



## International Covenant on Civil and Political Rights

Distr.: General  
7 April 2010

Original: English

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### Human Rights Committee

Ninety-eighth session

New York, 8–26 March 2010

### Concluding observations of the Human Rights Committee

#### Consideration of reports submitted by States parties under article 40 of the Covenant

#### New Zealand

1. The Human Rights Committee considered the fifth periodic report of New Zealand (CCPR/C/NZL/5) at its 2696th and 2697th meetings, held on 15 and 16 March 2010 (CCPR/C/SR.2696 and 2697). At its 2711th and its 2712th meetings, held on 25 March 2010 (CCPR/C/SR.2711 and 2712), it adopted the following concluding observations.

#### A. Introduction

2. The Committee notes with appreciation the timely submission of the fifth periodic report of the State party which gives detailed information on measures adopted by the State party to further the implementation of the Covenant. Furthermore, it expresses its appreciation for the quality of the written replies to the list of issues (CCPR/C/NZL/Q/5/Add.1) as well as of the answers provided orally during the consideration of the report.

#### B. Positive aspects

3. The Committee welcomes the following legislative and other measures:

(a) The adoption of the Civil Union Act 2005 regarding the recognition of civil unions of persons of the same sex and the right to equality of gay, lesbian, bisexual and transgender persons;

(b) The repeal of the defence permitting the use of force against children in the home for the purposes of parental correction in the Crimes Act;

(c) The adoption of the Immigration Act 2009;

(d) The ratification of international human rights treaties, including the International Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention against torture and other cruel, inhuman or degrading treatment or punishment.

4. The Committee welcomes the contribution of the New Zealand Human Rights Commission and non-governmental organizations to its work.

### C. Principal subjects of concern and recommendations

5. The Committee welcomes the State party's indication that it is currently amending its regulations on detention so as to permit the withdrawal of its reservation to article 10, paragraphs 2 (b) and 3, of the Covenant. The Committee further notes the intention of the State party to maintain its other reservations.

**The State party should proceed to withdraw its reservations to article 10, paragraphs 2 (b) and 3, and consider withdrawing all its other reservations to the Covenant.**

6. The Committee welcomes the adoption of a national action plan for human rights 2005-2010 by the New Zealand Human Rights Commission and notes the delegation's statement that all Government agencies are asked to take the action plan into consideration when developing their policies and programs, but is concerned that the State party has not formally endorsed such a plan as Government policy. (art. 2)

**The State party should engage in the development and the official adoption, as government policy, of a national human rights action plan 2010-2015.**

7. The Committee reiterates its concern that the Bill of Rights Act 1990 (BORA) does not reflect all Covenant rights. It also remains concerned that the Bill of Rights does not take precedence over ordinary law, despite the 2002 recommendation of the Committee in this regard. Furthermore, it remains concerned that laws adversely affecting the protection of human rights have been enacted in the State party, notwithstanding that they have been acknowledged by the Attorney-General as being inconsistent with the BORA. (art. 2)

**The State party should enact legislation giving full effect to all Covenant rights and provide victims with access to effective remedies within the domestic legal system. It should also strengthen the current mechanisms to ensure compatibility of domestic law with the Covenant.**

8. While welcoming the decision of the State party to undertake a case-flow analysis of the Family Court with a view to reducing delays in issuing decisions following the views adopted in Communication No. 1368/2005 (CCPR/C/89/D/1368/2005/Rev.1), the Committee is concerned that the authors of the case have not yet received reparation. (art. 2)

**The State party should give full effect to all views on individual communications adopted by the Committee, in order to comply with article 2, paragraph 3, of the Covenant which guarantees the right of a victim of a human rights violation to an effective remedy and reparation when there has been a violation of the Covenant.**

9. The Committee is concerned about the low representation of women in high-level and managerial positions and on boards of private enterprises. (arts. 2, 3, 25 and 26).

**In light of the Committee's general comment No. 28 (2000) on article 3 (the equality of rights between men and women), the State party should seek ways to further encourage the participation of women in high-level and managerial**

**positions and on boards of private enterprises through enhanced cooperation and dialogue with partners in the private sector.**

10. While noting the assurances of the State party that electro-muscular disruption devices (EMDs) “TASERS” are only to be used by trained law enforcement officers and in situations in which such use is warranted by clear and strict guidelines, the Committee is concerned that the use of such weapons may lead to severe pain, including life-threatening injuries. (arts. 6 and 7)

**The State party should consider relinquishing the use of electro-muscular disruption devices (EMDs) “TASERS”. While such weapons remain in use, it should intensify its efforts to ensure that its guidelines, which restrict their use to situations where greater or lethal force would be justified, are adhered to by law enforcement officers at all times. The State party should continue carrying out research on the effects of the use such weapons.**

11. While noting the steps taken by the State party to address the risk of human rights violations in relation with the Corrections (Contract Management of Prisons) Amendment Bill 2009, the Committee reiterates its concern at the privatization of prison management. It remains concerned as to whether such privatization in an area where the State party is responsible for the protection of human rights of persons deprived of their liberty effectively meets the obligations of the State party under the Covenant and its accountability for any violations, irrespective of the safeguards in place. (arts. 2 and 10)

**The State party should ensure that all persons deprived of their liberty are guaranteed all rights enshrined in the Covenant. In particular, all measures of privatization of prison management should continue to be closely monitored with a view to ensuring that under no circumstances can the State party’s responsibility for guaranteeing to all persons deprived of their liberty all Covenant rights, in particular those under article 10, be impeded.**

12. While noting the delegation’s acknowledgement, the Committee notes with concern the disproportionately high incarceration rate of Māori, in particular Māori women. It is also concerned that the proportion of Māori among persons accused of a crime as well as among victims of a crime is substantially higher than their proportion within the general population, which points to underlying social causes and raises concerns regarding the possibility of discrimination in the administration of justice. (arts. 2, 10 and 14)

**The State party should strengthen its efforts to reduce the over-representation of Māori, in particular Māori women, in prisons and continue addressing the root causes of this phenomenon. The State party should also increase its efforts to prevent discrimination against Māori in the administration of justice. Law enforcement officials and the judiciary should receive adequate human rights training, in particular on the principle of equality and non-discrimination.**

13. While noting the obligations imposed under Security Council resolution 1373 (2001), the Committee expresses concern at the compatibility of some provisions of the Terrorism Suppression Amendment Act 2007 with the Covenant. It is particularly concerned at the designation procedures of groups or individuals as terrorist entities and at the lack of a provision in the Act to challenge these designations, which are incompatible with article 14 of the Covenant. The Committee is also concerned about the introduction of a new section allowing courts to receive or hear classified security information against groups or individuals designated as terrorist entities in their absence. (arts. 2, 14 and 26)

**The State party should ensure that its counter-terrorism legislation is in full conformity with the Covenant. In particular, it should take steps to ensure that the measures taken to implement Security Council resolution 1267 (1999) as**

**well as the national designation procedures for terrorist groups fully comply with all the legal safeguards enshrined in article 14 of the Covenant.**

14. While acknowledging the delegation's explanations, the Committee regrets the lack of information concerning the proceedings with regard to so-called Operation 8 (anti-terrorism raids carried out on 15 October 2007), which allegedly involved excessive use of force against Māori communities. It also notes with concern that the trials of the suspects arrested during this operation will only begin in 2011. (arts. 2, 7, 14 and 26)

**The State party should ensure that the Terrorism Suppression Amendment Act is not applied in a discriminatory manner and does not lead to excessive use of force against suspects, in light of the need to balance the preservation of public security and the enjoyment of individual rights. It should also provide the Committee in its next periodic report with detailed information on the results of any investigation, prosecution and disciplinary measures taken vis-à-vis law enforcement officials in connection with the alleged human rights violations perpetrated, in particular cases of excessive use of force, in the context of Operation 8. Furthermore, the State party should ensure that the trials of those arrested in the context of Operation 8 are held within a reasonable timeframe.**

15. While the Committee welcomes the measures adopted concerning trafficking in human beings, the Committee is concerned that to date, the State party has failed to identify any case of trafficking. (art. 8)

**The State party should intensify its efforts to identify victims of trafficking and ensure the systematic collection of data on trafficking flows to and in transit through its territory. Training for police officers, border guards, judges, lawyers and other relevant personnel should be provided, in order to raise awareness of the sensitivity of the issue of trafficking and the rights of victims.**

16. The Committee notes the State party's policy to use detention of asylum-seekers in very limited circumstances. Furthermore, it is concerned that the State party's policy of "safe third countries" permits the refusal to consider a claim for protection or refugee status on the basis that the person lodged, or could have lodged, a claim in another country, which may lead to breaches of the principle of non-refoulement. It is also concerned at reports that asylum-seekers and undocumented migrants are detained in correctional facilities together with convicted prisoners. (art. 13)

**The State party should:**

**(a) Bring its legislation fully in line with the principle of non-refoulement;**

**(b) Ensure that no asylum-seeker or refugee is detained in correctional facilities and other places of detention together with convicted prisoners, and amend the Immigration Act accordingly;**

**(c) Consider extending the mandate of the New Zealand Human Rights Commission so that it can receive complaints of human rights violations related to immigration laws, policies and practices and report on them.**

17. The Committee is concerned that the finding of an infringement of the presumption of innocence in criminal legislation related to drug possession by the Supreme Court has not yet led to amendments of the relevant legislation. (arts. 9 and 14).

**In light of the Committee's general comment No. 32 (2007) on article 14 (Right to equality before courts and tribunals and to a fair trial), the State party should expedite the adoption of amendments to the Misuse of Drugs Act 1975,**

**with a view to ensuring compatibility with articles 9 and 14 of the Covenant and ensuring the right to be presumed innocent.**

18. While welcoming the initiatives taken to protect children from abuse and noting the State party's acknowledgment of the need for addressing this issue, the Committee expresses concern at the incidence of child abuse in the State party. (arts. 7 and 24)

**The State party should further strengthen its efforts to combat child abuse by improving mechanisms for its early detection, encouraging reporting of suspected and actual abuse, and by ensuring that the relevant authorities take legal action against those involved in child abuse.**

19. While acknowledging the negotiation process initiated with regard to a review or possible repeal of the Foreshore and Seabed Act 2004, the Committee is concerned that the Act discriminates against the Māori, and extinguishes their customary title over the foreshore and seabed. (arts. 2, 26 and 27)

**The State party should increase its efforts for effective consultation of representatives of all Māori groups with regard to the current review of the Foreshore and Seabed Act 2004, with a view to amending or repealing it. In particular, the public consultation period should be sufficiently long so as to enable all Māori groups to have their views heard. Furthermore, in light of the Committee's general comment No. 23 (1994) on article 27 (the rights of minorities), special attention should be paid to the cultural and religious significance of access to the foreshore and seabed for the Māori.**

20. The Committee welcomes the initiative of the State party for constitutional reform which also aims at giving greater effect to the Treaty of Waitangi. It notes, however, that the Treaty is currently not a formal part of domestic law, which makes it difficult for Māori to invoke it before the courts. The Committee also welcomes the efforts of the State party to settle historical Treaty claims, but is concerned at reports that in one particular case, the State party put an end to consultations despite the claim of some Māori groups that the settlements did not adequately reflect original tribal ownership. (arts. 2, 26 and 27)

**The State party should continue its efforts to review the status of the Treaty of Waitangi within the domestic legal system, including the desirability to incorporate it into domestic law, in consultation with all Māori groups. Furthermore, the State party should ensure that the views expressed by different Māori groups during consultations in the context of the historical Treaty claims settlement process are duly taken into account.**

21. The State party should widely disseminate the Covenant, the two Optional Protocols to the Covenant, the text of the fifth periodic report, the written responses it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee also suggests that the report and the concluding observations be translated into the other official language of the State party.

22. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 12, 14 and 19.

23. The Committee requests the State party to provide in its sixth periodic report, due to be submitted by 30 March 2015, specific, up-to-date information on all its recommendations and on the Covenant as a whole. The Committee also requests the State party, when preparing the sixth periodic report, to broadly consult with civil society and non-governmental organizations.

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