



Peace Movement Aotearoa

PO Box 9314, Wellington 6141, Aotearoa New Zealand. Tel +64 4 382 8129

Email pma@xtra.co.nz Web site www.converge.org.nz/pma

Economic, Social and Cultural Rights: UN Experts Recommendations

Committee on Economic, Social and Cultural Rights Concluding Observations on New Zealand

4 April 2018

The Concluding Observations of the Committee on Economic, Social and Cultural Rights on the New Zealand government's compliance with the International Covenant on Committee on Economic, Social and Cultural Rights (the Covenant) were released overnight, and are available at www.converge.org.nz/pma/cescr63rd.htm

The Committee, which comprises 18 independent human rights experts, considered the government's performance during its 63rd session, which was held in Geneva from 12 to 29 March 2018. The Concluding Observations are based on information supplied by the government in its fourth Periodic Report, statistical information, and discussion during interactive dialogues with a government delegation led by Andrew Little, Minister of Justice, on 22 and 23 March.

The Committee also took into account information provided in NGO reports from: Action for Children & Youth Aotearoa and Child Poverty Action Group, Canterbury Men's Centre, He Kainga Oranga / Housing and Health Research and the New Zealand Centre for Sustainable Cities, He Korowai Trust and Catherine Murupaenga-Ikenn, Human Rights Foundation, IHC New Zealand, Inclusive NZ, Independent Monitoring Mechanism for the United Nations Declaration on the Rights of Indigenous Peoples, New Zealand Council of Trade Unions / Te Kauae Kaimahi, Peace Movement Aotearoa, Tamaki Legal, and a combined report from Health Promotion Forum, Pukenga Consultancy Ltd, STIR: Stop Institutional Racism, SOUL: Save Our Unique Landscape, Tamaki Tiriti Workers, Auckland University of Technology, Te Runanga o Aotearoa - New Zealand Nurses Organisation, New Zealand Public Health Association and Waka Oranga; as well as information from other United Nations human rights monitoring bodies and procedures, and the Human Rights Commission.

During the 63rd session, additional updated information on nine of the NGO reports was provided to the Committee during a video briefing from Wellington organised by Peace Movement Aotearoa, in conjunction with the UN Office of the High Commissioner for Human Rights and the Human Rights Commission, and by NGO representatives in Geneva.

The Concluding Observations follow the standard format of UN human rights monitoring bodies with four main sections:

A. Introduction: has a brief introductory paragraph.

B. Positive aspects: has one paragraph welcoming some progress in implementing economic, social and cultural rights, and the government's commitment to addressing priorities such as reducing child poverty, increasing the minimum wage, overhauling both the mental health and education systems, and more effectively addressing the housing crisis; and one paragraph expressing appreciation for the role played by the Human Rights Commission and civil society, including indigenous peoples' organisations and representatives, in the review process of New Zealand's fourth periodic report.

C. Principle subjects of concern and recommendations: has forty six paragraphs listing concerns and recommendations on a range of issues, including constitutional issues, the Treaty of Waitangi, and key economic, social and cultural rights as summarised below.

D. Other recommendations: has seven paragraphs with recommendations on topics including: ratification of the Optional Protocol to the Covenant and other human rights instruments; the Sustainable Development Goals; steps to progressively develop and apply appropriate indicators on the implementation of economic, social and cultural rights in order to facilitate the assessment of progress achieved by New Zealand to comply with its obligations under the Covenant; dissemination and implementation of the Concluding Observations; a request to provide information on what has been done to implement three of the Committee's recommendations (on family violence, the social welfare sanctions regime, and housing) within eighteen months; and a paragraph inviting the government to submit its next periodic report by 31 March 2023.

The Committee's principle subjects of concern and recommendations (Section C) are organised under twenty headings:

- **Justiciability of the Covenant rights** (paragraphs 5 to 7): includes concerns that the economic, social and cultural rights do not have equal status with civil and political rights in the New Zealand Bill of Rights Act 1990; that provisions of the Covenant are still not fully incorporated into the domestic legal order; and that legislation adversely affecting human rights has remained in effect despite Declarations of Inconsistency made by the Human Rights Review Tribunal and the Courts under the Human Rights Act. Recommendations include ensuring equal legal status of all human rights - economic, social and cultural as well as civil and political rights - by fully incorporating the Covenant's provisions into the legal order, so as to render them justiciable in domestic courts and to enable victims of violations of Covenant rights to have access to effective remedies; and ensuring that recommendations made by mechanisms reviewing compliance of proposed legislation with New Zealand's international human rights obligations, as well as the New Zealand Bill of Rights Act and the Treaty of Waitangi, are taken into account by legislators.
- **Right to freely dispose of natural wealth and resources** (paragraphs 8 and 9): includes concerns that the Treaty of Waitangi is still not legally enforceable nor referred to in the Constitution Act; that the Waitangi Tribunal's recommendations are not binding and are frequently ignored by the government; that efforts to ensure meaningful participation of Maori in decision-making concerning laws that impact their rights, including land and water rights, are limited; and that the requirement of free, prior and informed consent is not systematically implemented, in particular in the context of development and extractive activities carried out on territories owned or traditionally used by Maori.

Recommendations include that the government: takes immediate steps, in partnership with Maori representative institutions, to implement the recommendations of the Constitutional Advisory Panel regarding the role of the Treaty of Waitangi within its constitutional arrangements together with the proposals put forward in the Matike Mai Aotearoa report; ensures systematic and full implementation of recommendations put forward by the Waitangi Tribunal; develops a national strategy to bring legislation and public policy in line with the provisions of the UN Declaration on the Rights of Indigenous Peoples, and ensures adequate provision of financial and human resources to the UN Declaration Independent Monitoring Mechanism established by the Iwi Chairs Forum; puts in place effective mechanisms to ensure meaningful participation of Maori in all decision-making processes affecting their rights (including trade strategy and climate change policies); takes effective measures to ensure compliance with the requirement of obtaining the free, prior and informed consent of Maori, notably in the context of extractive and development activities, and conducts social, environmental and human rights impact assessments prior to granting licences for extractive and development activities and during their operations.

- **Non-discrimination / unconscious bias** (paragraphs 10 and 11): includes concerns about the entrenched unconscious bias towards Maori in education, health, justice and social services, which has a significant detrimental impact on Maori in all areas of life; and recommends that a government-wide strategy is introduced to ensure that the nature and impact of unconscious bias is understood by governance bodies and employees at all levels, and that the strategy is supported by comprehensive training and education as well as having effective monitoring mechanisms.
- **Protection from violence** (paragraphs 12 and 13): includes concerns and recommendations around the prevalence of domestic and gender-based violence, impacting particularly Maori women and girls, “despite some positive measures taken in this regard”; and the extent of child abuse in the family and in state care, in particular the abuse experienced by children with disabilities and Maori children.
- **Maximum available resources** (paragraphs 14 and 15): includes concerns and recommendations around inadequate consideration of Covenant obligations in the budget process, and that budgetary allocations for areas relating economic, social and cultural rights remain insufficient.
- **Business and human rights** (paragraphs 16 to 18): includes concerns and recommendations around the lack of a national action plan on business and human rights, and that the regulatory framework for New Zealand companies operating here and overseas does not fully ensure respect for economic, social and cultural rights nor reparations for victims of any violations of those rights.
- **Persons with disabilities** (paragraphs 19 and 20): includes concerns and recommendations around lack of conformity to international standards regarding reasonable accommodation and inclusive education for persons with disabilities, living conditions and socio-economic outcomes, and the discrepancy between provisions of the Human Rights Act 1993 and the Education Act 1989 in relation to the rights of persons with disabilities.

- **Equality between men and women** (paragraphs 21 and 22): includes concerns and recommendations around the level of representation of women in leadership roles and on boards, and gender parity.
- **Unemployment** (paragraphs 23 and 24): includes concerns and recommendations around unemployment and underemployment, particularly in relation Maori, Pasifika, women and persons with disabilities, and the high numbers of youth who are not in employment, education or training.
- **Minimum wage** (paragraphs 25 and 26): includes concerns and recommendations around the gradual increase of the minimum wage “to subsistence level”; the Minimum Wage Act exemption permit system, whereby persons with disabilities may be paid lower salaries, below the minimum wage; and the necessity for all workers, without discrimination, to receive a minimum wage that enables them to have decent living conditions for themselves and their families.
- **Just and favourable conditions of work** (paragraphs 27 to 29): includes concerns and recommendations around the working conditions of migrant workers, significant non-compliance by employers with employment laws, and the prevalence of workplace deaths and injuries, especially in the agriculture, forestry and construction sectors.
- **Women’s employment** (paragraphs 30 and 31): includes concerns and recommendations around women being more likely to be engaged in part-time, casual, and low-paid employment, the gender wage gap, and equal pay for work of equal value.
- **Trade union rights** (paragraphs 32 and 33): includes concerns and recommendations around New Zealand’s reservation to Article 8 of the Covenant (rights around trade unions and the right to strike), the legal restrictions on trade union rights, and the lack of mechanisms to protect new employees against unfair dismissal during a trial period of employment.
- **Right to social security** (paragraphs 34 to 36): includes concerns and recommendations around the social welfare reforms that have resulted in sanctions on non-compliant beneficiaries, including those with dependent children, and are excessively focused on getting social welfare recipients into paid work; ensuring that persons in need of social assistance effectively receive social security benefits that are adequate and allow the beneficiaries and their families to enjoy an adequate standard of living; and the disparity whereby Maori social service providers’ contracts are more likely to be renewed on an annual basis while non-Maori providers’ contracts are renewed every five years.
- **Right to an adequate standard of living** (paragraphs 37 and 38): includes concerns and recommendations around the rise in child poverty; the disproportionate numbers of Maori and Pasifika children, as well as children with disabilities, living in households with incomes below the relative income poverty line; and ensuring the Child Wellbeing Strategy is well resourced and effectively implemented.
- **Right to housing** (paragraphs 39 to 41): includes concerns and recommendations around the likelihood of disadvantaged groups and individuals, notably Maori and Pasifika families and persons with disabilities, experiencing severe housing deprivation, including overcrowding conditions; the increase in homelessness due to housing becoming unaffordable for many

families; the considerable number of unsafe rental housing units and shortage of social and affordable housing; the need to redouble efforts to regulate the private housing market, including by controlling rent increases and taking effective measures to ensure that housing rental units are safe for living, for example by strengthening legislation that requires minimum standards for heating and insulation in rental homes; and the slow pace of processing claims arising from the Canterbury earthquakes in relation to the right to access to adequate housing.

- **Right to water** (paragraphs 42 and 43): includes concerns and recommendations around “persisting challenges” in access to safe drinking water.
- **Right to health** (paragraphs 44 and 45): includes concerns and recommendations around persisting gaps in the enjoyment of the right to health, especially for Maori and Pasifika, the higher rates of chronic diseases and disability for Maori, and the negative overrepresentation of Maori in suicide and mental health statistics.
- **Mental health** (paragraphs 46 and 47): includes concerns and recommendations around “insufficiently responsive” mental health and addiction services in relation to the rights and needs of persons with mental health disabilities, including those in prisons, and the independent inquiry into Mental Health and Addiction Services.
- **Right to education** (paragraphs 48 to 50): includes concerns and recommendations around the persistence of disparities in the enjoyment of the right to education, particularly for Maori and Pasifika students; the limited availability of Maori, or Maori-speaking, teachers “limiting even further access to education in the Maori language”; the placement of children with disabilities in special education; the prevalence of bullying and harassment at schools; indirect education costs leading to school drop-out, mostly by students from disadvantaged and marginalised households; the need to develop culturally appropriate education programmes in partnership with Maori and Pasifika; and the need for effective steps to address indirect schooling costs to ensure equal access to education by all children and students.

Where you can find more information

- **Information on the 63rd session** - including information on the International Covenant on Economic, Social and Cultural Rights and New Zealand, the process leading to the 63rd session, links to the NGO reports, links to the interactive dialogues, and media coverage - is available at www.converge.org.nz/pma/cescr63rd.htm
- **New Zealand and the International Covenant on Committee on Economic, Social and Cultural Rights** index page, www.converge.org.nz/pma/icescr.htm
- **Links to this update** - formatted for printing, www.converge.org.nz/pma/CESCR-C-Obs-April2018.pdf - on Facebook, www.facebook.com/notes/peace-movement-aotearoa/nz-economic-social-and-cultural-rights-un-experts-recommendations/1656259577754738