

# Talking Cents

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Talking Cents is an ecumenical group charged by the Auckland Anglican Diocesan Council to promote an alternative to current economic and political thought, and to encourage debate within the church.

Ministry units are encouraged to distribute these articles. This article is contributed by Margaret Bedggood, a member of the Third Order of the Society of St. Francis and of the Anglican parish of St. Matthew-in-the-City

## International Human Rights Law

### The Ideal Framework for Government Social and Economic Policy

Since the coalition Government came into office a raft of changes to economic and social policy have been announced, many seeking to address the glaring inequalities in our society, where many groups, children, Māori and Pasifika people, those with disabilities, older citizens, migrants and refugees, are missing out on basic needs. These policies relate to, for example: poverty in an affluent society, especially as it affects children; healthcare issues, including access, especially in mental health, and basic infrastructure; housing issues such as affordability, homelessness, security of tenure; water quality and distribution; and the problems associated with a low-wage, largely un-unionised economy.

All these issues are brought together in one ideal and obvious framework which the Government has so far not mentioned, the framework provided by international human rights law, which the New Zealand state has accepted as legally binding. It provides a clear set of obligations which the Government can and should look to justify its actions. These are to be found in the International Covenant on Economic, Social and Cultural Rights (ICESCR, the Covenant). This is one of the three foundational international human rights instruments (along with the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, from which both derive), and New Zealand ratified (that is, agreed to be bound by) it in 1978. The core of this document is a list of rights (ESCR) (see below) which all people are entitled to and which states have an obligation to respect, protect and fulfil.

One of the requirements of having ratified this Covenant is that of reporting regularly on progress on achieving these rights to the United Nations Committee on Economic, Social and Cultural Rights (CESCR, the Committee) whose mandate includes dialoguing with the state on this report and making recommendations. The Committee is

also happy to receive ‘parallel’ reports from NGOs and civil society, which can give an alternative view on the Government’s report and progress. The Committee may also set out a list of issues in advance on which they intend to focus.

As it happens, New Zealand was scheduled to so report this year. In addition to the reports there were also two preliminary ‘meetings’ by video conferencing of the Committee with contributing NGOs.<sup>1</sup> And in March our Government fronted up to the Committee at a meeting in Geneva. The timing was quite helpful for this new Government, given that their report had been drafted by the previous Government and that they could point to a raft of new policies. Nevertheless, it must have been a not very comfortable meeting for the Minister of Justice. The Committee members were ‘shocked’ at the record in an affluent country like New Zealand on child poverty, inadequate housing, the incarceration rate and violence, abuse and bullying. They even requested interim reports in eighteen months on progress on three issues of particular concern, namely family violence, the social welfare sanctions regime and housing, rather than wait for the next reporting round which will be several years away. At the conclusion of the process the Committee issued a set of Concluding Observations for the Government’s consideration.

The substantive content of these reports and recommendations largely follows the set of rights articulated in Articles 6 to 15 of the Covenant. These are the rights to and in work, and in relation to trade unions; to social security and social assistance; to an adequate standard of living, including to housing, food and water; to healthcare, including physical and mental health; to education; and to take part in cultural life. The Covenant also includes in Article 2(2) an over-

<sup>1</sup> All these and the Concluding Observations are available on [www.converge.org.nz/pma/cescr63rd.htm](http://www.converge.org.nz/pma/cescr63rd.htm).

arching right to equality and to non-discrimination on a growing number of grounds: race and colour, sex, language, religion, political or other opinion, property, birth, disability, age, nationality, marital status, employment status, sexual orientation and gender identity, health status, economic and social situation.<sup>2</sup> Protection is thus afforded to an increasing range of disadvantaged groups.

It is not possible here to discuss the details of all the issues addressed in the Government Report or in those of the various NGOs or emphasised in the Committee's Concluding Observations. But a glance at the list above will reveal how closely any consideration of progress in relation to the Covenant articles aligns with the Government's policy programme. As regards rights, it has already made some moves to address poverty, including child poverty, a range of work rights, social security, and aspects of access to housing, healthcare and water. Much of this programme is directed to the needs of disadvantaged groups, especially Māori and Pasifika people, children, women, people with disabilities, and migrant workers. The Committee also commented on other issues, including business and human rights, the ratification of other international human rights instruments and the level of budgetary allocation on ESCR, while NGOs also raised the discrimination faced by refugees and asylum seekers and older people, rights questions associated with climate change and the process for appointing human rights commissioners.

The Committee also identified wider underlying, and worrying, constitutional issues about the status of the Covenant rights in the New Zealand legal order, a question which has been raised before by the Committee and also by other UN bodies. These ESCR are not enshrined in New Zealand's constitutional law, specifically not in the New Zealand Bill of Rights Act 1990 (NZBORA) as civil and political rights are. The reasons for this are complex and largely now of historical interest but they have resulted in such rights being treated as 'second class' within New Zealand's justice system and rarely resorted to in courts of law. This is in contrast to the situation in many other jurisdictions where at least some such rights are constitutionally protected.

The traditional Government response to criticisms of the down-grading of ESCR has been that they are well protected in legislation. Even if this were true -which is certainly open to doubt, given that

<sup>2</sup> See CESCR General Comment 20, E/C.12/GC/20, 2 July 2009.

all these policy changes are seen to be necessary – then what can be the difficulty in granting them the stronger protection afforded by the NZBORA? Such a course brings many advantages: greater familiarity with these issues **as rights** amongst lawyers and judges, so that they can be upheld and advanced in court processes, and a stronger tool for NGOs and policy advocates working in all the areas noted earlier.

These constitutional questions are part of a wider 'national conversation' which we in New Zealand are yet to have, after the shelving of the recommendations of the Constitutional Advisory Panel, a conversation which must include the place of the Treaty of Waitangi. But in the meantime recognition of ESCR in the NZBORA would represent a welcome step in the right direction.

An objection often raised to any reliance on international law in the domestic context is that such law, including the "Observations" of a UN Treaty Body such as the CESCR, have "no teeth", that is, they have no means of enforcement and there are no sanctions against the state concerned if their recommendations are ignored. While this is true in the strictest sense – and is the main reason behind the demand for greater **domestic** protection in law for these rights - this does not mean that international law carries no weight at all in the meantime. NGOs can still rely on these international treaties, embodying as they do agreed international standards. The media could report on failure to meet such standards. As for the Courts, they are enjoined to take account of such standards where possible, since not to do so would suggest that our signing up to them could be seen as 'mere window-dressing'.<sup>3</sup>

More importantly, as in New Zealand we move from a narrow focus on largely economic concerns in national policy making to an increased emphasis on social and environmental outcomes as well, recognition of our human rights obligations can provide an ideal moral and legal framework for Government policy and action towards a fairer and more just society.

<sup>3</sup> *Tavita v Minister of Immigration* [1994] 2NZLR 257 (CA) per Cooke, P.