

INTERNATIONAL HUMAN RIGHTS LAW

I. INTRODUCTION

In 2012, New Zealand continued its wide-ranging engagement with the United Nations treaty and Charter based bodies. In its engagement with the human rights treaty bodies, New Zealand met with the Committee on Economic, Social and Cultural Rights (the Committee) over the course of three meetings in May to discuss New Zealand's third periodic report and subsequently received that Committee's concluding observations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) which, inter alia, called for human rights to inform the rebuilding of Christchurch. New Zealand also submitted its 18th to 20th consolidated periodic report to the Committee on the Elimination of Racial Discrimination and presented New Zealand's Submission of Follow-up Responses to the Human Rights Committee. The Committee Against Torture prepared a list of issues concerning the submission of New Zealand's sixth periodic report. New Zealand was an active observer State of the Human Rights Council. Notably, it introduced and sponsored a draft resolution on preventable maternal mortality and morbidity and human rights which was adopted. New Zealand was also an active participant in the Council's Special Session on Syria. The Human Rights Commission continued with its work, much of the focus of which was on the rebuilding of Christchurch. It also played an active role during the Committee on Economic, Social and Cultural Rights' consideration of New Zealand's third periodic report. This note reviews these and other aspects of New Zealand's state practice in the area of human rights in 2012.

II. PERIODIC REPORTS TO HUMAN RIGHTS TREATY BODIES

A. Concluding Observations of the Committee on Economic, Social and Cultural Rights

In May 2012,¹ the Committee on Economic, Social and Cultural Rights (the Committee) considered New Zealand's third periodic report,² covering the period from January 1998 to December 2007, on the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR).³ In its concluding observations, the Committee welcomed the Report,

1 CESCR *Summary record of the 9th meeting* E/C.12/2012/SR.9 (2012); CESCR *Summary record of the 10th meeting* E/C.12/2012/SR.10 (2012); and CESCR *Summary record of the 11th meeting* E/C.12/2012/SR.11 (2012).

2 CESCR *Third Periodic Report by New Zealand* E/C.12/NZL/3 (2011).

3 International Covenant on Economic, Social and Cultural Rights 993 UNTS 3 (opened for signature 16 December 1966, entered into force 3 January 1976).

describing it as self-critical and noted, with appreciation, the New Zealand delegation's frank, positive and constructive engagement with the Committee.⁴ The Committee also welcomed the written replies to its list of issues.⁵

On a positive note, the Committee welcomed New Zealand's recent progress in treaty ratification.⁶ It also welcomed New Zealand's endorsement of the United Nations Declaration on the Rights of Indigenous Peoples.⁷ A number of other areas received positive comment with the Committee noting the recognition of sign language as an official language, the entitlements for refugees and asylum seekers introduced under the Immigration Act 2009 and the development and implementation of an education curriculum more responsive to New Zealand's diversified student population. The Committee also noted the adoption of the Civil Union Act 2004, the Relationships (Statutory References) Act 2005 and the extension of the relationship property regime to de facto couples, the introduction of paid parental leave and the adoption of the Crimes (Substituted Section 59) Amendment Act 2007.⁸ The Committee also noted some practical achievements, in particular, the significant improvement in the immunisation rate among Māori, the low rates of hardship among older persons and the notable reduction of unemployment during the reporting period. It further noted New Zealand's policy of mainstreaming of human rights in its development cooperation programmes. It commended the work undertaken by the New Zealand Human Rights Commission and noted with appreciation the Commission's broadening mandate.⁹

The Committee also highlighted some principal subjects of concern and made some recommendations in that regard, such as New Zealand's ongoing failure to incorporate fully the provisions of the Covenant into domestic law and its failure to recognise these rights in the New Zealand Bill of Rights Act

4 CESCR *Concluding observations of the Committee on Economic, Social and Cultural Rights* E/C.12/NZL/CO/3 (2012) [CESCR *Concluding Observations*] at [2]-[3].

5 CESCR *List of Issues* E/C.12/NZL/Q/3 (2011) where the Committee had requested information on the status of New Zealand's constitutional reform and on the standing of the Bill of Rights Act as proposed under the reform; measures taken to make the Covenant rights justiciable and on how New Zealand guarantees the right to bring claims before domestic courts and request reparations. It also requested information on New Zealand's efforts to reach a minimum net amount of 0.7 per cent of gross national income (GNI) as official development assistance and the extent to which it has sought to promote the realisation of economic, social and cultural rights through its international development cooperation policy. CESCR *Replies by New Zealand to List of Issues* E/C.12/NZL/Q/3/Add.1 (2012).

6 During the reporting period, New Zealand ratified the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2375 UNTS 237 (opened for signature 4 February 2003, entered into force 22 June 2006), the Convention on the Rights of Persons with Disabilities 2515 UNTS 3 (opened for signature 30 March 2007 entered into force 3 May 2008) and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2171 UNTS 217 (opened for signature 25 May 2000, entered into force 18 January 2002).

7 GA Res 61/295, A/RES/61/295 (2007).

8 CESCR *Concluding Observations*, above n 4, at [5].

9 At [6]-[8].

1990 (NZBORA). It urged New Zealand to take the necessary measures, in the context of the ongoing constitutional review process, to give the Covenant full effect and to incorporate economic, social and cultural rights in the NZBORA. The Committee also called on New Zealand to ensure that redress for violations of the Covenant rights could be sought and it requested information on court cases where the provisions of the Covenant have not only been invoked but also applied in New Zealand's next periodic report.¹⁰

The Committee expressed its concern at New Zealand's failure to give sufficient protection to the inalienable rights of Māori.¹¹ It was concerned that Māori and Pasifika and persons with disabilities continue to be disadvantaged and called upon New Zealand to take further practical measures to strengthen its efforts in this regard.¹² The Committee recommended that New Zealand continue to provide education around equal career opportunities and take specific measures to promote women's advancement in the labour market. It also called upon New Zealand to amend its legislation so as to provide effectively for equal pay for work of equal value and to provide information to that effect in its next periodic report.¹³ The Committee expressed concern at New Zealand's high level of youth unemployment and the lack of a statutory maximum number of work hours.¹⁴ It was also concerned at the retrogressive nature of welfare reforms, which it regarded as being potentially discriminatory, and called on New Zealand to meet its Covenant obligations.¹⁵ The Committee expressed its concern at the on-going problem of family violence and sexual violence and the widespread violence and bullying in schools.¹⁶ It noted with concern the shortage of childcare facilities and expressed its regret at reports that childcare subsidies have benefited mainly middle and higher income households.¹⁷ The Committee noted the challenges caused by the recent earthquakes on the enjoyment of Covenant rights by persons affected and it recommended the adoption of a human rights approach to reconstruction efforts.¹⁸ The Committee called upon New Zealand to withdraw its reservation to Article 8 of the ICESCR and encouraged ratification of the Optional Protocol to the ICESCR.¹⁹ It also called upon New Zealand to consider signing and ratifying the Migrant Workers' Convention, the Enforced Disappearances Convention, the Optional

10 At [9]-[10].

11 At [11]. See Fleur Adcock "Year in Review: Indigenous Peoples Rights under International Law" (2012) 10 NZYIL (this volume) for a more full discussion of the Committee recommendations in relation to Māori.

12 CESCR *Concluding Observations*, above n 4, at [12]-[13].

13 At [14].

14 At [15]-[16].

15 At [17].

16 At [18]-[19].

17 At [20].

18 At [21].

19 At [30] and [31]; Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (opened for signature 24 September 2009, entered into force 5 May 2013).

Protocol to the Convention on the Rights of Persons with Disabilities, and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.²⁰

The Committee requested New Zealand to submit its fourth periodic report by 18 May 2017.²¹ In terms of the contents of that report, the Committee requested information on measures taken to protect, promote and fulfil the cultural rights of Tokelauans, statistical data on the size and makeup of the informal economy, underemployment and multiple occupations, the results of measures taken in the area of mental health, education measures in respect of sexual and reproductive health and the cost of education at all levels.²²

B. New Zealand's Submission of Follow-up Responses to the Human Rights Committee

In February 2012, the Human Rights Committee received further information, in response to an earlier request,²³ from New Zealand on recommendations related to the over-representation of Māori in prison, terrorism suppression and the police action known as “Operation Eight” and the review of the Foreshore and Seabed Act 2004.²⁴

C. New Zealand's Report to the Race Committee

In June 2012, New Zealand submitted its 18th to 20th consolidated periodic report to the Committee on the Elimination of Racial Discrimination (CERD).²⁵ The Report covers the period from 1 January 2006 to 22 December 2011 and responds to the Committee's concluding recommendations on the previous report. By October 2012, shadow reports had been sent to CERD from the New Zealand Federation of Multicultural Councils Inc and the New Zealand Human Rights Commission. In December, in connection with its consideration of the report, the Committee drew up a list of themes

20 CESCR *Concluding Observations*, above n 4, at [32]; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 2220 UNTS 3 (opened for signature 18 December 1990, entered into force 1 July 2003); International Convention for the Protection of All Persons from Enforced Disappearance 2562 UNTS (opened for signature 6 February 2007, entered into force 23 December 2010); Optional Protocol to the Convention on the Rights of Persons with Disabilities (opened for signature 30 March 2007, entered into force 3 May 2008); Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (opened for signature 19 December 2011, not yet in force).

21 CESCR *Concluding Observations*, above n 4, at [35].

22 At [27]-[28].

23 HRC *Concluding Observations of the Human Rights Committee: New Zealand* CCPR/C/NZL/CO/5 (2010) at [12]-[14] and [19].

24 HRC *Information received from New Zealand on the implementation of the concluding observations of the Human Rights Committee* CCPR/C/NZL/CO/5 (2012) regarding New Zealand's fifth periodic report under the International Covenant on Civil and Political Rights CCPR/C/NZL/CO/5 (2008).

25 CERD *Eighteenth to twentieth periodic reports of States parties due in 2011: New Zealand* CERD/C/NZL/18-20 (2012).

aimed at guiding the dialogue between the New Zealand delegation and the Committee on matters relating to the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) in domestic law, the institutional and policy framework for its implementation, the situation of ethnic and minority communities, access to justice, and discrimination against non-citizens including migrants, refugees and asylum seekers.²⁶

D. List of Issues Prepared by the Committee Against Torture Prior to the Submission of the Sixth Periodic Report of New Zealand

At its 48th session, also in June 2012, the Committee Against Torture adopted a list of issues to be considered by New Zealand prior to the submission of its sixth periodic report. The Committee requested specific information on the implementation of articles 1-16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including with regard to the Committee's previous recommendations.²⁷

III. HUMAN RIGHTS COUNCIL

A. Special Session on Syria

In May 2012, New Zealand, in its capacity as an observer State, supported a successful request that the Human Rights Council should convene a special session on the deteriorating situation of human rights in the Syrian Arab Republic and the recent killings in El-Houleh.²⁸ During the Special Session, held in June, New Zealand made a statement to the Council in which it condemned the gross human rights abuses that were being committed in Syria and called upon the Syrian authorities to implement fully the six-point proposal of the Joint Special Envoy of the United Nations and Arab League.²⁹ New Zealand was one of a number of sponsors of a draft resolution³⁰ which was subsequently adopted by the Council.

B. Regular Sessions

In the 19th regular session of the Human Rights Council, New Zealand made a statement, on behalf of Australia, Canada and New Zealand, to the high level panel to promote human rights mainstreaming and international cooperation. New Zealand made a statement during the urgent debate on the human rights and humanitarian situation in the Syrian Arab Republic and it

26 CERD *List of themes to be taken up in connection with the consideration of the eighteenth to twentieth periodic reports of New Zealand* CERD/C/NZL/Q/18-20 (2012).

27 CAT *List of issues prepared by the Committee prior to the submission of the sixth periodic report of New Zealand adopted by the Committee at its forty-eighth session 7 May-1 June 2012* CAT/C/NZL/Q/6 (2012).

28 Human Rights Council GA S-19/1, A/HRC/Res/S-19/1 (2012).

29 Human Rights Council - Special Session on Syria, Statement by New Zealand, 1 June 2012.

30 Draft resolution GA S-19/1, A/HRC/S-19/L.1, 1 June 2012 adopted as GA S-19/1, A/HRC/S-19/2 (2012) at [21].

co-sponsored a draft resolution on the escalating grave human rights violations and deteriorating humanitarian situation in that State. New Zealand also sponsored a draft resolution promoting reconciliation and accountability in Sri Lanka. The Council held an annual interactive debate on the rights of persons with disabilities and New Zealand participated in the ensuing panel discussion. New Zealand also participated in the interactive dialogue with both the Special Rapporteur on the Right to Food and the Special Representative of the Secretary-General on Violence Against Children. New Zealand sponsored and co-sponsored a series of draft resolutions on freedom of religion or belief, birth registration and the right of everyone to recognition everywhere as a person before the law, rights of persons with disabilities, participation in political and public life, the role of good governance in the promotion and protection of human rights, the promotion and protection of human rights in the context of peaceful protests and human rights and democracy and the rule of law. New Zealand also made statements to the Council in the follow-up to the 17th and 18th special sessions of the Council on the situation of human rights in the Syrian Arab Republic, as well as the follow-up to its 15th special session on the human rights situation in Libya. In relation to country specific resolutions, New Zealand also co-sponsored a draft resolution on the situation of human rights in the Islamic Republic of Iran, the Democratic People's Republic of Korea, Myanmar and the Syrian Arab Republic.³¹

New Zealand was also an active participant in the 20th regular session of the Human Rights Council as it engaged in interactive dialogue with the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression and on the independence of judges and lawyers, respectively, as well as the Working Group on the issue of discrimination against women in law and in practice. New Zealand also participated in the annual panel discussion on women's human rights. It co-sponsored a series of draft resolutions, which were adopted, on conscientious objection to military service, the right to a nationality, elimination of discrimination against women, the promotion, protection and enjoyment of human rights on the internet, and the acceleration of efforts to eliminate all forms of violence against women. New Zealand also co-sponsored draft resolutions (adopted) on the situation of human rights in Belarus and the Syrian Arab Republic respectively.³²

In the 21st session, New Zealand continued with its wide-ranging participation. It engaged with the Special Rapporteurs on the human rights obligations related to environmentally sound management and disposal of hazardous substances and wastes and on the situation of human rights in

31 Human Rights Council *Report of the Human Rights Council on its nineteenth session* A/HRC/19/2 (2013).

32 Human Rights Council *Report of the Human Rights Council on its twentieth session* A/HRC/20/2 (2012).

Cambodia, respectively. New Zealand introduced and sponsored a draft resolution on preventable maternal mortality and morbidity and human rights and co-sponsored a resolution on human rights and indigenous peoples which were both adopted. New Zealand participated in the interactive dialogue with the commission of inquiry on the Syrian Arab Republic and co-sponsored a draft resolution on the situation of human rights in that State which was adopted.³³

IV. ACTIVITIES OF THE NEW ZEALAND HUMAN RIGHTS COMMISSION

Work has continued on the Human Rights Commission's three year study of the impact of international human rights instruments on New Zealand law, policy and practice. The Commission made submissions on the Minimum Wage (Starting Out Wage) Amendment Bill, Parental Leave and Employment Protection (Six Months Paid Leave) Amendment Bill, Social Security (Benefit Categories and Work Focus) Amendment Bill, Marriage Equality Bill, Environment Canterbury (Temporary Commissioners and Improved Water Management) Bill, Local Government Act 2002 Amendment Bill, Immigration Amendment Bill, Child Support Amendment Bill, Corrections Amendment Bill, Social Security (Youth Support and Work Focus) Amendment Bill, Green Paper for Vulnerable Children and the Expert Mechanism on the Rights of Indigenous Peoples' (EMRIP) Study on the role of languages and culture in the promotion and protection of the rights of indigenous peoples to the UN High Commissioner for Human Rights.

In October 2012, the Commission published its Annual Report which focussed upon the Canterbury earthquake recovery, reducing entrenched inequalities, reducing violence abuse and bullying and effectively implementing international treaty obligations in New Zealand.³⁴ The Report also noted that the Commission was re-accredited as an "A" status national human rights institution under the Paris Principles.³⁵ To support New Zealand to meet its international treaty obligations, the Commission produced an issues paper and attended the United Nations Committee on Economic, Social and Cultural Rights' examination of New Zealand's third periodic report. The Commission worked with the Government delegation and the Committee to advise all parties. The Committee's recommendations reflected the majority of issues raised by the Commission.³⁶ The Commission also produced an issues paper for the UN Committee on the Convention

33 Human Rights Council *Report of the Human Rights Council on its twenty-first session* A/HRC/21/2 (2013).

34 New Zealand Human Rights Commission *New Zealand Human Rights Commission Annual Report* (HRC, Wellington, 2012).

35 At 5.

36 At 5.

on the Elimination of Discrimination Against Women.³⁷ In November, the Commission also published its fifth benchmark report on the New Zealand Census of Women's Participation.³⁸

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37 At 5.

38 New Zealand Human Rights Commission *New Zealand Census of Women's Participation 2012* (HRC, Wellington, 2012).