

FACT SHEET UPR NEW ZEALAND 2018 HUMAN RIGHTS IN THE CONTEXT OF THE CANTERBURY EARTHQUAKE RECOVERY

2014 Recommendations



Netherlands

Take further measures to ensure full and consistent protection of human rights in domestic law and policies, taking into account the recommendations made by United Nations human rights bodies and the New Zealand Human Rights Commission



Germany

Speed up the rebuilding and compensation process in the aftermath of the Canterbury earthquakes.



Trinidad & Tobago

Consider policies in relation to gender mainstreaming, adequacy of housing and access to buildings for persons with disabilities in the post-recovery efforts of the Canterbury earthquakes.



Algeria

Facilitate the realization of economic, social and cultural rights through the reconstruction of the areas affected by earthquakes in 2010 and 2011.

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NATIONAL LEGISLATION / POLICIES / STATISTICS



Emergency legislation:

Canterbury Earthquake Response and Recovery Act 2010;

Canterbury Earthquake Recovery Act 2011;

Greater Christchurch Regeneration Act 2016;

Insurance (Prudential Supervision) Act 2010; Review of Insurance Contract Law;

Fair Insurance Code (not legally binding);

Marine and Coastal Area (Takutai Moana) Act 2011 (defines the common marine and coastal area in New Zealand).

Situation:

- **1265 earthquake cases before the High Court; just over 1% of individual claims have been disposed by judgment.**
- **87 suicides - all-time record - in Canterbury in last reported year**
- **Christchurch District Plan became operative on 19.12.2017. A government submission made recommendations regarding fault lines, mitigation of hazards and prohibition of development. These were not followed up.**
- **Statutory entity Regenerate Christchurch was established to develop a roadmap for specific areas and was to complete a regeneration strategy for the coastal suburbs of South Brighton and Southshore by 31 March 2018. No concrete proposals have been made for coastal areas.**
- **Marine and Coastal Area (Takutai Moana) Act provides that all land subsided below Mean High Water Springs (average high tide) becomes divested of ownership and unratable. This land has still not been identified or surveyed since the earthquakes.**

CHALLENGES

Access to justice/separation of powers

The New Zealand Government is the principal defendant in a large number of High Court cases and has therefore an interest in preventing cases going to court and precedents being set.

Treasury has raised concerns about precedent risk if damages are awarded against Crown entities or private insurers and the potential repercussions for insurance and reinsurance in New Zealand

IMPACT

Legal process expensive and protracted for homeowners; only 10-20 individual claims (some featuring immigrants from Afghanistan and China) have been disposed by court judgment; legal obstacles create a loss of trust in due process and the New Zealand justice system; information is not transparent; an inaccurate earthquake list is published at irregular intervals from which it is impossible to extract statistics; authorities use media publicity to encourage mediation and discourage litigation.

Land damage and seismic risks not properly identified. Taken in conjunction with sea level rise, large areas will be uninsurable.

The main EQ that caused subsidence (23 December 2011) and historical records of previous earthquakes from the same fault line have been removed from the internet. Subsided land has still not been surveyed and technical reports exclude critical damage.

Absence of insurance regulation and power imbalance. Claimants must prove their loss and many are still trying to do so eight years later. No requirement for insurer to settle a claim, but legal challenges are statute-barred after 6 years.

There is no balanced playing field; insurance claimants must engage specialist experts and the protracted legal process drains them of resources; claims settlement services have been controlled by insurers/government authorities; few legal precedents have been set; the Human Rights Tribunal has a lengthy waiting period and no HR claims have yet been brought before the High Court.

Housing: Thousands of Canterbury people are still living in quake-damaged homes, eight years after the event. Others are living cheaply in on-sold homes that pose risks to life and limb in a future earthquake. Unrepaired homes are often unsanitary, with weatherproof issues or mould infestation.

Growing number of failed repairs carried out by government entities; many EQ fault lines have been identified, yet development in the immediate proximity of such fault lines has not been prohibited; no protection has been provided against flooding and erosion, putting at risk the future insurability of properties in risk areas.

Upwards trend in mental health statistics and suicide rates while local funding has remained largely static in real terms.

Nationwide problem in NZ, but Canterbury has had the worst rates 2016-2018 (78-79-87 – current figure worst on record). Children and young adults particularly at risk. Social stressors include unsanitary housing, unemployment, relationship breakdowns, legal battles for insurance settlements, broken homes, broken families, drug and alcohol abuse, social deprivation, feelings of hopelessness.

RECOMMENDATIONS

- **Improve access to justice** by expanding **court resources** and increasing the level of **legal aid** for low-income and vulnerable claimants
- Amend **insurance legislation** to include a **legally binding fair insurance code** and establish a balance between the obligations of insurer and insured
- **Strengthen the separation of powers** by establishing a **fully independent tribunal** for earthquake cases with no government/ministerial or insurer involvement
- **Increase mental health funding** and support at-risk groups such as young adults, women and children with suicide prevention campaigns
- Ensure **protection of people and property** by clearly **identifying earthquake-induced** natural hazards, **remediating land damage** and **prohibiting development** in high hazard areas
- Establish a **comprehensive independent Commission of Inquiry** into the Canterbury Earthquake Recovery

References/sources:

Legislation:

1. Canterbury Earthquake Response and Recovery Act 2010

<http://www.legislation.govt.nz/act/public/2010/0114/latest/whole.html>

2. Canterbury Earthquake Recovery Act 2011

<http://www.legislation.govt.nz/act/public/2011/0012/latest/DLM3653522.html>

3. Greater Christchurch Regeneration Act 2016

<http://www.legislation.govt.nz/act/public/2016/0014/32.0/DLM6579202.html>

4. Review of Insurance Contract Law

<https://www.mbie.govt.nz/info-services/business/business-law/insurance-contract-law-review>

5. Marine and Coastal Area (Takutai Moana) Act 2011

<http://www.legislation.govt.nz/act/public/2011/0003/latest/DLM3213131.html>

Human Rights Tribunal:

https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11982110

High Court EQ List

<https://www.courtsfnz.govt.nz/the-courts/high-court/high-court-lists/earthquake-list-christchurch/HC%20EQ%20list.pdf>

Coastal suburbs and mental health

<https://www.stuff.co.nz/the-press/christchurch-life/68935466/fixing-new-brighton-after-years-of-neglect>

Canterbury healthcare funding

<https://www.stuff.co.nz/national/health/94356731/cruel-ministry-rejects-canterburys-urgent-mental-health-funding-plea>

Regenerate Christchurch: Statement Of Performance Expectations 1 July 2017—30 June 2018

<https://www.regeneratechristchurch.nz/assets/Uploads/regenerate-christchurch-statement-of-performance-expectations-1-july-2017-to-30-june-2018.pdf>

Coronial services of New Zealand: Suicide statistics 2018

<https://coronialservices.justice.govt.nz/suicide/annual-suicide-statistics-since-2011/>