
ADVANCE UNEDITED VERSION

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 following concluding observations.

A. Introduction

2. The Committee is grateful to the State party for having accepted the new optional procedure for submission of reports and for submitting its sixth periodic report in response to the list of issues prior to consideration of reports (CCPR/C/NZL/QPR/6), under that procedure. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high-level delegation on its report. 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 of 2014;
- (d) The adoption of the Vulnerable Children Act of 2014;
- (e) The adoption of the Māori Disability Action Plan for Disability Support Services (Whāia Te Ao Mārama) 2012-2017;
- (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;

* The present document is being issued without formal editing.

- (i) The adoption of the Māori Education Strategy (Ka Hikitia) 2013-2017.
4. The Committee welcomes the ratification of, or accession to, the following international instruments by the State party:
- (a) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography on 20 September 2011.

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, paragraphs 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 further 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, paragraphs 2 (b) and 3, and consider removing all of its other reservations to the Covenant.**

National Action Plan on Human Rights

7. The Committee welcomes the information provided by the State party regarding the main achievements related to the implementation of the National Action Plan on 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 discontinuation between the conclusion of the first National Action Plan in 2010 and the adoption of the second National Action Plan in 2015 (art. 2).
8. **The State party should provide in its next periodic report information on the implementation of the second National Action Plan, including its main achievements and challenges, as well as information on how the second National Action Plan has addressed the Committee's recommendations and those of other international human rights mechanisms.**

Bill of Rights

9. The Committee takes note that the Bill of Rights Act 1990 does not reflect all the rights enshrined in the Covenant and that it does not have, in domestic law, the status of entrenched law. The Committee further takes note that laws adversely affecting the protection of human rights, such as the Criminal Investigations (Bodily Samples) Amendment Act of 2009, have been enacted, notwithstanding that they have been reported by the Attorney-General as being 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 incorporation of all rights enshrined in the Covenant;**
- (b) **Ensure that draft and enacted bills subjected to negative reporting by the Attorney-General are 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 the enacted laws with the Bill 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 Paris Principles and involves the effective engagement of all relevant stakeholders, including civil society organizations. The State party should take all appropriate measures to accelerate the process of enactment of 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 on the intelligence and security services, the Committee is concerned that: (a) the enactment of counter-terrorism legislation directly affecting rights protected by the Covenant, has been done under urgent time frames without providing sufficient time for public consideration and consultation; (b) the intelligence services' oversight and accountability framework remains fragmented with a limited oversight role played by the judiciary; and (c) the State party does not intend to amend the Terrorism Suppression Act 2002 with the view to including provisions allowing for the launch of 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 formulated in the report by the independent reviewers of the intelligence and security services.

Right to Privacy

15. The Committee is concerned about the fact that the right to privacy is not part of the Bill of Rights Act 1990 and that the existing legal framework provides for a very broad mandate of the Government Communications Security Bureau. Furthermore, the Committee is concerned about the absence of a clear definition of "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 (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 persons' nationality or location, in terms of interception of communications and metadata collection, processing, and sharing.

Equality between women and men

17. The Committee remains concerned about the persisting 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 over-representation of women in minimum wage jobs. The Committee further notes with concern that the principle of equal pay for work of equal value is not fully respected and applied in both public and 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 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 SDG No. 5, ensuring gender equality and empowerment of 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 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 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, and regrets the lack of information on the low number of cases of racial discrimination and racially motivated violent incidents investigated, 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 of victims' 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 persisting inequalities that affect disproportionately Māori and Pasifika, in particular Māori and Pasifika women and youth, 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 of Māori and Pasifika, in particular of Māori and Pasifika women and youth, persons with disabilities and 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 related 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 by the Independent Police Conduct Authority (IPCA) 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 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. While noting the efforts made by the State party to address the issue of over-representation of Māori and Pasifika in the criminal justice system, with particular focus on youth, including through the initiative “Turning of the Tide: A Whānau Ora Crime and Crash Prevention Strategy” and the Youth Crime Action Plan, the Committee remains concerned about the disproportionately high rates of incarceration and over-representation of Māori and Pasifika, and particularly women and youth, at all levels of criminal justice process (arts. 2, 14, 24, 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 incarceration rates and over-representation of members of Māori and Pasifika communities, particularly women and youth, at all levels of the criminal justice system, as well as reconviction and re-imprisonment 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, the judiciary and penitentiary personnel.

Adoption

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

28. The State party should amend the Adoption Act of 1955 and repeal all of its discriminatory provisions, and consider providing civil union partners access to adoption.

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: (a) the low rates of reporting and prosecution of cases of sexual violence; and (b) the absence of information on victims' rehabilitation and redress programmes. Finally, the Committee takes note of the Family Court reforms introduced by the State party in 2014, but 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 gender-based violence in all forms, 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 in relation to domestic and gender-based violence, including sexual violence, is effectively enforced across its territory;

(b) Programmes combating domestic and gender-based violence, including sexual violence, are incorporated into the National Action Plan on 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, psycho-social and legal assistance;

(e) The existing family dispute settlement framework is effectively implemented 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 of child victims, in particular of 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 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 Child, Youth and Family (CYF) agency, as well as on the measures taken in order to increase the efficiency and quality in the provided child and youth protection and rehabilitation services;

(c) Ensure that all appropriate measures are taken, including awareness-raising programmes at school level, to prevent the recurrence of events depicted in the Roast Busters case.

Electro-muscular disruption devices (EMDs) “TASERS”

33. The Committee is concerned about information received regarding the systematic equipment of frontline law enforcement officers with electro-muscular disruption devices (EMDs) “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 (EMDs) “TASERS”, with a view to minimizing the use and effects of this less-lethal weapon, and ensuring consistency with the United Nations 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 notes its concern about: (a) the immigration legislation provisions allowing the disclosure of a claimant’s information to third parties, including the claimant’s country of origin; and (b) the differences in treatment of some categories of refugees as opposed to those arriving via the UNHCR refugee quota programme. The Committee further notes the State party’s intention to interview children as part of the refugee determination, 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 adopted immigration legal and policy framework does not breach the State party’s obligations under the Covenant;

(b) Ensure that the verification of the claimant’s information guarantee the claimant’s right to privacy and confidentiality, especially when it involves disclosure of information to third parties, including the claimant’s country of origin;

(c) Ensure that any policy to interview children as part of the refugee determination is restricted to situations where this is necessary to determine the child’s claim and where 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 of 2013 provides for the detention of “mass arrivals”, defined as those arrive in a group of 30 or more persons, for an initial period of up to 6 months, renewable every 28 days. The Committee is further concerned about the fact that: (a) police facilities are used for immigration purposes; and (b) migrants and asylum seekers are not separated from the rest of detained population (art. 9).

38. The State party should:

(a) Ensure that detention of migrants and asylum seekers, who unlawfully enter the State party’s territory, including those who fall under the definition of “mass arrival”, is implemented only for a short period of time in order to document their entry, record their claims and determined 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 detained population.

Trafficking in persons, and other slavery-like practices

39. The Committee welcomes the amendment of Section 98D “Trafficking in Persons” of the Crimes Act 1961 that aligns the definition of trafficking in persons with that of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the adoption of measures to combat trafficking in persons. It also welcomes 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 of trafficking and other slavery-like practices is low, and is concerned about the fact that the first prosecutions on trafficking in persons occurred only in 2014 (art. 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 sanction of perpetrators;

(b) Develop and implement programmes of victims’ rehabilitation and redress, with particular focus on women and children 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 privatisation policies on the effective management of prisons and 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 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) and provide adequate human and financial resources to the Office of the Ombudsman to effectively discharge its monitoring and reporting mandate.

Marine and Coastal Area (Takutai Moana) Act of 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 of 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 the view to ensuring respect of 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 the 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 further takes note of the State party's insufficient engagement with indigenous communities prior to the signing of the Trans-Pacific Partnership Agreement (TPPA) in February 2016, 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 persisting low representation of Māori and Pasifika in government positions at all levels. The Committee further regrets that the Auckland "Supercity" Council has not implemented the 2009 recommendation by 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, the two Optional Protocols to the Covenant, 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 languages of the State party.

50. Pursuant to rule 71, paragraph 5, of the rules of procedure of the Committee, the State party should provide, within one year, relevant 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 of 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, 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, and its replies to it will constitute the seventh periodic report of the State party. The word limit for the report is 21,200 words, in accordance with General Assembly resolution 68/268.
