be perfect and may ultimately be insufficient in ensuring that the right to housing is enjoyed and respected by all in New Zealand. However, they represent important steps in the right direction. From her 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.

26. In addition to the above-mentioned initiatives, through the Housing and Social Policy Inquiry of the Waitangi Tribunal a panel will hear claims and grievances on behalf of various whanau, hapu and iwi from across the nation. Maori face much higher rates of inadequate housing and homelessness and continue to experience the long-term impact of forced displacement, leading to social and community disintegration. The Special Rapporteur welcomes the inquiry as an opportunity to ensure justice, restoration and compensation for past and ongoing injustices under the Treaty of Waitangi.

27. The strategic intentions of the Ministry of Housing and Urban Development cover important normative content of the right to adequate housing, including a commitment to end homelessness, but are not comprehensive enough to constitute a rights-based housing strategy. In its Statement of Strategic Intentions for 2019–2023, the Ministry indicates that people’s well-being and aspirations should be at the centre of housing policies and refers to the Treaty of Waitangi as guidance for housing policy. It underlines that “everyone needs and deserves a home”,¹⁴ but fails to refer to the right to adequate housing and the country’s international human rights obligations in that regard.

28. The Government has published indicators to track implementation of its strategic intentions. They include rental affordability, the duration of the waiting period for public housing, an increase in Maori homeownership, a decrease in the proportion of the population who are homeless and a decrease in the proportion of children living in homes that are cold, damp or mouldy.¹⁵ Every month since September 2019 the Government has published key statistical information in the form of a housing dashboard.¹⁶ The Special Rapporteur also welcomes that the Government has made a commitment to publish data more regularly on severe housing deprivation and homelessness.¹⁷

III. Issues related to the right to adequate housing

A. Housing crisis in New Zealand

29. It is widely recognized that there is a housing crisis in New Zealand and that it is being experienced most acutely by particular groups, including Maori, Pacific peoples and other minorities, persons with disabilities, single parents (particularly single mothers), young people and children, and those living in poverty.

¹² See <https://kaingaora.govt.nz/tenants-and-communities/our-tenants/kainga-oras-accessibility-policy/#:~:text=With%20our%20new%20Accessibility%20Policy,universal%20design%20standards%20as%20possible>.

¹³ See www.hrc.co.nz/news/new-guidelines-aim-advance-human-right-decent-home/.

¹⁴ Statement of Strategic Intentions for 2019–2023, p. 15.

¹⁵ *Ibid.*, p. 16.

¹⁶ See www.hud.govt.nz/news-and-resources/statistics-and-research/government-build-programme-housing-dashboard/.

¹⁷ See, for example, www.hud.govt.nz/news-and-resources/statistics-and-research/2018-severe-housing-deprivation-estimate/.

30. What is less recognized is that the housing crisis in New Zealand is, in fact, a human rights crisis. High rates of homelessness, unaffordability and escalating rents, substandard conditions, overcrowding, insufficient security of tenure, housing largely inaccessible for persons with disabilities, and a lack of social, affordable and community housing for those in need are all inconsistent with the enjoyment of the right to housing. Such conditions would not have reached such a point had housing been fully understood, recognized and implemented by national and local governments as a human right and a social good rather than as an asset for wealth accumulation and growth over the last decades.

B. Housing as an investment, and speculation

31. A number of causes of the housing crisis have been identified, 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 indeed played a role, the crisis has its roots elsewhere. Historically, the country's housing policy has almost exclusively focused on homeownership, which, in more recent years and particularly since the global financial crisis, has translated into housing having lost its function as "home" – a place to live – as that concept has been replaced with the notion that housing is a speculative asset. Housing finance has morphed into consumer finance. Low interest rates, coupled with an underdeveloped rental housing system with weak tenant protections, have allowed housing speculation to continue in a relatively unbridled fashion.

32. In mid-2019, the total wealth of New Zealand households was almost \$NZ 1.6 trillion. Of this wealth, more than 53 per cent, or nearly \$NZ 850 billion, was held in land and housing. Over the previous 10 years, the value of wealth held in housing and land grew 91 per cent – by more than \$NZ 400 billion – 80 per cent of which was from the appreciation in house values.¹⁸ As it stands, close to 50 per cent of banking system assets are residential property-related loans. 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.

33. Successive Governments have sought to introduce greater controls aimed at reducing real estate speculation and curbing some effects of financialization. For example, in 2015, the Government introduced the Taxation (Bright-Line Test for Residential Land) Act. The aim of the Act was to deter property investors from engaging in housing speculation and/or "flipping" houses. It currently requires anyone who purchases a residential property and sells it on within five years to pay income tax on any gains they make (family homes are exempt). This has curbed speculation to some extent.

34. More recently, the Overseas Investment Amendment Act of 2018 was introduced. The Act bars non-residents from purchasing residential properties in New Zealand. There are some exemptions to this prohibition, insofar as overseas investors can apply for consent from the Overseas Investment Office to purchase land or housing for specific purposes. Some observers consider the Act as relatively ineffective and overreaching, as foreign ownership of property in New Zealand is relatively limited. For example, only 3 per cent of all transfers of residential properties in New Zealand involved foreigners in 2018.

C. Lack of housing affordability

35. Under international human rights law, States are required to take measures to ensure access to housing that is affordable regardless of household income. Affordability must be based on and measured against household income, not on what the market can bear.

36. As it stands, the housing market – without intervention by the State – is not meeting the needs of all residents of New Zealand. Until the late 1980s, various forms of financial

¹⁸ Submission by the Child Poverty Action Group to the Special Rapporteur (February 2020), available at www.cpag.org.nz/assets/CPAGs%20response%20to%20UN%20special%20rapporteur%20on%20housing%20Feb%202020.pdf.

assistance provided by the State allowed for low-income families to build or acquire homes meeting their needs. Over time, however, such support has been reduced to insignificant amounts, resulting in very few affordable houses for low-income families. During the 1960s and 1970s, a much higher number of all new builds were affordable for low-income families. By 2014, however, more than half of all newly built housing was upper-market housing.¹⁹ In sum, in recent years, housing for the rich was built in abundance, but insufficient housing was constructed for the majority of the people who have low or middle incomes.

37. At the same time, housing costs increased significantly. Between June 2001 and June 2019, median house prices rose by an alarming 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.²⁰ Between 2009 and 2017, median weekly rents increased by 38.7 per cent, outstripping median weekly incomes, which have increased by only 25.3 per cent. While 31.3 per cent of all tenants are spending over 30 per cent of their income on rent, low-income households commonly spend over 50 per cent of their income on housing, leaving insufficient resources for food, health, education and other essential needs. Even during the economic downturn related to the COVID-19 pandemic, housing prices continued to rise. According to the Real Estate Institute of New Zealand, in October 2020 median house prices reached new record highs across New Zealand, increasing by a further 19.8 per cent within one year.²¹

38. The Government has attempted 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, which is provided to social housing tenants, and the Accommodation Supplement, which is provided to a further 285,000 households.²² Total annual expenditure for the various housing-related social transfers increased to about \$NZ 2.9 billion per annum in 2019, but the level of support beneficiaries receive is insufficient to protect all low-income households from housing cost overburden or energy poverty.

39. As the private rental market is underregulated, some benefits offered to tenants may actually have contributed to increases in rental prices, offering homeowners 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 by those who are most marginalized, which suggests that the complex range of State support often fails to reach those whose right to adequate housing is most at risk.

D. Limited tenant protection, and evictions

40. Today, 56.9 per cent of Maori, 66.9 per cent of members of Pacific peoples and 43 per cent of all children live in rented housing.²³ Until very recently, New Zealand was one of the few Organization for Economic Cooperation and Development countries where property owners could terminate periodic rental agreements without providing any valid reasons. As of February 2021, under the reformed Residential Tenancies Act, property owners must provide valid reasons for ending a periodic rental agreement. Termination due to “anti-social behaviour” requires sufficient proof of three separate instances of anti-social behaviour within a 90-day period, and all newly concluded fixed-term tenancies will become periodic tenancies at the end of the fixed term, unless the owner and tenant agree otherwise. In addition, the ability of homeowners to increase the rent every six months has been abolished.

¹⁹ Kay Saville-Smith, ed., *Revitalising the Production of Affordable Housing for Productive, Engaged & Healthy Lives: Integrated Report* (Building Better Homes, Towns and Cities National Science Challenge, November 2019), pp. 3–4.

²⁰ *16th Annual Demographia International Housing Affordability Survey: 2020 – Rating Middle-Income Housing Affordability*, pp. 20–21.

²¹ Real Estate Institute of New Zealand, “Auckland median house price hits \$1m mark in October; 9 other regions & 28 districts hit record median prices”, press release, 12 November 2020. Available at www.reinz.co.nz/Media/Default/Statistic%20Documents/2020/October/REINZ%20Residential%20Press%20Release%20-%20October%202020.docx.

²² Kay Saville-Smith and Ian Mitchell, “Accommodation Supplement: high expenditure, low efficacy” (Building Better Homes, Towns and Cities National Science Challenge, December 2020).

²³ Johnson, Howden-Chapman and Equb, *A Stocktake*, pp. 9 and 40.

These are important measures; however, they remain insufficient in providing adequate protection for tenants in rental accommodation.

41. Under the revised legislation, property owners can still increase rent every 12 months and there is no statutory limitation for such increases. The only protection against unreasonable rent levels is that a tenant can apply to the Tenancy Tribunal for a review and reduction in rent if they can prove that the owner is charging significantly more than what is being charged for similar properties in the same area. This puts the burden on tenants to collect evidence that their rent is much higher than rent for similar homes in their neighbourhood. Given the overall housing shortage, tenants are reluctant to challenge rent increases as they fear that their tenancies could be cancelled in retaliation. Many also fear that they may be rated negatively by agencies that collect data on tenants to allow homeowners to select “the right tenant”, who is, of course, a tenant that simply pays the rent and refrains from causing any “trouble”.

42. Limited tenant protection can contribute to a situation in which renters are forced to change their home, resulting in a high degree of housing instability, affecting in particular families with children, Maori and Pacific peoples, with adverse impacts on their well-being, health and school achievements. In New Zealand, a renter changes residence twice within a five-year period on average, and sometimes far more often. In 2018, more than half of all renters had fixed tenancy agreements of one year or less, and about one quarter of all tenants who moved said they had been forced to move because the homeowner had ended their contract.²⁴

43. Public data on evictions is, regrettably, not available. However, over 70 per cent of the applications to Tenancy Tribunals concern rent arrears, which are also one of the most prominent reasons for early termination of tenancies. Rent that is outstanding for 21 days is a legitimate reason for terminating a tenancy. Tenancy Tribunals can make conditional orders terminating a tenancy, but if a tenant fails to pay back outstanding rent within a specified period, the property owner can apply for an eviction warrant at a district court, should the tenant not move out.

44. To prevent evictions and homelessness, the Government has established a sustaining tenancies programme. During November 2020, 462 households were supported by the programme.²⁵ The Special Rapporteur welcomes that the Government is planning to further expand the programme, which is currently still small compared to the actual number of tenants in arrears or at risk of eviction.

45. Residents experiencing difficulties paying their rent can receive a Recoverable Assistance Payment or be assisted through rent arrears assistance, which must also be paid back. After the Government ended the COVID-19 tenancy termination restrictions in June 2020, the amount that tenants could receive as rent arrears assistance was doubled. The Special Rapporteur welcomes this measure, but doubts that it will be sufficient to ensure that most people affected by the crisis can remain in their home. For many tenants it could result in an accumulation of private household debt, postponing the problem instead of solving it.

46. The Special Rapporteur remains concerned that neither the Residential Tenancies Act nor any other national law provides for any certain protection against an eviction into homelessness. As evictions into homelessness are considered under international human rights law as a gross violation of the right to adequate housing and other human rights, the current legal framework has in this respect a considerable protection gap.

E. Substandard and unhealthy housing

47. New Zealand has a large stock of mainly privately owned rental housing, much of which is substandard. Damp, cold, mouldy, poorly ventilated and poorly maintained housing

²⁴ Stats NZ, *Housing in Aotearoa: 2020* (December 2020), pp. 40–43.

²⁵ New Zealand, Ministry of Housing and Urban Development, “The Housing Dashboard: November 2020”.

is common and contributes to poor health outcomes.²⁶ The poor housing stock of New Zealand causes a large amount of preventable respiratory diseases. Children living in rental accommodation are more likely to be hospitalized or rehospitalized, and to die young. The Ministry of Health has labelled some diseases housing-sensitive hospitalizations, for which approximately 6,000 children are admitted each year. These children are 3.6 times more likely to be rehospitalized and 10 times more likely to die in the following 10 years.²⁷

48. Lack of adequate insulation and heating results in bad indoor air quality and high energy costs, affecting in particular low-income households. An official survey on energy hardship found that 29 per cent of all New Zealand households struggled to afford their power bills, spent a larger part of their income on power, or often felt cold.²⁸ The risk that renters would face any such problem was twice as high compared to homeowners. Many bedrooms cannot be heated in winter to the standards of the World Health Organization, which recommends that indoor temperatures should not be below 18°C.²⁹ Retrofitting housing with adequate insulation and heating would significantly reduce hospitalizations, save \$NZ 500 million in public health costs annually,³⁰ and put an end to housing situations that are incompatible with the rights to adequate housing and health.

49. The Special Rapporteur therefore welcomes the Government's recent adoption of healthy homes standards, which require landlords to adhere to specific and minimum standards for heating, insulation, ventilation, moisture and drainage, and draught-stopping in rental properties.³¹ By 1 July 2021, these standards must be complied with by all property owners newly renting out a home or renewing a tenancy. Housing rented out by the public housing provider Kāinga Ora and community housing providers must be compliant by 1 July 2023. By mid-2024, all rental housing is to meet the standards.

50. The Special Rapporteur's principle concern is the limited capacity for public inspections to ensure that the healthy homes standards are adhered to. The different deadlines for compliance could send the signal that the human right to a healthy home is less urgent for those living in public housing, as compared to those renting privately.

F. Lack of adequate social housing supply or State-subsidized housing

51. There is a long tradition of State housing in New Zealand, providing affordable housing of relatively high quality to residents. While the population continues to grow, the public housing stock has not kept pace. In fact, stock decreased from nearly 70,000 homes in 2011 to 61,732 homes in September 2018.³² The overall share of public housing in the public housing stock was estimated to be as low as 3.4 per cent in 2017.³³ In its Public Housing Plan for 2018–2022, the Government has committed to reversing this trend and 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.

52. Since 2015, demand for social housing has exploded. As at September 2020, there were 21,415 applicants on the Social Housing Register; this compares to 13,966 on the list as at September 2019.³⁴ In addition, as at September 2020 90 per cent of all applicants were categorized as “Priority A”, meaning that they were considered by the Ministry for Social

²⁶ See Vicky White, *Assessing the condition of New Zealand Housing: Survey Methods and Findings*, BRANZ Study Report SR456 (Judgeford, New Zealand, 2020).

²⁷ Jane Oliver and others. “Risk of rehospitalization and death for vulnerable New Zealand children”, *Archives of Disease in Childhood* vol. 103, No. 4 (2017), and Johnson, Howden-Chapman and Eaquad, *A Stocktake*, p. 41.

²⁸ Johnson, Howden-Chapman and Eaquad, *A Stocktake*, p. 42.

²⁹ See *WHO Housing and Health Guidelines* (Geneva, 2018).

³⁰ Johnson, Howden-Chapman and Eaquad, *A Stocktake*, p. 43.

³¹ See the Residential Tenancies (Healthy Homes Standards) Regulations of 2019.

³² Johnson, Howden-Chapman and Eaquad, *A Stocktake*, p. 27, and New Zealand, Ministry of Housing and Urban Development, “Public housing quarterly report: September 2019”, p. 3.

³³ Johnson, Howden-Chapman and Eaquad, *A Stocktake*, p. 27.

³⁴ See www.msd.govt.nz/about-msd-and-our-work/publications-resources/statistics/housing/index.html#TheHousingRegistersincenbspDecember20182.

Development to be at risk and were experiencing a severe and persistent housing need that must be addressed immediately. The data underlines the severity of the housing crisis in New Zealand, which is, at least in part, related to the lack of affordable housing.

53. The Special Rapporteur welcomes efforts to expand the provision of social housing through the newly formed public housing provider Kāinga Ora. The Salvation Army, however, has estimated that future demand for public housing will require the building of at least an additional 2,000 units per year over the next decade. The lengthy waiting list for public housing suggests that the offer of public housing by Kāinga Ora and community housing providers must be increased significantly.

54. The Special Rapporteur also welcomes the intention of the Government, as reflected in the Urban Development Act of 2020, to facilitate the construction of public housing. While the Act includes provisions requiring public consultation, the Special Rapporteur remains concerned that there is insufficient regulation to ensure that all urban development, including urban development driven by private actors, is socially inclusive and that local communities can fully participate in such development in an effective and meaningful way. The Act could have stronger safeguards to ensure that urban development does not result in spatial segregation and that it responds better to housing and social infrastructure needs as identified by local residents through housing and community needs assessments. Rights-based urban development should be aimed at preventing the economic or physical displacement of residents; offer decent and culturally responsive housing that is affordable for people of all ages and different income levels; be fully accessible for persons with disabilities; facilitate intergenerational cohabitation; be well serviced by transport, childcare and medical services; ensure access to employment opportunities; and respond to prevailing and future household and family sizes.

G. Impact of COVID-19

55. During the COVID-19 lockdown, many people worked for reduced wages or were made redundant. The crisis has had a disproportionate effect on those who were already living on or below the poverty line, with insecure housing and work. Certain industries, such as tourism and hospitality, are likely to take longer to recover and there is a real risk of prolonged unemployment within regions, and among Maori, Pacific peoples, women, single parents, persons with disabilities, LGBT+ and migrant communities.

56. The Special Rapporteur commends the Government for having protected its residents against the virus very successfully, as compared internationally. She applauds the temporary prohibition on rent increases and the restrictions on tenancy terminations during 2020 to reduce the risk that persons would become homeless during the pandemic. She also welcomes the strengthened efforts made to end street homelessness by making 1,000 additional places in motels available. In addition, the Government had offered the temporary Income Relief Payment, providing support for up to 12 weeks to persons who had lost their job or self-employment between 1 March and 30 October 2020. The Government also took the important measure of ensuring an increase in rent arrears assistance once the temporary eviction restrictions ended. No doubt this helped many tenants to remain in their homes.

57. While these measures have cushioned some of the worst impacts of the crisis, they may not be sufficient to ensure durable solutions for all persons affected, in particular given that, as of 26 September 2020, rents can again be increased in a context where housing prices have reached record highs. The economic fallout of the pandemic has aggravated the housing situation of marginalized households. More people are facing housing deprivation or are at risk of eviction, and the number of households on the waiting list for public housing has increased.

H. Earthquake response in Christchurch

58. In 2010 and 2011, Christchurch was struck by a series of large earthquakes, causing 185 deaths and severe damage to the city, including to 65,000 homes. Following the second earthquake on 22 February 2011, “red zones” were established in areas considered to be

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 are believed to have been displaced. Many of these people settled far from the city centre, in the north and south of Christchurch, meaning that people whose property had been in the red zones lost not only their houses, but also their communities. Tenants living in rental accommodation were particularly affected, having received no support to relocate and given that very few affordable and accessible rentals were available in the city. Following the earthquakes, government at the local and national levels implemented various measures to prevent, mitigate and respond to natural disasters, including a mandatory natural disaster insurance provided through a two-tiered system of State and private insurance. Even so, many residents experienced significant difficulties in obtaining independent damage assessments in a manner that was timely and respected their human rights and dignity.

59. Many people reported to the Special Rapporteur a high number of visits from experts contracted by public and private insurance providers, but noted that they had not received timely compensation for the necessary repairs. Further concerns were also raised about the independence of the Insurance & Financial Services 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.

IV. Groups at risk of discrimination and social exclusion

60. Discrimination in the housing market is a significant problem. The Special Rapporteur heard from many Maori, members of Pacific peoples and other persons belonging to racial minorities that tight rental markets allowed discrimination to flourish. Property owners would repeatedly choose people of European descent over people from other racial groups, making access to private rental accommodation very difficult. 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 those complaints, 108 were classified as relating to grounds of race, colour, and/or ethnic or national origin. A total of 63 complaints related to discrimination on the grounds of disability.³⁵

61. People living in situations of homelessness also experience significant discrimination. The Special Rapporteur heard repeated references to their “anti-social behaviour”, from public officials and within the general population. Maori living in situations of homelessness indicated that they were often treated with disrespect and suspicion when trying to access services.

A. Maori

62. Maori suffer some of the worst housing outcomes in the country. Representing 16.5 per cent of the national population, Maori are disproportionately represented among homeless populations, experience a higher rate of disability than non-Maori (32 per cent of the total population, when adjusted for age), have a lower median weekly income, represent 60 per cent of those who receive Emergency Housing Special Needs Grants for short-term emergency accommodation, and make up 36 per cent of social housing tenants. Maori are four times more likely to live in overcrowded housing conditions than people of European heritage. Homeownership rates for Maori in 2018 were 47 per cent, as compared to 64 per cent for the general population. These figures above forcefully lead to the conclusion that significant targeted action is required urgently to meet the current housing needs of Maori as a means to both promote human rights and restore Te Tiriti rights.

³⁵ Data provided by the New Zealand Human Rights Commission to the Special Rapporteur.

63. New Zealand has a separate housing strategy for Maori that covers the period 2014–2025. In the strategy, the Government notes that access to shelter is a fundamental human right, and envisages an increase in the number of Maori community housing providers, more Maori employment in the construction sector and an increase in housing construction on Maori land. It does not, however, encompass the broader spectrum of elements required in a human rights-based housing strategy for indigenous peoples. For example, the strategy does not refer to the concepts of self-determination and free, prior and informed consent, or state that Maori housing programmes should be administered as far as possible through their own institutions.³⁶ The Kāinga Strategic Action Plan in Auckland is also noted as referencing the human right to housing, but it is focused on elevating the rights outlined in the Treaty of Waitangi rather than all components of the right to adequate housing. The Special Rapporteur also notes, however, the Māori and Iwi Housing Innovation Framework for Action, developed by Maori housing experts and providers and launched in 2020, which is aimed at, among other things, increasing the capacity of Maori housing providers and addressing systematic housing issues through the Waitangi Tribunal inquiry.

B. Persons in situations of homelessness

64. New Zealand has a broad definition of homelessness. It covers people sleeping on the street, in temporary accommodation or sharing with other households. According to the 2018 census there were more than 41,000 individuals in New Zealand living in situations of homelessness.³⁷ The rising demands for emergency and public housing suggest that this figure has likely further increased.

65. The 2018 census provides a staggering picture, showing that nearly half of those living in situations of homelessness were under 25 years old. About 32 per cent were Maori, although they represent only 16 per cent of the overall population, and 24 per cent were members of Pacific peoples.³⁸ In 2013, 43 per cent were single parents. Being a student or in paid employment provides no protection from homelessness, with 52 per cent of the homeless population working, studying or both.³⁹

66. According to data obtained through a homelessness count in Auckland in 2018, over 45 per cent of the homeless population in that city was under 18 years old. About 43 per cent of those surveyed were Maori, although Maori represent only 11 per cent of the city's total population. Similarly, single parents, particularly single mothers, Pacific peoples, LGBTQI+ persons, and persons with disabilities were all disproportionately represented among individuals living in situations of homelessness.⁴⁰

67. The Special Rapporteur learned that many people avoided sleeping on the streets by living in their cars or camper vans, and that some lived in those conditions for many months, if not longer. These housing conditions are obviously grossly inadequate and non-compliant with international human rights law. The Special Rapporteur notes, however, that most people living in their vehicles are not criminalized for doing so. Persons who do not have access to adequate or affordable housing should not be persecuted or criminalized for resorting to the few possessions they have to shelter themselves. The Special Rapporteur learned that in some cities, unfortunately, those living in vehicles or camping have been fined.

68. One emergency response to homelessness has been the use of Emergency Housing Special Needs Grants 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 astronomical. The Special Rapporteur was told by several motel

³⁶ See United Nations Declaration on the Rights of Indigenous Peoples, arts. 3, 10 and 23.

³⁷ See Kate Amore, Helen Viggers and Philippa Howden Chapman, "Severe housing deprivation in Aotearoa New Zealand, 2018".

³⁸ Ibid.

³⁹ See Kate Amore, "Severe housing deprivation in Aotearoa/New Zealand 2001–2013" (*He Kainga Oranga/Housing & Health Research Programme*, Department of Public Health, University of Otago, Wellington, 2016), p. 3.

⁴⁰ Housing First Auckland, *Ira Mata, Ira Tangata: Auckland's Homeless Count Report: Point in Time Count 2018*.

residents that the Government was paying over \$NZ 4,000 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.

69. The Special Rapporteur applauds the Government for adopting the homelessness action plan for 2020–2023 with a view to ensuring that homelessness is prevented, rare, brief and non-recurring. By implementing the action plan, the Government intends to assist 10,000 individuals experiencing, or at risk of experiencing, homelessness. It envisions a partnership with Maori to deliver solutions and achieve positive outcomes with regard to Maori housing and well-being.

70. The homelessness action plan includes a commitment of more than \$NZ 300 million 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 places. The Government also announced that those using emergency housing services would pay 25 per cent of their income to access accommodation; the requirement came into effect in October 2020. The Special Rapporteur encourages the Government to ensure that this fee-for-service arrangement ensures that no one is evicted from temporary housing or turned away for lack of sufficient funds and that the fees do not jeopardize access to food or other human rights.

71. The Special Rapporteur is concerned that despite these commitments, the Government will not be able to eliminate homelessness or prevent its reoccurrence. While the action plan includes a commitment to “housing first”, government officials, service providers and advocates with whom she met indicated that without more affordable and accessible housing stock or without being able to access existing supply on a priority basis, it was impossible to roll out a substantial national programme. Moreover, for “housing first” to be successful for Maori, the model must be adapted, developed and administered by Maori, as is being done, for example, at Te Puea Memorial Marae. Overall, Maori iwi have to date not been provided with sufficient resources to provide such services.

C. Persons with disabilities

72. New Zealand is required under international human rights law to ensure that all persons with disabilities have access to a safe and healthy home, without discrimination.⁴¹ The Special Rapporteur met with a number of persons with disabilities who indicated that public and private accommodation was rarely physically accessible. While discrimination in relation to housing is prohibited under the Human Rights Act, it appears still to be widespread, as many private property owners avoid renting out their homes to persons with disabilities for fear of potential modifications or other reasons.

73. According to the results of the 2013 Disability Survey, persons with disabilities made up 24 per cent of the country’s population, and their number has been projected to grow significantly to about 1.7 million by 2038. It is estimated that only 2 per cent of the country’s housing stock is accessible,⁴² even though one in six people would currently require home modifications.

74. The Convention on the Rights of Persons with Disabilities requires States to ensure reasonable accommodation is provided to persons with disabilities. This means guaranteeing that appropriate modifications and adjustments are made so that persons with disabilities can enjoy their right to housing and other rights on an equal basis.⁴³

75. The refusal of reasonable accommodation appears to be an issue for, in particular, persons living in homes rented on the private market. 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

⁴¹ Convention on the Rights of Persons with Disabilities, arts. 1 and 9 (1) (a), and Committee on the Rights of Persons with Disabilities, general comment No. 2 (2014), paras. 15–17 and 25. See also www.rnz.co.nz/national/programmes/checkpoint/audio/2018752086/housing-nz-s-accessible-homes-goal-should-be-much-higher-disability-rights-commissioner.

⁴² CCS Disability Action Coalition, “Joint briefing to Hon. Phil Tyford, Minister of Housing” (13 November 2017), p. 2.

⁴³ See Convention on the Rights of Persons with Disabilities, arts. 2, 5 (3), 9 (1) (a), 19 (a) and 28 (1).

entrance. Another resident told the Special Rapporteur that she had to shower at work because she could not access the bathroom in her house.

76. Homeowners with disabilities can apply for financial support to adapt their home. However, persons with disabilities who are renting cannot submit applications for these funds and have to rely on the goodwill of the property owners.⁴⁴ While the most recent changes to the Residential Tenancies Act allow tenants to undertake minor changes that would allow premises to be returned easily to substantially the same condition, any more significant adaptation measures that persons with disabilities may require are not necessarily covered by this legal reform.

77. Universal design in housing would ensure that nearly all people could access and live in housing without requiring modifications. It would benefit the entire society, including those using strollers or wheelchairs and those with age-related mobility impairments. The Special Rapporteur is concerned that, aside from the goal of the public housing provider Kāinga Ora to have 15 per cent of all of its new-build housing meet universal design standards by 2022,⁴⁵ there has been very little commitment to universal design in government-led housing schemes or in construction standards for residential housing. The Building Act covers only accessibility to public buildings and venues, and excludes residential housing from accessibility requirements.⁴⁶ As the public housing stock is small in size, the goal must be to ensure accessibility in new-build private housing as well.

78. Retrofitting housing to make it accessible is much more expensive than ensuring accessibility for new-build housing. Therefore there is no justification for the lack of regulation to ensure that newly built housing meets certain accessibility standards. In this context the Special Rapporteur wishes to stress that ensuring that building regulations for newly built housing meet accessibility standards is an immediate obligation under the Convention on the Rights of Persons with Disabilities, while retrofitting existing housing may be subject to progressive realization with clearly indicated time frames.⁴⁷ The current situation is unsatisfactory and calls into question the fulfilment of the Government's obligations under articles 19 and 28 of the Convention, concerning the right to live independently and be included in the community and the right to an adequate standard of living.

V. Access to justice

79. The right to adequate housing cannot be realized if it cannot be claimed by a person or a community.⁴⁸ As it stands, the right to adequate housing does not fall within the scope of the New Zealand Bill of Rights Act and is not sufficiently enshrined in national legislation in a way that would offer clear pathways to administrative, non-judicial and judicial remedies.

80. Disputes between tenants and property owners can be settled through the Tenancy Tribunal. Theoretically the Tribunal is one avenue to protect tenants from arbitrary evictions, undue rental increases and issues regarding housing adequacy. In 2018, however, 85 per cent of all cases brought before the Tenancy Tribunal were initiated by property owners against their tenants. Making matters more difficult, tribunal cases and claimants are usually made public, creating a circumstance in which tenants who bring a case to the Tribunal may be identifiable to future lessors, and could potentially be discriminated against as a result of attempting to exercise their rights. A recent law change that makes it easier for tenants to obtain name suppression may only partially address the latter issue. Overall, access to justice through the Tenancy Tribunal remains unbalanced and continues to disadvantage tenants.

⁴⁴ See www.health.govt.nz/your-health/services-and-support/disability-services/types-disability-support/equipment-and-modifications-disabled-people/housing-modifications-disabled-people.

⁴⁵ Kāinga Ora, Accessibility Policy 2019–2022.

⁴⁶ See www.stuff.co.nz/business/116625561/accessibility-and-universal-design-not-part-of-building-act-reforms.

⁴⁷ Committee on the Rights of Persons with Disabilities, general comment No. 2, paras. 24–25.

⁴⁸ See A/HRC/40/61.

81. 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 the property owners even if they are subject to undue rent increases or live in unacceptable housing conditions. In general, consumer protection and legal aid for tenants is severely underdeveloped and underfunded. For example, in Auckland, a city of 1.3 million inhabitants, the Tenants Protection Association (Auckland) has only one professional on staff and the organization functions without any support from the Auckland Council.

82. While the Attorney-General is required to assess whether new legislation tabled in Parliament is compliant with various civil and political rights set out in the New Zealand Bill of Rights Act, there is no obligation to assess compliance of laws with the right to adequate housing or any other economic, social and cultural right.

83. Domestic courts have occasionally rendered judgments that are not in compliance with the country's human rights obligations. In *Lawson v. Housing New Zealand*, for example, 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, pursuant to international human rights law, required to take human rights obligations into account to ensure that State conduct is compliant with international human rights norms.

84. The New Zealand Human Rights Commission can be an alternative avenue for bringing cases of discrimination in the area of land, housing and accommodation. However, its competencies do not render the right in all its dimensions justiciable.

VI. Recommendations

85. **The Special Rapporteur makes the following recommendations to local governments and the national Government in New Zealand:**

(a) **Recognize the right to adequate housing, as set out in international human rights law, as an enforceable right in national legislation and in the New Zealand Bill of Rights Act. The Canadian model could be an option. This should at minimum include a legal obligation of the State to progressively implement the right to housing and provide suitable and accessible emergency housing to individuals and families at risk or in a situation of homelessness. A legislated right to housing should render the right justiciable in domestic courts and enable those who have suffered violations access to effective administrative, non-judicial and judicial remedies;**

(b) **Develop and implement a comprehensive human rights-based housing strategy⁴⁹ based on the right to adequate housing as reflected in international human rights law, the Treaty of Waitangi, the Convention on the Rights of Persons with Disabilities and the United Nations Declaration on the Rights of Indigenous Peoples and its principles of free, prior and informed consent and self-determination. The strategy should also take into due consideration the guidelines on the right to a decent home being developed by the New Zealand Human Rights Commission. It should also set out how New Zealand will implement the relevant Sustainable Development Goals;**

(c) **Ensure that private sector actors are aware of their human rights responsibilities with respect to housing provision, maintenance and finance and that they are included in the monitoring and accountability mechanisms established with respect to the right to housing;**

(d) **Ensure that national law provides for 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 with the affected persons and after ensuring that they have access to all social and housing benefits to which they are entitled. If eviction cannot be avoided, proof should be submitted to the district court**

⁴⁹ See also the recommendation of the Committee on Economic, Social and Cultural Rights, E/C.12/NZL/CO/4, para. 40.

that alternative affordable housing has been offered to the affected tenant(s) in close proximity to the place of residence before an eviction order is executed;

(e) Expand advice and financial support for tenants and homeowners who have fallen into arrears for rent, mortgages or utility costs. Such public spending would significantly reduce the high costs that are currently incurred by placing individuals and families into emergency accommodation and the social and health costs incurred by evictions and homelessness;

(f) Ensure that the New Zealand Human Rights Commission is enabled to provide dispute resolution for all alleged violations of the right to adequate housing, not only those related to allegations of discrimination, without curtailing the ability of courts to hear matters related to the right to adequate housing;

(g) Establish forthwith the post of a commissioner for indigenous peoples' rights in the New Zealand Human Rights Commission, as well as of a commissioner responsible for monitoring the implementation of the right to housing;

(h) Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which allows individuals who have exhausted all domestic remedies to submit complaints to the Committee on Economic, Social and Cultural Rights;

(i) Strengthen the capacity of tenant protection associations so that they are better equipped to provide legal advice, assist tenants in out-of-court settlements of grievances with property owners and, if necessary, in filing applications before the Tenancy Tribunal;

(j) Enhance the capacity of the tenancy compliance and investigations team as an independent service to inspect whether housing meets building, safety, health and accessibility standards, including by providing advice, support and credit for private and public lessors to undertake necessary renovations. Enforce fines for homeowners who fail to undertake required works and adjustments;

(k) Strengthen tenant protections beyond the latest reform of the Residential Tenancies Act by further enhancing security of tenure through the regulation of rent increases and rental freezes in tight markets, and by fortifying rules around short-term rental platforms to ensure they do not have a deleterious impact on the availability and affordability of long-term rentals;

(l) Adopt regulations that provide incentives for making vacant housing units available to low-income households, and provide to State and community housing providers in regions lacking affordable housing priority for renting a housing unit on the private market to ensure that all people on waiting lists can be housed;

(m) Ensure that housing and social benefits are sufficient to actually cover the cost of living for low-income households, and reduce energy poverty to ensure a life in dignity for all;

(n) Reduce housing speculation and the financialization of housing by adopting a capital gains tax as a sustainable revenue source to support a strong housing system, limiting the debt-to-income ratio to regulate mortgage markets and introduce a progressive refinancing scheme for primary homes to limit the effects of negative equity that could result from changes to taxation and mortgage lending;

(o) Expand rent-to-buy schemes and improve access to State-insured mortgages for low-income households and those who experience difficulties in accessing homeownership financing;

(p) Increase efforts to provide alternative housing schemes for low-income and vulnerable groups. This must also include targeted funding, financing and capacity-building for iwi and Maori housing providers;

(q) Support, facilitate and provide financial resourcing to iwi, runanga and Maori housing providers and increase the self-determination of housing solutions by indigenous peoples;

(r) Significantly increase the public housing stock and enhance the support for community housing providers in order to complement and amplify State efforts to ensure community-based solutions to the housing crisis and ensure that there is competition in the public housing sector in order to promote high quality, well-maintained and responsive homes that go beyond the provision of a roof and four walls;

(s) Redirect, in the long-term, expenditure away from programmes that are failing to realize the right to housing, such as the use of motels as emergency shelters or programmes subsidizing housing that fail to deliver a net increase in affordable housing, towards supporting housing providers and developers committed to building and delivering adequate, affordable housing;

(t) In conformity with the right to adequate housing, ensure meaningful participation of all residents, including minorities and marginalized groups, in the development and implementation of all government programmes, policies and legislation related to housing, including with respect to urban development and regeneration;

(u) Adopt regulations requiring or enabling inclusionary zoning nationally and ensure that targets set for affordable units correspond to actual, measured need to ensure thriving communities throughout the country in which nobody is left behind;

(v) Incorporate universal design standards and other obligations contained in the Convention on the Rights of Persons with Disabilities in all housing-related legislation, building standards and policies, to ensure accessibility of housing and the right of persons with disabilities to independent living in the community;

(w) Specify in the Residential Tenancies Act the reasonable modifications and adaptations required by homeowners to ensure that rental housing is rendered accessible to persons with disabilities and persons with age-related impairments;

(x) Provide to all persons with disabilities, on a non-discriminatory basis, access to funding for housing modification and adaptation based on individual need, not on the basis of their tenure status or other criteria;

(y) Refrain from adopting or implementing laws or by-laws that serve to criminalize homelessness, including living in cars, campervans or tents;

(z) Improve regulations and policies in relation to natural disaster response to ensure that compensation, inspection, repair and reconstruction is undertaken in a timely, coordinated, non-intrusive manner and that mitigation measures minimize displacement, relocation and the break-up of communities and prevent any homelessness as required under international human rights law;

(aa) Further improve the monitoring and implementation of housing policies by establishing independent accountability and monitoring mechanisms and by regularly publishing data, disaggregated by age, population group (Maori, Pacific peoples), gender and sexual orientation, and disability, on housing affordability, housing conditions and housing overcrowding, compliance with healthy home standards, homelessness, accessibility of private and public housing for persons with disabilities, security of tenure, rent, mortgage and utility areas, evictions, duration on the waiting list for accessing public housing, and time spent in transitional housing before accessing long-term housing.