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Committee on Economic, Social and Cultural Rights

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Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant

Concluding observations of the Committee on Economic, Social and Cultural Rights

New Zealand

1. The Committee on Economic, Social and Cultural Rights considered the third periodic report of New Zealand on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/NZL/3) at its 9th, 10th and 11th meetings, held on 4 and 7 May 2012, and adopted, at its 28th meeting, held on 18 May 2012, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of New Zealand which is self-critical and describes the measures taken to implement the recommendations made by the Committee in its previous concluding observations. The Committee also welcomes the written replies to its list of issues (E/C.12/NZL/Q/3/Add.1). The Committee appreciates the quality of information contained in both documents.

3. The Committee notes with appreciation the frank, positive and constructive engagement of the State party's delegation with the Committee.

B. Positive aspects

4. The Committee welcomes the ratification by the State party of the Optional Protocol to the Convention against Torture on 14 March 2008, the Convention on the Rights of Persons with Disabilities on 25 September 2008, and 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. The Committee also welcomes the State party's endorsement of the United Nations Declaration on the Rights of Indigenous Peoples.

5. The Committee welcomes the range of measures taken by the State party to promote the realization of economic, social and cultural rights, noting the following in particular:

- (a) The recognition of sign language as an official language;
 - (b) The entitlements for refugees and asylum seekers introduced under the Immigration Act 2009;
 - (c) The development and implementation of the new education curriculum which is more responsive to the diversified student population of the State party;
 - (d) In the area of family protection, the adoption of the Civil Union Act 2004, the Relationships (Statutory References) Act 2005 and the extension of the relationship property regime to de facto couples; the introduction of paid parental leave; and the adoption of the Crimes (Substituted Section 59) Amendment Act 2007 prohibiting corporal punishment by parents.
6. The Committee notes some practical achievements in the realization of economic, social and cultural rights, in particular, the significant improvement in the immunization rate among Māori, the low rates of hardship among older persons and the notable reduction of unemployment during the reporting period.
7. The Committee notes with appreciation the State party's policy of mainstreaming of human rights in its development cooperation programmes.
8. The Committee commends the work undertaken by the New Zealand Human Rights Commission. The Committee also notes with appreciation that the State party has continually expanded the mandate of the Human Rights Commission to respond to evolving needs.

C. Principal subjects of concern and recommendations

9. In view of the State party's dualist regime, the Committee is concerned that, notwithstanding existing legislation providing for some elements of economic, social and cultural rights, the provisions of the Covenant have not been fully incorporated into the domestic legal order (art. 2, para. 1).

The Committee urges the State party to take the necessary measures, in the context of the ongoing constitutional review process, to give the Covenant full effect in its domestic legal order. The Committee also calls on the State party to ensure that redress for violations of the Covenant rights can be sought through the State party's varied recourse mechanisms. The Committee requests that the State party provide in its next periodic report information on court cases where the provisions of the Covenant have not only been invoked but also applied.

10. The Committee is concerned that economic, social and cultural rights are not recognized in the Bill of Rights adopted by the State party in 1990. Moreover, the Committee is concerned that the legislative and policy-making processes do not allow for a review of the compatibility of draft laws, regulations and policies with the rights enshrined in the Covenant (art. 2, para. 1).

The Committee urges the State party to incorporate economic, social and cultural rights into the 1990 Bill of Rights. The Committee also calls upon the State party to take steps so that the competent authorities review draft laws, regulations and policies to ensure their compatibility with the provisions of the Covenant. The Committee recommends that the State party make additional efforts to raise awareness of economic, social and cultural rights among parliamentarians and policy-makers.

11. The Committee is concerned that the State party does not give sufficient protection of the inalienable rights of indigenous people to their lands, territories, waters and maritime areas, and other resources, as manifested by the fact that Māori free, prior and informed

consent on the use and exploitation of these resources has not always been respected (arts. 1, para.2; and 15).

The Committee calls on the State party to ensure that the inalienable rights of Māori to their lands, territories, waters and marine areas and other resources as well as the respect of the free, prior and informed consent of Māori on any decisions affecting their use are firmly incorporated in the State party's legislation and duly implemented.

The Committee also urges the State party to take the necessary measures to guarantee Māori right to redress for violations of these rights, including through the implementation of the recommendations of Waitangi Tribunal's proceedings, and to ensure that Māori receive proper compensation and enjoy tangible benefits from the exploitation of their resources.

12. The Committee is concerned that Māori and Pasifika continue to be disadvantaged in the enjoyment of economic, social and cultural rights, in spite of measures taken by the State party and improvements in the area of health and education (art. 2, para. 2).

The Committee calls on the State party to strengthen its efforts aimed at eliminating the disadvantages faced by Māori and Pasifika in the enjoyment of economic, social and cultural rights by addressing structural factors and ensuring that relevant measures effectively benefit the most disadvantaged. The Committee also recommends that the State party set specific equality targets by year and closely monitor their achievement. The Committee refers the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

13. The Committee is concerned that persons with disabilities continue to be disadvantaged in the enjoyment of economic, social and cultural rights, in spite of the numerous measures taken by the State party. The Committee expresses concern in particular at the insufficiency of measures in place, legislative or otherwise, to promote the employment of persons with disabilities and at the difficulties faced by persons with intellectual disabilities in accessing some health services (art. 2, para. 2).

The Committee calls upon the State party to (a) introduce incentives and other special measures to promote the employment of persons with disabilities; (b) explicitly regard denial of reasonable accommodation as a form of discrimination; (c) ensure that its primary health system is adequately equipped to provide care to persons with intellectual disabilities.

The Committee recommends that the State party collect data to monitor the enjoyment of economic, social and cultural rights by persons with disabilities and provide information and statistical data in this respect in the next periodic report. The Committee also calls on the State party to take all appropriate measures to ensure that the position of Disability Commissioner is established on a permanent basis.

14. The Committee notes with concern the horizontal and vertical occupational segmentation by gender in the State party, which constitutes an obstacle to addressing the gap in the remuneration between men and women. The Committee notes with particular concern that the wage gap is more significant in the public sector. Moreover, the Committee is concerned that the provisions of the 1972 Equal Pay Act, which make it unlawful for employers to pay different wages to employees with the same or similar qualifications, fall short of the requirement of article 7 of the Covenant. Furthermore, the Committee notes with concern that arrangements in place for monitoring discrimination in remuneration and for seeking redress, are inadequate (arts. 3 and 7).

The Committee recommends that the State party continue to educate men and women about equal career opportunities with a view to promoting their pursuance of education and training in fields other than those traditionally dominated by either sex

and take specific measures to promote women's advancement in the labour market. The Committee also calls upon the State party to amend its legislation on equality in employment so as to effectively provide for equal pay for work of equal value and apply the Job Evaluation Tool to this effect. Moreover, the Committee urges the State party to take steps, with a clear timeline, to correct the gender wage gap in the public sector.

The Committee requests that the State party provide in its next periodic report information on the implementation of the response plans mentioned in the State party's report, and on job revaluation undertaken and remedial settlements paid.

15. The Committee remains concerned that unemployment continues to disproportionately affect young persons (art. 6).

The Committee recommends that the State party include in its strategy for boosting skills and employment targeted measures to address the obstacles impeding young persons' access to employment. In this regard, the Committee refers the State party to its general comment No. 18 (2005) on the right to work.

16. The Committee is concerned that the omission of a statutory maximum number of work hours in the Health and Safety in Employment Act falls short of the requirements of article 7 of the Covenant regarding the protection of workers' right to rest and reasonable limitation of working hours. The Committee is also concerned at reports that some collective agreements fail to specify work hours, which is in contravention of the State party's legislation (art. 7).

The Committee recommends that the State party introduce a statutory maximum number of work hours. The Committee also calls on the State party to promptly investigate all allegations of violations of labour laws.

17. The Committee expresses concern about the retrogressive nature and the possible discriminatory impact of welfare reforms, including those currently before the Parliament, particularly in light of the State party's recovery from an economic downturn (art. 9).

The Committee urges the State party to meet its obligations under the Covenant by ensuring that welfare reforms, including those aimed at reducing long-term welfare dependency, protect the right to social security and to an adequate standard of living in respect of disadvantaged and marginalized individuals and groups. The Committee calls on the State party, in particular, to reconsider the work-test requirements being introduced and also to ensure that income management is applied on an individual basis and according to need. The Committee draws the attention of the State party to its general comment No. 19 (2009) on the right to social security, and its open letter on economic, social and cultural rights, and economic and financial crisis, dated 16 May 2012.

18. The Committee is concerned that, in spite of the measures taken by the State party, family violence and sexual violence continue to be a problem, affecting in particular Māori women (art. 10).

The Committee recommends that the State intensify its measures to combat family violence and also adopt, as a priority, a framework for the implementation of the recommendations of the Taskforce for Action on Sexual Violence. The Committee requests that the State party provide in the next periodic report information on results achieved, including updated statistical data on the incidence of family violence and sexual violence.

19. The Committee notes with concern that violence and bullying in schools are widespread in the State party (art. 10).

The Committee recommends that the State party (a) systematically collect data on violence and bullying in schools; (b) monitor the impact of the student mental health

and well-being initiatives recently introduced in schools on the reduction of the incidence of violence and bullying; and (c) assess the effectiveness of measures, legislative or otherwise, in countering violence and bullying.

20. The Committee notes with concern the shortage of childcare facilities in the State party and regrets that childcare subsidies under the Working Families Scheme have reportedly benefited mainly middle and higher income households (arts. 9 and 10).

The Committee calls on the State party to take specific measures to increase the number of childcare facilities and to ensure that the most disadvantaged and marginalized groups also have access to such services.

21. The Committee notes the challenges caused by the recent earthquakes on the enjoyment of Covenant rights by persons affected, especially their right to housing (arts. 2, para. 2; and 11).

The Committee recommends that the State party adopt a human rights approach to reconstruction efforts, ensuring thereby appropriate consideration to availability, affordability and adequacy of housing, including for temporary housing. In this regard, the Committee refers the State party to its general comment No. 4 (1991) on the right to adequate housing. The Committee also encourages the State party to seize the opportunity of the reconstruction efforts to apply designs which enable access for persons with disabilities on an equal basis with others to the physical environment, facilities and services provided to the public.

22. The Committee notes with concern the long waiting list for social housing in the State party. It further regrets the decision of the State party to restrict eligibility for social housing to only those 'in the greatest need,' which denies many people of their right to adequate housing (art. 11).

The Committee calls on the State party to ensure that its enactments and policies guarantee the right to adequate housing for everyone, including for all those in need of social housing and especially those who are no longer eligible to it. The Committee also urges the State party to take appropriate measures to address the problem of the long waiting list in respect of social housing. The Committee draws the attention of the State party to its general comment No. 4 (1991) on the right to housing.

23. The Committee notes with concern that the quality of water distributed from reticulated water supply or unregistered supplies is not always guaranteed, in spite of the entry into force of the Health Drinking Water Amendment Act 2007 (arts. 11 and 12).

The Committee recommends that the State party ensure that the right to affordable and safe water remains guaranteed, including in the context of privatization of water distribution. The Committee refers the State party to its general comment No. 15 (2002) on the right to water.

24. The Committee regrets that it has not been given information on the impact of measures taken to address the difficulties faced by communities in rural and remote areas in terms of access to some health services and to improved sewage systems (art. 12).

The Committee requests the State party to provide in its next periodic report information on the impact of measures taken to ensure access to full health-care services and improved sewage systems among communities in rural and remote areas. The Committee refers the State party to its statement adopted in 2010 on the right to sanitation.

25. The Committee is concerned that, in spite of measures taken such as the ban on tobacco advertisement, tobacco consumption remains widespread, particularly among Māori and Pasifika (art. 12).

The Committee recommends that the State party strengthen its measures to counter tobacco consumption, particularly among Māori and Pasifika and improve access to smoking cessation programmes.

26. The Committee recommends that, when acting upon the recommendations of the Waitangi Tribunal, as contained in the Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, the State party bear in mind its obligation to protect the cultural rights of Māori. These include, among others, Māori's right to conserve, promote and develop their own culture, language and cultural heritage, traditional knowledge and traditional cultural expressions, and the manifestations of their sciences and cultures. In this regard, the Committee refers the State party to its general comment No. 21 (2009) on the right of everyone to take part in cultural life (art. 15).

27. The Committee requests that the State party provide in the next periodic report information on measures taken to protect, promote and fulfil the cultural rights of Tokelauans (art. 15).

28. The Committee requests that the State party provide in its next periodic report information, including statistical data, on the following issues:

- (a) The size of the informal economy and the groups of population working therein;
- (b) Underemployment and multiple occupations;
- (c) The results of measures taken in the area of mental health, including services for inmates;
- (d) Education measures in respect of sexual and reproductive health;
- (e) Cost of education at all levels.

29. The Committee encourages the State party to increase the level of its contribution of official development assistance with a view to attaining the United Nations target of 0.7 per cent of gross national income.

30. The Committee recommends that the State party adopt such legislative measures so as to enable it to withdraw its reservation to article 8 of the Covenant.

31. The Committee encourages the State party to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

32. The Committee encourages the State party to consider signing and ratifying the Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, the International Convention for the Protection of all Persons from Enforced Disappearance, the Optional Protocol to the Convention on the Rights of Persons with Disabilities, and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

33. The Committee recommends that the State party take these concluding observations into account in its next national human rights action plan and encourages it to continue to work with the Human Rights Commission as well as with non-governmental organizations and other members of civil society in the development and implementation of this plan.

34. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, particularly among State officials, the judiciary and civil society organizations, to translate and publicize them as far as possible and to inform the Committee on the steps taken to implement them in its next periodic report. It also encourages the State party to continue to engage with the Human Rights Commission, non-governmental organizations and other members of

civil society in the process of discussion at the national level prior to the submission of its next periodic report.

35. The Committee requests the State party to submit its fourth periodic report, prepared in accordance with the revised reporting guidelines of the Committee adopted in 2008 (E/C.12/2008/2), by 18 May 2017.
