



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

NGO Briefing, 63rd session of the Committee on Economic, Social and Cultural Rights, 19 March 2018

This statement provides an update on two of the issues raised in Peace Movement Aotearoa's 2016 report for the List of Issues Prior to Reporting¹, and an additional point to an issue raised by another NGO in their report for the session.

Firstly, with regard to our concerns about the constitutional arrangements, there has been no change in the state party's failure to recognise Article 1, the right of self determination, in relation to Maori, nor in the related issues around free, prior and informed consent. Structural discrimination in the criminal justice system, education and health has not been substantively addressed, although at least the state party apparently now recognises it exists.²

In relation to human rights more generally, the state party announced last month that it will provide a statutory power for the courts to make a Declaration of Inconsistency under the Bill of Rights Act³. However, as the Committee is aware, the Bill of Rights Act does not cover economic, social and cultural rights, and the proposal will have little practical effect because the courts will still not have the power to strike down inconsistent legislation. The state party's announcement stressed that parliamentary sovereignty will remain.⁴

Secondly, we raised issues around the state party's spending priorities - in light of the increasingly urgent need for increased social expenditure, we suggested that the military budget should be reduced in order to meet health, housing, social welfare and other needs. In 2016, the state party announced \$20 billion of new military expenditure⁵ - in addition to the annual military budget - to increase the armed forces combat capabilities. Last year, military spending rose by 5.3% to a record \$3.67 billion⁶. We would appreciate a recommendation in the Concluding Observations about the need for social spending to be given priority over military spending.

Finally, we would like to raise two concerns around the New Zealand Human Rights Commission.

The Human Rights Foundation's report raised issues around the appointment of Commissioners which we share. We would also like to point out that the functional independence of the Human Rights Commission has been eroded in recent years, and there are now references to the Minister of Justice being involved in setting the Commission's work priorities and activities in three sections of the Human Rights Act⁷. It is our view that

these provisions do not meet the minimum requirements for functional (and perceived) independence for a National Human Rights Institution.

Thank you.

References

¹ NGO information for the List of Issues Prior to Reporting: New Zealand (57th session of the Committee on Economic, Social and Cultural Rights), Peace Movement Aotearoa, February 2016, http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/NZL/INT_CESCR_IC_S_NZL_22979_E.pdf

² See, for example, “ ... in an extraordinary statement for a Minister of Justice, he said the imbalance of Maori in prison - 52 per cent of the 10,695 prison population - revealed systemic problems in the criminal justice system. "There is a built in systemic bias or prejudice and we've got to understand that. We've got to do something about it.” in ‘Minister of Justice: 'Longer sentences, more prisoners - it doesn't work and it has to stop', NZ Herald, 22 February 2018, www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11999980 It is a marked change for a Minister of Justice to talk about “systemic bias” in the criminal justice system rather than “unconscious bias”, a catch-phrase that has been used in recent years by politicians and others in positions of authority to deny the existence of structural discrimination / institutional racism

³ ‘Government to provide greater protection of rights under the NZ Bill of Rights Act 1990’, Hon Andrew Little / Hon David Parker, 26 February 2018, beehive.govt.nz/release/government-provide-greater-protection-rights-under-nz-bill-rights-act-1990

⁴ “The change proposed is to amend the Act to confer an express power for the courts to make a declaration of inconsistency. That would trigger reconsideration of the issue by Parliament. The Courts would not be able to strike down statutory law and Parliament would retain its sovereignty. After reconsideration Parliament could amend, repeal or stick with the law as originally passed. The Government will carry out further work to enable the change proposed, while protecting Parliament’s sovereignty.” as at note above

⁵ Aotearoa New Zealand Campaign on Military Spending, www.converge.org.nz/pma/gdams.htm

⁶ As at note above

⁷ Human Rights Act 1993, legislation.govt.nz/act/public/1993/0082/latest/whole.html#DLM304212

Section 7. Commission determines general nature of activities (1) **Subject to the role of the Minister in the process of setting and monitoring the strategic direction and targets of the Commission under Part 4 of the Crown Entities Act 2004, the members of the Commission acting together determine the strategic direction and the general nature of activities undertaken in the performance of the Commissions functions.**

Section 8. Membership of Commission ... (1B) A Commissioner must lead the work of the Commission in any other priority area that is designated by the Chief Commissioner, and the Chief Commissioner may designate an area of work as a priority area only in accordance with the strategic direction and the general nature of activities determined by the Commission under section 7(1) and **after consultation with the Minister and the other Commissioners.**

Section 15. Functions of Chief Commissioner ... (e) to allocate spheres of responsibility (including responsibility for priority areas designated under section 8(1B)) among the Commissioners, and to determine the extent to which Commissioners engage in activities undertaken in the performance of the Commissions functions (except for those stated in section 76), **but in each case only after consultation with the Minister**” [our emphasis].