

NEW ZEALAND Human Rights in the Christchurch Recovery (2011-2018)

Empowered Christchurch Inc.
Submission To the Universal Periodic Review
32nd session of the UPR Working Group, July 2018

Executive Summary

New Zealand had its second periodic review in 2014, in the midst of the recovery efforts from the Canterbury Earthquake Sequence. At that time, various submitters highlighted the progressive erosion of democratic processes and human rights as a result of the emergency legislation enacted following the disaster. This submission will look at some of the **human rights areas affected** from the regional Canterbury perspective and examine whether the situation has been improved or exacerbated in the intervening four years. These areas are: [1] The right to property and the right to adequate housing; [2] The right to health; [3] Civil and democratic rights.

[1] The right to property and the right to adequate housing

One of the most serious long-term problems in Christchurch after the earthquakes was **land damage**; the earthquake sequence damaged thousands of building foundations and large parts of the city suffered significant subsidence, leaving a substantial number of properties exposed to tidal inundation. The low-lying topography of the city meant that earthquake-induced subsidence and exposure to tidal fluctuation greatly increased the vulnerability of certain areas to liquefaction and erosion. There is now less dry land above the level of groundwater and a greater volume of storm water needs to be drained. This accumulates as it passes down the city's waterways to the sea, thus increasing the potential risks for the lower River Avon estuary. In the absence of land mitigation in the Avon estuary, this has generated serious problems for residents in estuary suburbs, who are exposed to the risk of both tidal and storm water flooding. Many properties lost up to 70 cm of elevation due to the earthquakes. Depending on the particular location, subsidence of this magnitude could reduce the life of new properties by up to 70 years.

Where land has subsided below the high tide levels, and is exposed to tidal fluctuation from groundwater (leading to erosion) the threat is all the greater. Against the background of climate change and rising sea levels, some coastal communities will soon be fighting for their survival.

In August 2011, the New Zealand government made the first purchase offers to residents in the residential red zones. In 2015 the Supreme Court ruled that the governments decisions on uninsured red zoned residential property owners and owners of undeveloped land had not been lawfully made. In 2018, there are still numerous homeowners fighting the government for their rights to remain in

their properties. The government has still made no decisions on the long-term future of red zone land.

Recommendation: uncertainty is the greatest enemy of recovery. The New Zealand government should probably decide what will be done with the large tracts of red-zoned land and offer acceptable alternatives to residents living there.

The current situation is very serious for the communities affected by coastal hazards in particular. Against a background of uncertainty, with falling house prices, absent infrastructure, and a growing pool of low-rental housing because buildings damaged by the earthquakes have not been rebuilt or repaired, business investors, insurance companies and banks are progressively withdrawing from certain parts of Christchurch. Presumably they see little point in reinvesting in an area where the authorities have no recovery planning in place. This is, in effect, a forced retreat, with the first to retreat being those who are best informed. In such a scenario, local government avoids investment, insurance companies avoid issuing new insurance policies, and business investment moves elsewhere.

As the reality of abandonment surfaces and understanding increases, property values drop, leading to less investment in maintenance and lower standards of housing.

There is now a steadily increasing number of empty sections in these hazard-prone areas (as a result of unremediated earthquake damage). When planning is finally in place, building will be prohibitively expensive or deemed a non-permitted activity.

Many Christchurch residents are now in the position where they have been left facing the imminent loss of their properties. Several insurance companies have recently stated that they are not issuing any new policies in the worst affected areas. The largest New Zealand company, Tower Insurance, is introducing risk-based pricing for its products, which is likely to make insurance in high-risk areas unaffordable.

The Earthquake Commission confirmed that up to 2,000 properties in Christchurch had no economically viable solution for ground remediation. Seven years after the disaster, the bulk of these properties are waiting for an assessment of tidal groundwater risks. Final flood plans have still not been released by the local council despite the fact that these areas are exposed to tidal flooding from the Pacific Ocean. A flood mapping error that was the subject of a complaint and that has been admitted by the council has still not been corrected.

A revised version of a flood mitigation report was published by the organisation Regenerate Christchurch in May 2018. It estimated the cost of providing sustainable solutions (flood walls and stop banks) for the most hazard-prone properties at NZ\$ 141m, while a retreat from the areas in question would cost up to NZ\$ 4bn.

The cost of providing solutions has been estimated, but no budget or plans are in place to enable this work to be implemented. This has happened time and time again in the recovery. Suggestions are made, but then ignored and the “do nothing” option on cost grounds becomes the preferred option leading to ongoing social and economic disruption. The duty of care owed to people

following a natural disaster, and the duty to protect people and property that is anchored in national legislation, have been breached.

Recommendation: the New Zealand government needs to properly identify and remediate earthquake-induced land damage, or compensate people in a programme of managed retreat. Over the longer term, this will in all probability be necessary in additional areas as sea level rise continues.

[2] The right to health

Like many other health systems in developed countries, New Zealand must cope with spiralling operating costs, an aging population, and wage increase demands from health sector employees. In the Canterbury context, this has been compounded by unsanitary living conditions, a reduced housing stock, damaged underground infrastructure, and increased unemployment. Chlorine has recently been added to the water supply in most areas following sporadic cases of E. coli contamination. Suicide statistics for Canterbury in 2016 and 2017 (78 and 79 respectively) were far in excess of any other district health board in the country¹. It is not unreasonable to assume that this is indirectly connected with increased social deprivation, fragmentation, isolation and depression following the earthquakes. Funding and counselling for the vulnerable is unfortunately being wound down. However, studies have shown that the four stages of recovery can last up to 10 years. The new government announced generous funding for child mental health programmes, but no additional funding for adults. Unfortunately, it is the lack of progress and the bleak outlook for the future that is the root cause, rather than the trauma of the earthquake experience.

Recommendation: the New Zealand government needs to expedite insurance claims settlement, compensate homeowners for botched repairs by Crown entities, and increase funding for mental health services.

[3] Civil and democratic rights (access to information and participation in decision-making

The Canterbury Earthquake Recovery (CER) Act of 27 February 2013 gave the New Zealand government sweeping powers to drive forward recovery measures. The legislation was roundly

¹ <http://www.newstalkzb.co.nz/news/national/canterbury-has-highest-number-of-suicides-in-country/>

criticized by the opposition² and various NGOs at the time. In its submission to the 18th session of the UPR working group in 2014, Amnesty International criticised the practice of passing bills under legislative emergency, which prevented it from making submissions. This practice has continued and Orders in Council are a further legislative instrument that the government has used to circumvent public discussion and potential objections to amendments and new regulations. Creeping changes to legislation in recent years (see also below) have included the removal of the phrase “community wellbeing” from the Local Government Act in 2014, and changes to the Crown Proceedings Act that remove the accountability of government employees for negligent practices. On a local level, coastal hazard planning and mitigation solutions for the worst affected land were omitted from the Christchurch District Plan.

The Government-owned Earthquake Commission, which covers the first \$100,000 of damage in natural disasters, is currently the defendant in several hundred cases before the New Zealand High Court. In many instances, it is being sued for underscoping damage and botching repair work, which subsequently failed. Another frequent defendant is a Crown-owned run-off insurance company, Southern Response, which has coordinated claims settlement and litigation defences with the EQC. In essence, what has been witnessed in Canterbury has been an example of regulatory capture, whereby, instead of meeting its liabilities under the Earthquake Commission Act and insurance contracts, the Crown-directed entities have advanced the interests of the private insurance sector, while making every effort to reduce what the government pay out for earthquake damage.

Key pieces of legislation intended to protect people, property and the environment (Marine and Coastal Area (Takutai Moana) Act, Resource Management Act, Civil Defence Emergency Act, Building Act³) have been repeatedly breached, and on at least three occasions, the use of emergency powers under the CER Act has been deemed illegal by the High Court⁴. In other instances, legislative provisions have been simply ignored. Through administrative mechanisms, responsibility

² https://www.parliament.nz/en/pb/hansard-debates/rhr/document/49HansD_20110412_00000816/canterbury-earthquake-recovery-bill-first-reading

³ <https://www.radionz.co.nz/news/regional/303141/no-compo-for-homes-rebuilt-in-potential-flood-zone>

⁴ <http://www.stuff.co.nz/the-press/news/christchurch-earthquake-2011/9354331/Legal-challenges-expose-hasty-process>

for certain high-risk areas was transferred from the regional authority Environment Canterbury to the Christchurch City Council to allow repair and rebuild work to be classified as discretionary activities, rather than noncomplying or prohibited ones.

Recommendation: Central and local government need to face up to their responsibilities and comply with mandatory legal provisions requiring them to protect people, property and the environment. A recently promised inquiry into the failures of the EQC needs to be implemented promptly in an effort to restore a public faith in the Commission

[3.1] Access to information

The services of the Ombudsman are in increasing demand, often in connection with unsatisfactory local or central government responses to Official Information Act requests. Media articles have reported journalists being asked to pay for information⁵ and the local council is treating all requests for information from our own organization under the Local Government Official Information Act.

[3.2] Technical information

New Zealand has many excellent and capable scientists, and following the CES we now have access to some of the most detailed investigations of land damage in the world. The scientific anomalies are therefore quite startling when final reports on earthquake damage are investigated. The findings and data reports frequently depend on what the initial instructions from the customer were (something that has also been a feature of technical claims reports for insurance companies). If a specific area is omitted from reports, damage will never be confirmed, and hazards will not be mapped, or mitigated. The independence of scientists, who frequently depend on government for funding, has been called into question. Scientists and central and local authorities have given presentations predicting that certain areas will be underwater in 20 years' time due to earthquake-induced land damage and the increasing height of tidal groundwater as climate change takes effect. Maps have been published showing that exposed coastal areas will erode away. A fault line that is unmapped runs through the eastern suburbs of Christchurch. This fault line was transferred to a different location before the serious earthquake in December 2011.

[3A] Risk transfer has been aided by the use of parliamentary urgency to introduce or amend the following legislation:

⁵ <https://www.stuff.co.nz/business/92154480/press-freedoms-stifled-by-cynical-use-of-official-information-act-report>

The CER Act
Building Act (removal of accountability)
Regenerate Christchurch Act (delays in planning)
Christchurch District plan (delays in planning; removal of coastal hazards chapter)
Local Government Act (removal of community wellbeing)
RMA (use of global consents – Existing Use Rights (EURs); removal of erosion hazard)
Crown Proceedings Act (removal of accountability of individuals for negligent acts)
Justice – A special earthquake list was established in the New Zealand High Court. The mechanisms appear designed to prolong the process as much as possible and reduce the number of cases being heard by the court. The average waiting time between filing and trial date is currently more than a year.
Recommendation: the New Zealand government should allow greater public discussion of new legislation, or material amendments to existing legislation, and should follow standard parliamentary procedures without the use of urgency.

Empowered Christchurch has followed this “recovery” process over seven years and has endeavoured to track where the draconian powers conferred under the CER Act have been misused. It appears that community wellbeing has been replaced with political wellbeing. The extensive insurance cover that most people enjoyed before the earthquakes is being replaced with a political policy and then enforced by the imposition of higher tax and rate levies.

Summary

The accumulation of legislative changes and regulations has transferred a large measure of liability from the government and consenting authorities to homeowners, designers & builders. During the parliamentary debate on the CER Act in 2012, the Labour Party prophetically warned of the potential consequences: “There is a risk of exposing consumers in this scenario in a way that they should never be exposed, and of reducing council responsibilities in a way that is unhelpful.” There appears to have been little improvement since 2014 in many of the areas described above. The root cause would appear to be government determination not to admit failures, and the pursuit of an economically driven recovery despite the terrible human cost.

Background and Framework

Promotion and Protection of Human Rights on the Ground

A. Cooperation with human rights mechanisms

The New Zealand Human Rights Tribunal

There is currently a 5-year waiting list and the volume of work has reportedly doubled over the last two years. The commission is dependent on government funding and in 2013 was threatened with a reduction in its allocated funds after issuing a report that criticised a Government bill as posing unacceptable risks to privacy rights.

Recommendation: The New Zealand government should increase funding for the Human Rights Commission to allow it to deal swiftly with the growing backlog of cases. Greater information transparency must be ensured from central and local government.

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Annex A

Information on submitting and supporting organisations

Submitter:

Empowered Christchurch Incorporated

Empowered Christchurch is a fully unfunded, volunteer community group established in the aftermath of the 21 February 2011 Christchurch earthquake with the following aims:

- To research and expose the actual situation in the city and the injustices that have happened and are still happening following the Canterbury Earthquake Sequence (CES)
- To empower and help obtain fair settlements for homeowners

Supporting organisations:

The South Brighton Residents' Association Incorporated (SBRA)

The South Brighton Residents' Association represents homeowners and ratepayers in an eastern suburb of Christchurch that was one of the areas worst affected by the earthquakes. It currently faces the risks of subsidence, tidal flooding, erosion, high groundwater, and proneness to liquefaction and lateral spreading in a future seismic event. No land remediation has been carried out by the EQC, flood protection is in the form of temporary stop banks erected after the earthquakes, and the city council and regional authority have each claimed that the other is liable in the event of a stop bank failure.

Annex B:**List of abbreviations:**

CES – Canterbury Earthquake Sequence

EQC – Earthquake Commission

CER – Canterbury Earthquake Recovery

Annex C:

Cover Up – A presentation given by Empowered Christchurch in March 2015 on various aspects of the Christchurch recovery process.