



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Concluding observations on the sixth periodic report of New Zealand\*

1. The Committee considered the sixth periodic report of New Zealand (CCPR/C/NZL/6) at its 3244th and 3245th meetings (CCPR/C/SR.3244 and 3245), held on 14 and 15 March 2016. At its 3259th meeting, held on 24 March 2016, it adopted the present concluding observations.

#### A. Introduction

2. The Committee is grateful to the State party for having accepted the simplified reporting procedure and for submitting its sixth periodic report in response to the list of issues prior to reporting prepared under that procedure (CCPR/C/NZL/QPR/6). It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high-level delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee thanks the State party for the oral responses provided by the delegation and for the supplementary information provided to it in writing.

#### B. Positive aspects

3. The Committee welcomes the following legislative and institutional measures taken by the State party:

- (a) The adoption of the Organised Crime and Anti-Corruption Legislation Act of 2015;
- (b) The adoption of the Harmful Digital Communications Act of 2015;
- (c) The adoption of the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act 2014;
- (d) The adoption of the Vulnerable Children Act 2014;
- (e) The adoption of the Māori Disability Action Plan for Disability Support Services (Whāia Te Ao Mārama) 2012-2017;

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\* Adopted by the Committee at its 116th session (7-31 March 2016).



- (f) The adoption of the National Pasifika Disability Plan (Faiva Ora) 2014-2016;
  - (g) The adoption of the Marriage (Definition of Marriage) Amendment Act 2013;
  - (h) The adoption of the Youth Crime Action Plan 2013-2023;
  - (i) The adoption of the Māori Education Strategy, Ka Hikitia: Accelerating Success 2013-2017.
4. The Committee welcomes the State party's ratification on 20 September 2011 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

## C. Principal matters of concern and recommendations

### Reservations to the Covenant

5. The Committee regrets the slow progress made by the State party toward withdrawing its reservation to article 10 (2) (b) and (3), although it notes the information provided by the State party regarding measures to separate youth detainees from adult detainees and, in particular, the establishment by the Department of Corrections of dedicated youth units. The Committee also notes the intention of the State party to maintain its other reservations (art. 2).

6. **The Committee reiterates its previous recommendation (CCPR/C/NZL/CO/5, para. 5) and invites the State party to proceed speedily with the withdrawal of its reservation to article 10 (2) (b) and (3), and to consider removing all of its other reservations to the Covenant.**

### National Plan of Action for Human Rights

7. The Committee welcomes the information provided by the State party regarding the main achievements relating to the implementation of the National Plan of Action for Human Rights for the period 2005-2010, in particular the ratification of the Convention on the Rights of Persons with Disabilities. Nevertheless, the Committee regrets the long hiatus between the conclusion of the first National Plan of Action in 2010 and the adoption of the second Plan in 2015 (art. 2).

8. **The State party should provide in its next periodic report information on the implementation of the second National Plan of Action for Human Rights, including its main achievements and challenges, as well as information on how the second Plan has addressed the Committee's recommendations and those of other international human rights mechanisms.**

### Bill of Rights

9. The Committee notes that the Bill of Rights Act 1990 does not reflect all the rights enshrined in the Covenant and that the Act does not have, in domestic law, the status of entrenched law. The Committee also notes that laws adversely affecting the protection of human rights, such as the Criminal Investigations (Bodily Samples) Amendment Act 2009, have been enacted, notwithstanding the fact that the Attorney-General has reported that they are inconsistent with the Bill of Rights Act 1990 (art. 2).

10. **The State party should:**

- (a) **Consider amending the Bill of Rights Act 1990 in order to ensure that it incorporates all the rights enshrined in the Covenant;**

(b) **Ensure that draft and enacted legislation that is the subject of negative reporting by the Attorney-General is reviewed in order to ensure consistency with the Bill of Rights Act 1990 and the Covenant;**

(c) **Consider entrenching the Bill of Rights Act 1990 and strengthening the role of the judiciary, as well as parliamentary scrutiny, in assessing the consistency of enacted laws with the Act and the Covenant.**

#### **National human rights institution**

11. The Committee expresses its concern about the considerable delays on the part of the State party in promulgating the Human Rights Amendment Bill (art. 2).

12. **The State party should ensure that the functioning of the New Zealand Human Rights Commission and the selection process of its Commissioners fully comply with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and involve the effective engagement of all relevant stakeholders, including civil society organizations. The State party should take all appropriate measures to accelerate the process of enacting the Human Rights Amendment Bill.**

#### **Counter-terrorism**

13. While acknowledging the State party's need to adopt measures to prevent acts of terrorism and the decision of the State party to undertake an independent review of the intelligence and security services, the Committee is concerned that: (a) counter-terrorism legislation that directly affects rights protected by the Covenant has been enacted under urgent time frames without providing sufficient time for public consideration and consultation; (b) the oversight and accountability framework of the intelligence services remains fragmented and the oversight role of the judiciary is limited in that regard; and (c) the State party does not plan to amend the Terrorism Suppression Act 2002 with a view to including provisions that would enable people to launch legal proceedings to challenge designations imposed under Security Council resolution 1373 (2001) (arts. 2, 14 and 26).

14. **The State party should:**

(a) **Fully integrate the rights protected under the Covenant into its legislative and policy actions to combat terrorism;**

(b) **Ensure that the enactment and revision of counter-terrorism bills facilitate wide public consideration and consultation;**

(c) **Ensure that designation procedures and terrorist investigations fully comply with the provisions of the Covenant;**

(d) **Include in its next periodic report information on the measures adopted to address the observations and recommendations that the independent reviewers of the intelligence and security services made in their report.**

#### **Right to privacy**

15. The Committee is concerned that the right to privacy is not part of the Bill of Rights Act 1990 and that the existing legal framework provides the Government Communications Security Bureau with a very broad mandate. The Committee is also concerned about the absence of a clear definition of the terms "national security" and "private communication" in the Telecommunications (Interception Capability and Security) Act 2013. The Committee is further concerned about the limited judicial authorization process for the

interception of communications of New Zealanders and the total absence of such authorization for the interception of communications of non-New Zealanders (art. 17).

16. **The State party should take all appropriate measures to ensure that:**

(a) **Its legal framework regulating communications surveillance is in line with its obligations under the Covenant, in particular article 17;**

(b) **Sufficient judicial safeguards are implemented, regardless of the nationality or location of affected persons, in terms of interception of communications and metadata collection, processing and sharing.**

#### **Equality between women and men**

17. The Committee remains concerned about the persistent inequalities between women and men, in particular: (a) the significant wage gap between women and men, which disproportionately affects low-income women, especially Māori and Pasifika women, as well as women with disabilities; (b) the unequal representation of women in high-level private and public sector managerial positions; and (c) the overrepresentation of women in minimum wage jobs. The Committee notes with concern that the principle of equal pay for work of equal value is not fully respected and applied in either the public or private sectors, and that the institutional framework to monitor discrimination in remuneration and to seek redress is inadequate (arts. 2, 3 and 26).

18. **The Committee recalls its general comment No. 28 (2000) on the equality of rights between men and women and recommends that the State party:**

(a) **Fully incorporate the principle of equality between women and men in all its national policies;**

(b) **Develop programmes for the implementation of Sustainable Development Goal 5 to achieve gender equality and empower all women and girls, with particular focus on Māori and Pasifika women and girls, as well as women and girls with disabilities;**

(c) **Promote greater women's representation in managerial and leadership positions both in the public and private sectors, including through temporary special measures;**

(d) **Ensure the full operationalization and implementation of the principle of equal pay for work of equal value across its territory, in both the public and private sectors.**

#### **Combating stereotypes, racism and other forms of intolerance**

19. While acknowledging the efforts made by the State party to eliminate racially motivated incidents and incitement to hatred in the media and on the Internet, the Committee is concerned about the absence of a comprehensive national strategy to combat racism, racial discrimination, xenophobia and other forms of intolerance, including racial and religious hatred. The Committee regrets the lack of information on the low number of cases of racial discrimination and racially motivated violent incidents that are investigated and the perpetrators prosecuted and punished (art. 20).

20. **The State party should develop and implement a comprehensive national strategy to combat racism, racial discrimination, xenophobia and other forms of intolerance, including racial and religious hatred, with clearly defined targets, systematic data collection, awareness-raising campaigns, training programmes, and programmes for victim rehabilitation and redress.**

### **Non-discrimination in employment and vocational training**

21. While welcoming the adoption and implementation by the State party of welfare, employment and education programmes with a particular focus on Māori and Pasifika, as well as support programmes for migrants, the Committee remains concerned about the persistent inequalities that disproportionately affect Māori and Pasifika, in particular Māori and Pasifika women and young people, and persons with disabilities in the area of employment and vocational training (art. 26).

#### **22. The State party should:**

(a) **Address the high unemployment rates among Māori and Pasifika, in particular Māori and Pasifika women and young people, among persons with disabilities and among migrants, through the adoption and effective implementation of comprehensive employment and vocational training strategies, and report on the progress made in its next periodic report;**

(b) **Ensure that cases of discrimination on any grounds in relation to employment are thoroughly investigated and that victims are provided with adequate remedies.**

### **Non-discrimination in law enforcement**

23. The Committee notes the information provided regarding the outcomes of the investigations relating to the so-called Operation Eight (anti-terrorism raids carried out on 14 October 2007), as well as the efforts made to incorporate some of the recommendations from the Independent Police Conduct Authority in the police operational planning and operational guidelines. It also notes statements by State officials suggesting an “unconscious bias” in police operations towards Māori and is concerned about allegations of racial profiling involving Māori and persons of African descent (arts. 2, 7, 14, 26 and 27).

**24. The State party should undertake a comprehensive review of law enforcement operational policies in order to ensure their conformity with human rights principles, including the prohibition of discrimination, and to evaluate their impact on indigenous peoples. The State party should also provide training to law enforcement officials in order to sensitize them to the need to conduct themselves in a way that does not lead, even unintentionally, to acts of racial profiling.**

25. The Committee notes the efforts made by the State party to address the issue of the overrepresentation of Māori and Pasifika in the criminal justice system, with particular focus on young people, including through the initiative “Turning of the Tide: A Whānau Ora Crime and Crash Prevention Strategy” and the Youth Crime Action Plan. However, the Committee remains concerned about the disproportionately high rates of incarceration and overrepresentation of Māori and Pasifika, particularly women and young people, at all levels of the criminal justice process (arts. 2, 14, 24 and 26).

**26. Recalling its previous concluding observations (CCPR/C/NZL/CO/5, para. 12), the Committee urges the State party to:**

(a) **Review its law enforcement policies with a view to reducing the incarceration rates and the overrepresentation of members of the Māori and Pasifika communities, particularly women and young people, at all levels of the criminal justice system, as well as reconviction and reimprisonment rates;**

(b) **Eliminate direct and indirect discrimination against Māori and Pasifika in the administration of justice, including through human rights training programmes for law enforcement officials, the judiciary and penitentiary personnel.**

**Adoption**

27. The Committee notes with concern that the current legislative regime regarding adoption includes a number of provisions that are discriminatory (arts. 23, 24 and 26).

**28. The State party should amend the Adoption Act 1955 and repeal all of its discriminatory provisions, and consider permitting civil union partners to adopt children.**

**Domestic and gender-based violence**

29. While welcoming the establishment in 2014 of the Ministerial Group on Family Violence and Sexual Violence, and the implementation of community-based anti-domestic violence campaigns, the Committee remains concerned about the high prevalence of domestic violence, in particular violence against women and girls, which includes sexual violence, and especially against Māori and Pasifika women and girls, as well as women and girls with disabilities. The Committee is also concerned about the low rates of reporting and prosecution of perpetrators of sexual violence and about the absence of information on victims' rehabilitation and redress programmes. While the Committee notes the Family Court reforms introduced by the State party in 2014, it is concerned about reported instances of women being forced to attend family dispute resolution courses with their abusers (arts. 3 and 7).

**30. The State party should strengthen efforts to combat domestic and all forms of gender-based violence, including sexual violence, particularly in relation to Māori and Pasifika women and girls, as well as women and girls with disabilities. In particular, the State party should ensure that:**

(a) **Its criminal legislation concerning domestic and gender-based violence, including sexual violence, is enforced effectively across its territory;**

(b) **Programmes to combat domestic and gender-based violence, including sexual violence, are incorporated into the National Plan of Action for Human Rights;**

(c) **Effective monitoring and evaluation processes with clearly defined indicators and systematic data collection are put in place to assess the extent of the problem of domestic and gender-based violence and inform future legislative and policy initiatives;**

(d) **Programmes of victims' rehabilitation and redress are developed and implemented across its territory, involving the provision of specialized medical, psychosocial and legal assistance;**

(e) **The existing family dispute settlement framework is implemented effectively and monitored, particularly for the protection of those experiencing domestic violence, especially women and children.**

**Child abuse**

31. While welcoming the State party's efforts to address child abuse, which disproportionately affects vulnerable children, the Committee is concerned about the significant number of children who suffer physical and psychological abuse and neglect, and regrets the absence of information regarding programmes of rehabilitation, reintegration and redress for child victims, in particular Māori and Pasifika child victims. The Committee is also concerned about the filing of the Roast Busters case (arts. 7 and 24).

32. **The State party should:**

(a) **Strengthen its efforts to combat child abuse in all settings, including through the development and implementation of multi-stakeholder, child-friendly early detection and reporting mechanisms and through the effective investigation of cases and the accountability of perpetrators;**

(b) **Provide detailed information, in its next periodic report, on the outcomes of the Children’s Action Plan and the review of the Child, Youth and Family agency, as well as on the measures taken in order to increase the efficiency and quality of the child and youth protection and rehabilitation services that are provided;**

(c) **Ensure that all appropriate measures are taken, including conducting awareness-raising programmes in schools, to prevent the recurrence of events such as those that took place in the Roast Busters case.**

#### **Electro-muscular disruption devices, such as tasers**

33. The Committee is concerned about information received regarding the systematic equipment of front-line law enforcement officers with electro-muscular disruption devices, such as tasers, and about the absence of information in the State party’s report about rules and guidelines governing the use of such equipment (arts. 6 and 7).

34. **The Committee reiterates its previous recommendation (CCPR/C/NZL/CO/5, para. 10) and calls on the State party to re-evaluate its policies on the use of electro-muscular disruption devices, such as tasers, with a view to minimizing the use and effects of these “less-lethal weapons”, and ensuring consistency with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The State party should consider equipping law enforcement officers with body-mounted cameras in order to better monitor the deployment of all tactical options, including tasers.**

#### **Immigration and asylum process**

35. The Committee is concerned that the State party’s immigration legislation allows for the disclosure of a claimant’s information to third parties, including the claimant’s country of origin, and that there are differences in treatment between some categories of refugees and those who arrive under the refugee quota programme of the Office of the United Nations High Commissioner for Refugees. The Committee notes the State party’s intention to interview children as part of the refugee determination process, a practice which may negatively affect children (arts. 17 and 24).

36. **The State party should take all appropriate measures to:**

(a) **Ensure that the legal and policy framework on immigration does not breach the State party’s obligations under the Covenant;**

(b) **Ensure that claimants’ rights to privacy and confidentiality are guaranteed in the process of verifying their information, especially when the process involves disclosure of information to third parties, including claimants’ country of origin;**

(c) **Ensure that any policy to interview children as part of the refugee determination process is restricted to situations in which such interviews are necessary to determine the child’s claim and the child has expressed a desire to be heard.**

**Detention of migrants and asylum seekers**

37. The Committee is concerned that the Immigration Amendment Act 2013 provides for the detention of mass arrivals, defined as the arrival of groups of 30 or more persons, for an initial period of up to 6 months, renewable every 28 days. The Committee is also concerned that police facilities are used for immigration purposes, and that migrants and asylum seekers are not separated from the rest of the detainee population (art. 9).

**38. The State party should:**

(a) **Ensure that migrants and asylum seekers who unlawfully enter the State party's territory, including those who fall under the definition of mass arrival, are detained only for a short period of time in order to document their entry, record their claims and determine their identity if it is in doubt;**

(b) **Ensure that migrants and asylum seekers detained in correctional and police facilities are separated from the rest of the detainee population.**

**Trafficking in persons, and other slavery-like practices**

39. The Committee welcomes the amendment of section 98D of the Crimes Act 1961, concerning trafficking in persons, which aligns the definition of trafficking in persons with that of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. The Committee also welcomes the adoption of measures to combat trafficking in persons and the State party's efforts to prevent other slavery-like practices, such as economic exploitation and forced labour in foreign-chartered vessels operating in New Zealand waters and in other labour sectors. Nevertheless, the Committee notes with concern that the prosecution and conviction rates for trafficking in persons and other slavery-like practices is low, and is concerned about the fact that the first prosecutions for trafficking in persons occurred only in 2014 (arts. 8 and 24).

**40. The State party should:**

(a) **Ensure the protection of victims of trafficking, commercial sexual exploitation, and other contemporary forms of slavery, the immediate and thorough investigation of all allegations of such acts, and the prosecution and punishment of perpetrators;**

(b) **Develop and implement programmes for victims' rehabilitation and redress, with particular focus on women and child victims;**

(c) **Effectively regulate and monitor international labour contractors and recruitment agencies to prevent trafficking, commercial sexual exploitation and other contemporary forms of slavery;**

(d) **Ensure that victims of trafficking are not prosecuted, detained or punished for activities they were involved in as a result of their situation as trafficked persons, and consider offering immigration status options to these victims.**

**Deprivation of liberty**

41. The Committee remains concerned about the negative impact of the State party's prison privatization policies on the effective management of prisons and on the respect and promotion of the rights of detainees (arts. 2 and 10).

**42. The State party should take all appropriate measures to ensure that the human rights of persons deprived of their liberty are respected and protected in all places of deprivation of liberty, including private penitentiary institutions, in line with the**



established international standards, including the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The State party should also provide adequate human and financial resources to the Office of the Ombudsman to enable it to discharge its monitoring and reporting mandate effectively.

#### **Marine and Coastal Area (Takutai Moana) Act 2011**

43. The Committee is concerned about the fact that the replacement of the Foreshore and Seabed Act 2004 by the Marine and Coastal Area (Takutai Moana) Act 2011 has not adequately addressed the discriminatory effects on Māori claims to their customary land and their right to cultural development (art. 27).

44. **The State party should revise the Marine and Coastal Area (Takutai Moana) Act 2011 with a view to ensuring respect of the customary rights of Māori on their land and resources, and their cultural development.**

#### **Treaty of Waitangi and the Waitangi Tribunal**

45. The Committee is concerned about the fact that, since the adoption by the Waitangi Tribunal of decision WAI 262 in 2011, the State party has not provided the relevant human rights bodies with any information regarding policies and implementation timetables. The Committee notes the State party's insufficient engagement with indigenous communities prior to the signing in February 2016 of the Trans-Pacific Partnership Agreement, which includes provisions that may have a negative effect on the rights of indigenous peoples, in particular with regard to their free, prior and informed consent in the implementation of the Agreement, and to an effective remedy (arts. 2, 26 and 27).

46. **The State party should:**

(a) **Strengthen the role of the Treaty of Waitangi in the existing constitutional arrangements;**

(b) **Guarantee the informed participation of indigenous communities in all relevant national and international consultation processes, including those directly affecting them;**

(c) **Implement technical capacity programmes for indigenous communities aiming at their effective participation in all relevant consultation and decision-making processes.**

#### **Government representation of Māori and Pasifika**

47. The Committee notes with concern the persistently low representation of Māori and Pasifika in government positions at all levels. The Committee regrets that Auckland Supercity Council has not implemented the 2009 recommendation from the Royal Commission on Auckland Governance to establish Māori seats (art. 26).

48. **The State party should take all appropriate measures to enhance Māori and Pasifika representation in government positions at all levels, in particular at the local council level, including through the establishment of special electoral arrangements.**

### **D. Dissemination of information relating to the Covenant**

49. The State party should widely disseminate the Covenant, its two Optional Protocols, its sixth periodic report and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and

administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into the other official language of the State party.

50. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 30 (domestic and gender-based violence), 32 (child abuse) and 44 (Marine and Coastal Area (Takutai Moana) Act 2011) above.

51. The Committee requests the State party to submit its next periodic report by 31 March 2023 and to include in that report specific up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. The Committee also requests the State party, in preparing the report, to broadly consult civil society and non-governmental organizations operating in the country, as well as indigenous communities and minority and marginalized groups.

52. Given that the State party has accepted the simplified reporting procedure, the Committee will transmit to it a list of issues prior to the submission of the report in due course. The State party's replies to that list will constitute its seventh periodic report. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words.

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