



# Peace Movement Aotearoa

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## NGO submission for the 4th Cycle UPR of New Zealand International Instruments: Joining and Removing Reservations

11 October 2023

### Introduction

1. Peace Movement Aotearoa welcomes this opportunity to contribute to the 4th cycle Universal Periodic Review of New Zealand. We are the national networking peace organisation in Aotearoa New Zealand, working on humanitarian disarmament, human rights, social justice and climate justice, and the intersections among these. We regularly provide information to UN bodies, including the human rights treaty monitoring bodies and Special Procedures and mechanisms of the Human Rights Council, on a range of human rights, humanitarian disarmament and justice issues in Aotearoa New Zealand<sup>1</sup>.
2. Due to time constraints, this is a brief submission with some comments and recommendations on the core international human rights instruments that New Zealand has not yet joined, and reservations on instruments it is already a state party to. The human rights instruments are listed in chronological order in sections A to G below, followed by section H on International Labour Organisation Conventions.
3. Our submission primarily relates to the UPR 3rd cycle recommendations 122.1, 122.5, 122.10, 122.18, and 122.26.
4. In addition to our recommendations, we support the recommendations in the UPR submission from the Aotearoa Independent Monitoring Mechanism for the UN Declaration on the Rights of Indigenous Peoples.
5. **Contact:** Edwina Hughes, Coordinator, Peace Movement Aotearoa, email [icanz@xtra.co.nz](mailto:icanz@xtra.co.nz)

### **A. International Convention on the Elimination of All Forms of Racial Discrimination 1965 (ICERD)**

6. New Zealand has not made a declaration under ICERD Article 14 recognising the competence of the Committee to receive and consider communications from individuals or groups of individuals.

*Recommendation: New Zealand must make an ICERD Article 14 declaration.*

### **B. International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)**

7. New Zealand is a state party to the ICESCR with one reservation, to Article 8 on the right of everyone to form and join trade unions, the right to strike, and the rights of trade unions<sup>2</sup>.

8. New Zealand is not a state party to the ICESCR Optional Protocol 2008, which limits the options available to anyone here whose Covenant rights have been violated. This is particularly concerning because although New Zealand ratified the ICESCR in 1978, economic and social rights are not included in the New Zealand Bill of Rights Act 1990<sup>3</sup> (the Act only includes most - but not all - of the rights articulated in the International Covenant on Civil and Political Rights). Cultural rights are partially included in the Act in relation to the rights of minorities<sup>4</sup>, but the right of self-determination for all peoples as articulated in the shared Article 1 of both International Covenants<sup>5</sup>, a right of obvious significance for hapū and iwi Māori, is not included.

***Recommendations:***

*a) New Zealand must amend the New Zealand Bill of Rights Act to include economic and social rights, and the right of self-determination;*

*b) New Zealand must remove its reservation to the ICESCR and ensure domestic legislation is consistent with these human rights obligations; and*

*c) New Zealand must become a state party to the ICESCR Optional Protocol.*

**C. International Covenant on Civil and Political Rights 1966 (ICCPR)**

9. New Zealand is a state party to the ICCPR, but with four reservations: to Article 10(2)(b) and 10(3) on detention of juvenile persons; to Article 14(6) on compensation for a miscarriage of justice; to Article 20 on propaganda for war and advocacy of national, racial or religious hatred; and to Article 22 on the right to freedom of association with others, including the right to form and join trade unions<sup>6</sup>.

***Recommendation:*** *New Zealand must remove its reservations to the ICCPR and ensure domestic legislation is consistent with these human rights obligations.*

**D. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT)**

10. New Zealand is a state party to the CAT, but with a reservation to Article 14, whereby New Zealand reserves the right to award compensation to torture victims only at the discretion of the Attorney-General (a Minister of the government of the day, which makes that a political rather than a judicial decision).

***Recommendation:*** *New Zealand must remove its reservation to the CAT and ensure domestic legislation is consistent with these human rights obligations.*

**E. Convention on the Rights of the Child 1989 (CRC)**

11. New Zealand is a state party to the CRC, but with three reservations: New Zealand's ability to treat children's entitlement to benefits and other protections differently depending on their citizenship status; to Article 32 on economic exploitation and employment conditions; and to Article 37(c) on ensuring every child deprived of liberty is separated from detained adults<sup>7</sup>.

***Recommendation:*** *New Zealand must remove its reservations to the CRC and ensure domestic legislation is consistent with these human rights obligations.*

**F. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 (ICMW)**

12. New Zealand is not a state party to the ICMW, which is problematic because migrant workers and their families are particularly vulnerable to exploitation as has been outlined in the UPR submissions from Community Law Centres o Aotearoa and others.

***Recommendation:** New Zealand must become a state party to the ICMW, and make an Article 76 declaration recognising the competence of the Committee to receive and consider communications; and ensure domestic legislation is consistent with these human rights obligations.*

### **G. International Convention for the Protection of All Persons from Enforced Disappearance 2006 (CPED)**

13. New Zealand is not a state party to CPED, a matter which has been a particular focus of public attention due to the range of significant concerns about the conduct of New Zealand armed forces deployed in Afghanistan from 2001 to 2012. This ultimately led to a government Inquiry into a military operation that was conducted in 2010 (Operation Burnham) and related matters; the Inquiry ran from 2018 to 2020, but regrettably did not make any recommendation to hold anyone to account for their actions<sup>8</sup>.

14. Enforced disappearance is included in the International Crimes and International Criminal Court Act 2000 via Section 10(2) on crimes against humanity, which includes any “act specified in Article 7 of the ICC Statute”<sup>9</sup>. However, any prosecution for a crime under this or other sections of the Act requires the consent of the Attorney-General before it can proceed in a New Zealand Court<sup>10</sup>, which is problematic because that makes this a political rather than a judicial decision.

#### ***Recommendations:***

*a) New Zealand must become a state party to the CPED, and recognise the competence of the Committee on Enforced Disappearances to examine individual and inter-State communications (Articles 31 and 32); and*

*b) New Zealand must remove the requirement for the Attorney-General to consent to prosecutions under the International Crimes and International Criminal Court Act 2000.*

### **H. International Labour Organisation (ILO) Conventions**

15. New Zealand has not ratified a number of ILO Conventions, including two of the fundamental Conventions C087 (Freedom of Association and Protection of the Right to Organise Convention, 1948) and C138 (Minimum Age Convention, 1973); and others, including C156 (Workers with Family Responsibilities Convention, 1981), C183 (Maternity Protection Convention, 2000), and C190 (Violence and Harassment Convention, 2019).

***Recommendation:** New Zealand must ratify ILO Conventions C087, C138, C156, C183 and C190, among others; and ensure domestic legislation is consistent with these human rights obligations.*

16. **Thank you** for your attention to our submission, and thank you also to all who assisted with putting this compilation together at short notice.

### **References**

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<sup>1</sup> For example, to the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People in 2005; to the Committee on the Elimination of Racial Discrimination in 2007, 2013 and 2017; to the Human Rights Committee in 2009, 2010, 2014 and 2016; to the Committee on the Rights of the Child in 2010, 2011, 2016, 2020 and 2022; to the Committee on Economic, Social and Cultural Rights in 2011, 2012, 2016 and 2018; to the Committee Against Torture in 2015 and 2023; to the Human Rights Committee for the General Discussion on Article 6 of the International Covenant on Civil and Political Rights in 2015 and 2017; to the Committee on the Rights of the Child on the Draft General Comment on Article 4 of the Convention (Public Spending) in 2015 and on the Draft General Comment No. 26 on Children's Rights and the Environment with a Special Focus on Climate Change in 2023; and jointly with the Aotearoa Indigenous Rights Trust and others, to the Human Rights Council for the Universal Periodic Review of New Zealand in 2008, 2009, 2014, 2018 and 2019.

<sup>2</sup> An explanation of New Zealand's position on this (and a prior, now reversed) reservation is available at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/human-rights/international-human-rights/international-covenant-on-economic-social-and-cultural-rights>

<sup>3</sup> New Zealand Bill of Rights Act 1990,  
<https://www.legislation.govt.nz/act/public/1990/0109/latest/whole.html>

<sup>4</sup> As above, Section 20

<sup>5</sup> Article 1, International Covenant on Economic, Social and Cultural Rights, and International Covenant on Civil and Political Rights

<sup>6</sup> An explanation of New Zealand's position on these reservations is available at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/human-rights/international-human-rights/international-covenant-on-civil-and-political-rights/>

<sup>7</sup> An explanation of New Zealand's position on these reservations is available at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/human-rights/international-human-rights/crc/>

<sup>8</sup> The Inquiry website is at <https://operationburnham.inquiry.govt.nz/> with the Inquiry Report at <https://operationburnham.inquiry.govt.nz/inquiry-report/>

<sup>9</sup> International Crimes and International Criminal Court Act 2000,  
<https://legislation.govt.nz/act/public/2000/0026/latest/whole.html>

<sup>10</sup> As above, Section 13(1)