

**The UNGP Protect, Respect and Remedy Framework as a Best Practice Model for Dispute Resolution in the Context of Natural Disasters**

|  |
| --- |
| **SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES** |
| “Speed up the rebuilding and compensation process in the aftermath of the Canterbury earthquakes “ (Germany). “Facilitate the realization of economic, social and cultural rights through the reconstruction of the areas affected by earthquakes in 2010 and 2011” (Algeria). |

|  |
| --- |
| **NATIONAL FRAMEWORK** |
| EQC’s obligations are governed by the Earthquake Commission Act 1993. The obligations of private insurers are governed by contracts of insurance which typically provided for full insurance cover. Insurers are subject to self-regulation and are generally expected to comply with the Fair Insurance Code 2016. |

|  |  |
| --- | --- |
| **CHALLENGES** | **IMPACT** |
| *Critical human rights challenges include:*   * *Failure to provide any legal aid to affected people who have commenced or will commence earthquake related litigation in the court system.* * *Failure to establishing a bespoke earthquake claims tribunal.* * *Failure to address the inherent imbalance in power between affected people and their insurers.* * *Failure to codify and strengthen the insurers’ duty of good faith.* | *Legal aid is necessary for earthquake claims because the resources of EQC and insurers are far greater than the resources of ordinary people. There is such an imbalance of power between affected people and their insurers.*  *A key problem for affected people has been the lack of affordable and timely access to an independent decision-maker.*    *As discussed above, there is an undeniable imbalance in power between insurers and affected people. In other similar contexts this is recognised and addressed. For example, in employment legislation, the need to acknowledge and address the inherent inequality and power in employment relationships is expressly acknowledged and the duty of good faith requires parties to an employment relationship to be active and constructive in establishing and maintaining a productive employment relationship. If an employer breaches the duty, it has to pay more in remedies to affected employees. There is no reason why similar measures should not be extended to insurance legislation* |

|  |
| --- |
| **RECOMMENDATIONS** |
| WCM Legal recommends that the New Zealand government must:   * 1. Provide legal aid urgently to all Canterbury earthquake claimants who have commenced litigation against EQC and insurers.   2. Provide affected people with unrestricted access to mediation and other ADR services.   3. Ensure that the duty of good faith is codified and strengthened in insurance legislation. |

References/sources:

1. Employment Relations Act 2000.
2. United Nations “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework” (United Nations, New York and Geneva, 2011).
3. Earthquake Commission Act 1993.
4. Fair Insurance Code 2016.
5. United Nations Economic and Social Council *Concluding Observations on the Fourth Periodic Report of New Zealand* (United Nations, E/C.12/NZL/CO/4, May 2018).