

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/1155/Add.25
22 November 1974

ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS
Thirty-first session

PERIODIC REPORTS ON HUMAN RIGHTS

Reports on economic, social and cultural rights,
for the period 1 July 1969-30 June 1973, received
from Governments under Economic and Social Council
resolution 1074 C (XXXIX)

NEW ZEALAND

I. CONCISE INTRODUCTORY DESCRIPTION OF GENERAL POLICIES OF ECONOMIC AND SOCIAL DEVELOPMENT WHICH HAVE CONTRIBUTED IN A SIGNIFICANT MANNER DURING THE PERIOD FROM 1 JULY 1969 TO JUNE 1973 TO ENSURING THE RECOGNITION, REALIZATION AND PROTECTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

New Zealand has been fortunate in that enlightened legislators saw fit to embody the egalitarian spirit developed in the early years of the nation's history in far-reaching legislation designed to guarantee the physical, intellectual and spiritual advancement of all its inhabitants without discrimination. In some of this legislation, New Zealand led the world, being for example the first nation to enfranchise women (in 1893) and to introduce old age pensions.

Despite this history of legislative endeavour, national planning was not attempted in any comprehensive way until the National Development Conference was held in 1969. The National Development Council set up after the Conference was responsible for giving the Government advice on a full range of economic, social and cultural matters, through a number of subcouncils comprising experts from Government, commerce, agriculture and numerous other interest groups.

In Section III of this report the general situation in New Zealand is dealt with briefly in relation to individuals and groups of people whose rights need special protection. An account of legislation passed during the period under consideration is also given where appropriate.

The following is an account of two recent pieces of social legislation which affect larger sections of the community and cannot be satisfactorily subsumed under any of the headings provided, so all-embracing are they in their significance.

A. THE ACCIDENT COMPENSATION ACT 1972

On 1 April 1974, the Accident Compensation Act 1972 came into force. From that date no right of action at all will lie in a New Zealand court for damages in respect of personal injury (or death resulting therefrom) arising out of an accident occurring in New Zealand on or after 1 April 1974. In the place of actions for personal injury, three schemes for the compensation of persons injured by accident are established by the Act.

Under the Earners' Scheme, and subject to a limited number of exceptions, all persons who are earners either self-employed or employed, are entitled to compensation for personal injury by accident based on the rate of their earnings prior to the accident, whether or not the accident occurred in the course of their work.

Under the Motor Vehicle Accident Scheme, compensation is provided for those suffering injury by accident involving a motor vehicle. A person thus injured or not, however, thereby deprived of compensation calculated in accordance with the Earners' Scheme if he is also an earner.

Under the third Scheme, known as the Supplementary Scheme, compensation is provided for those people suffering injury by accident in circumstances where neither the Earners' Scheme nor the Motor Vehicle Accident Scheme applies.

It should be made clear that cover under the legislation is not based on nationality but on the presence in New Zealand of a person who, by reason of an injury by accident, is brought within the scope of one of the three Schemes. This cover is available 24 hours a day.

The Act provides a comprehensive system of compensating accidents, thus recognizing the community's general responsibility for accidents and to provide for their victims.

The provisions of the Act encompass the following:

- (a) Immediate provision of compensation, without proof of fault, to every injured person wherever the accident occurs;
- (b) Entitles the injured person to compensation both for permanent physical disability and also for income losses on an income related basis;
- (c) Provides for regular adjustment in the level of payment to injured persons in accord with variations in the value of money; and
- (d) Advances the injured person's physical and vocational rehabilitation.

B. THE LEGAL AID ACT 1969 repealed the earlier Act of 1939 to make aid more readily available for persons of small or moderate means. It established a Legal Aid Board, an Appeal Authority and District Legal Aid Committees and provides for legal aid in section 15 with certain exceptions:

/...

All civil proceedings in the Magistrates' Court;

All proceedings by way of complaint in the Childrens Court;

All original civil proceedings in the Supreme Court except proceedings initiated under the Matrimonial Proceedings Act 1963;

Proceedings under the Matrimonial Proceedings Act 1963 which are exclusively for the purposes of auxiliary relief;

All proceedings in the Compensation Court;

Appeals to the Supreme Court and Court of Appeal in Civil and Domestic Proceedings, other than appeals in respect of the Matrimonial Proceedings Act 1963; and

Appeals to Privy Council with some exceptions.

II. INFLUENCE OF UNITED NATIONS INSTRUMENTS CONTAINING PRINCIPLES AND NORMS FOR THE RECOGNITION, REALIZATION AND PROTECTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND, IN PARTICULAR, MEASURES ADOPTED TO IMPLEMENT SUCH INSTRUMENTS DURING THE PERIOD FROM 1 JULY 1969 TO 30 JUNE 1973

In general it is difficult to assess the degree to which policy concerned with economic, social and cultural rights has been influenced by United Nations instruments. Much of New Zealand's most important welfare legislation either preceded the United Nations Charter and its covenants or evolved from them at the same time as the formulation of principles took place in international forums.

While existing legislation and practice in New Zealand were considered to be consistent with the principles embodied in question IV, there were certain provisions dealing with areas of conduct which had not previously been considered necessary to regulate by specific legislation. In 1972 the Race Relations Act was passed to ensure full compliance with the International Convention on the Elimination of All Forms of Racial Discrimination prior to ratification. Various aspects of this piece of legislation will be discussed under sections III A1 and G, and section IV.

At present ILO conventions, in particular those relating to the employment of women, are under examination with a view to bringing New Zealand legislation in line with United Nations practice.

III. SIGNIFICANT DEVELOPMENTS DURING THE PERIOD FROM 1 JULY 1969 TO 30 JUNE 1973 WITH REGARD TO THE RECOGNITION, REALIZATION AND PROTECTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS, REFERRING WHERE APPROPRIATE TO CONSTITUTIONAL PROVISIONS, LEGISLATIVE MEASURES AND ADMINISTRATIVE REGULATIONS AND PROCEDURES ENACTED AND COURT DECISIONS RENDERED

A. THE RIGHT TO WORK

1. Right to free choice of employment

A person may undertake work of any description which is available and for which he is qualified. There are, however, restrictions upon entry into certain professions which require the attainment of certain minimum qualifications, but the opportunity to acquire such qualifications is available generally. The Race Relations Act 1971, designed to affirm and promote racial equality in New Zealand, implements the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination. It embraces, *inter alia*, discrimination on the grounds of colour, race or ethnic or national origins in employment.

Section 5 of the Act makes it unlawful for an employer or an agent on his behalf to refuse or omit to employ any person in work for which is qualified; to refuse or omit to offer or afford any person the same terms of employment,

/...

conditions of work and opportunities for training and promotion as are made available for persons of the same qualifications employed in the same circumstances on work of that description; or to dismiss any person in circumstances in which other persons employed by that employer on work of that description are not or would not be dismissed - by reason of the colour, race or ethnic or national origins of that person.

It is likewise unlawful for any employment agent to discriminate against employment of any particular person in the ways outlined above, for those reasons. It is, however, legal to refuse to employ a person on the grounds of his national origin where the employment involves the national security of New Zealand.

It is illegal to publish or display any advertisement or notice which indicates or could reasonably be understood as indicating an intention to commit a breach of this section of the Act. The Race Relations Act is examined more fully under section IV of this report.

2. Right to just and favourable conditions of work

A considerable proportion of the persons comprising the labour force of New Zealand have their working conditions determined either directly or indirectly by virtue of provisions made under numerous Acts brought into force before the period covered by this report. Those persons not covered by legislation relating explicitly to their type of employment are, in general, adequately covered by the State Services Act 1962 and supplementary legislation dealing with the public service sector and enacted during the late 1950s and early 1960s.

The Department of Labour has the largest over-all responsibility for the prevention of accidents in industry and for ensuring the general welfare, health and safety of those included under the provisions of the Factories Act 1944, the Construction Act 1959 and the Machinery Act 1950.

The following legislation was enacted in the period 1 July 1969 to 30 June 1973:

The Aircrew Industrial Tribunal Act 1971 which created a Tribunal to provide for the determination of the conditions of employment of aircrew employed by New Zealand airlines and to provide the means for conciliation, the power to make awards and the settlement of personal grievances.

The State Services Remuneration and Conditions of Employment Act 1969 which provides for the fixing of rates of remuneration and conditions of employment for employees in the State Services, and establishes certain tribunals to do this. The conditions of employment which may be prescribed pursuant to this Act are comprehensive and include:

(a) Annual and special leave, sick leave, holidays, ordinary hours of work and the period to be worked before overtime rates become payable;

/...

(b) Rates of remuneration and conditions in respect of minimum earnings, overtime, travelling time, standing time, night work, shift work and special duty, and in respect of work on Saturdays, Sundays, holidays and at any other time outside the ordinary hours of duty;

(c) Minimum rates of remuneration for adult employees and for married employees;

(d) Separation allowances, locality allowances, dirty work allowances and other allowances relating to conditions of work;

(e) Tool allowances and allowances in the nature of additional pay for classes or conditions of work warranting the payment thereof;

(f) Travelling, relieving, lodging, night, rest, camp, transfer and meal allowances and expenses;

(g) The terms and conditions on which uniforms and industrial clothing may be issued;

(h) In respect of the New Zealand Government Railways Department only, also payments to engine crews on the basis of mileage run during any shift and the conditions on which free travelling on the railways or travelling at reduced rates may be granted;

(i) In respect of the Defence Forces only, also all allowances, grants, gratuities and other similar payments, including overseas allowances made in respect of conditions of service in the Defence Forces.

3. Right to protection against unemployment and underemployment

Most employees in New Zealand industry, other than those at senior management level are covered by awards and agreements which have been negotiated by their respective employees' union and representatives of the employers concerned. Awards and agreements invariably contain a clause concerned with dismissal and the termination of employees' services. Usually a contract of service remains in force until it is terminated by either the employer or the employee, or by their mutual agreement. Where the employment has been permanent, a minimum period of notice is usually stipulated by the award or agreement.

If an award is silent on the question of forfeiture of wages when termination has not been carried out within its terms, an employee's redress could include a claim in the Magistrate's Court for damages.

The legislation under which agreements and awards are made is the Industrial Relations Act 1973. This Act contains provision for the settlement of "personal grievances" where an employee feels he has been dismissed unjustifiably. Provision for dealing with such a claim must be included in every award or agreement.

Where any person is at any time unemployed, he is entitled, under the New Zealand Government's policy for benefits and pensions, to safeguard against loss in income in the form of an unemployment benefit and to receive supplementary assistance where income or financial resources are insufficient to meet his living costs and other commitments.

4. Right of everyone who works to just and favourable remuneration ensuring a decent living for himself and his family

For many years the basis for determination of wages and salaries for the majority of employees has been a system of conciliation and arbitration supplemented by general wage orders. About half of New Zealand's wage and salary earners are subject to awards and industrial agreements falling under the jurisdiction of the Industrial Relations Act 1973.

The Act recognizes certain factors not previously or only partially taken into account, by prior legislation.

New machinery to make general wage orders from time to time was provided by the General Wage Order Act 1969. The Arbitration Court formerly made general wage orders under the authority of the Economic Stabilization Regulations. The new Act was an attempt to bolster the outmoded and inefficient general wage order system. The criteria which the Court must take into consideration in determining whether an order ought to be made are:

1. Any rise or fall in retail prices;
2. Economic conditions affecting finance, trade and industry;
3. Any increase or decrease in productivity and in the volume and value of production;
4. Relative movements in the incomes of different sections of the community;
5. Any increase or decrease in minimum rates of remuneration;
6. Such other matters as the Court considers relevant.

The new Act provides further direction to the Court in assessment of the criteria set out above by providing in S 3(2) that the purpose of any review shall be to

- (a) Maintain and promote living standard, so far as it is within the capacity of the economy to sustain such an adjustment;
- (b) Promote industrial harmony;
- (c) Maintain and promote exports by New Zealand industry.

The last general wage order was made on 1 July 1974 and gave all employees an additional 9 per cent on salaries and wages.

5. Right of everyone, without discrimination of any kind, to equal pay for equal work

In 1972, legislation was enacted in the form of the Equal Pay Act providing for the prevention and the removal of discrimination based on the sex of the employee, or rates of pay for male and female workers. The Act provided for the phasing in of equal pay in five annual steps to be completed by 1977.

Implementation of the 1960 Government Service Equal Pay Act, which covers that group of workers not included under the provisions of the 1972 Act, will be discussed in sections IV and V of this report.

6. Right to rest, leisure and reasonable limitation of working hours and periodic holidays with pay

There has been no recent legislation on this matter, but since 1946 most employees have had the benefit of a five-day, 40-hour week. Indeed the Industrial Relations Act stipulates that no award between employee and employer shall provide for more than a 40-hour, five-day week. All employees have the benefit of a two week annual holiday with pay, although in practice many enjoy more than the two week minimum.

7. Right to form trade unions and to join trade unions

The New Zealand system of conciliation and arbitration is based on the voluntary registration of industrial unions and associations. The Industrial Relations Act 1973 simplified and consolidated procedures developed under the former Industrial Conciliation and Arbitration Act in order to bring them up to date with present needs. The inadequacies of past legislation which influenced the formulation of the new law are discussed in section V of this report.

Under section 104 of the Industrial Relations Act, every person who, by virtue of his employment or intended employment, is within the class of which an industrial union of workers is constituted, and who is not of general bad character, is entitled to be admitted to membership of the union; and so far as the rules of any union are inconsistent with the provisions of this subsection they are deemed to be null and void. No person is, however, obliged to join a union, and he may be exempted from union membership on conscientious grounds.

Section 163 of the Act provides that subject to certain rules any society of persons lawfully associated for the purpose of protecting or furthering the interests of employers or as the case may be, of workers, engaged in any specified industry or related industries in New Zealand may be registered as an industrial union of employers or as the case may require, of workers, under this Act.

8. The right to strike

At common law there is a recognized right to strike, although this is restricted by statutory rules. The Industrial Relations Act 1973 provides that no person in

/...

any of certain named industries (which relate to essential services) may strike without having given to his employer within one month before so striking not less than 14 days' signed notice in writing of his intention to strike. The law however does not prohibit other ways in which a worker may exercise his right to withhold his labour and the majority of industrial stoppages (e.g. stop-work meetings) proceed without hinderance.

B. THE RIGHT TO SOCIAL SECURITY, INCLUDING SOCIAL INSURANCE IN THE EVENT OF UNEMPLOYMENT, SICKNESS, DISABILITY, WIDOWHOOD, OLD AGE OR OTHER LACK OF LIVELIHOOD IN CIRCUMSTANCES BEYOND ONE'S CONTROL

An advanced system of benefits and pensions has existed in New Zealand for many years prior to the period under discussion. The Government's policy has provided individuals in the community against loss or reduction of income as a result of old age, incapacity, widowhood, orphanhood, unemployment or other circumstances beyond their control. The new Accident Compensation Act is discussed in section I above. The one objective of this legislation is to ensure income security which will enable those who, as a result of receiving personal injury by accident, are deprived of all or part of their usual source of income.

Every person who has attained the age of 60 years is entitled to receive an age benefit, subject to residential qualifications and income test. Age benefits can be made available to unmarried women between 55 and 60 years of age who are unable for some reason to engage in regular employment. People of the age of 65 years who satisfy the prescribed residential qualifications are entitled to a superannuation benefit without regard to financial circumstances. At present legislation is before Parliament which will make contributions to a superannuation scheme compulsory.

Anyone over the age of 16 years who is temporarily incapacitated for work through sickness or accident, and as a result suffers a loss of earnings may apply for a sickness benefit.

Social welfare policies and programmes have received increased emphasis at the personal level in New Zealand in recent years. In 1971, the Department of Social Welfare Act was passed to establish one Government department responsible for all aspects of social welfare.

C. THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

1. Right to adequate food

The principle to a good standard of living including, inter alia, sufficient food, is bound up in New Zealand's social welfare legislation which provides various benefits to those particularly in need at any given moment.

In addition there is food and nutrition legislation which protects the quality of food. There are strict provisions governing the packing, labelling, storage and sale of poisons.

/...

The Consumer Information Act 1969 came into effect on 1 June 1970 on the basis that the provision of adequate information to consumers is an effective means of promoting honest practice in the market place, and enables the consumer to assess for himself the quality, value and suitability of the article he is invited to purchase.

The Act seeks to make provision for increased information to be given to the consumer in five respects:

- (i) Prescribed information to be given in labels on goods
- (ii) Prohibition of deceptive and misleading labelling
- (iii) Prohibition of deceptive or misleading packaging
- (iv) Prohibition of deceptive or misleading advertising
- (v) Prohibition of false or misleading statements regarding prices.

2. Right to adequate clothing and housing

The housing policy of the Government includes the provision of loans to local authorities through the State Advances Corporation for pensioner, rural and community housing, including urban renewal. The Corporation also has authority to grant loans for general housing purposes, i.e., for the benefit of the community in general. In addition to the facilities of the State Advances Corporation, the Government's welfare policy provides assistance towards housing finance for families of moderate means by way of an advance of family benefit.

Assistance is also available from other sources to different groups who may be economically disadvantaged, for example, the Board of Maori Affairs is empowered by 1935 legislation to give financial aid to Maoris and other Polynesians for the building of houses, including the purchase of building sites, additions, repairs to existing dwellings, and for the purchase of houses.

State rental houses and flats have been built since March 1937. These are allocated to tenants on the basis of income and need. In 1943 the income limit on applicants for tenancies was removed, and a points system of priorities substituted.

In 1973, the Property Speculation Tax Act was passed to discourage the buying and selling of land for speculative purposes. The Act provided for the imposition of a tax on profits equal to 90 per cent of the profit made except where the land had been held for two years prior to disposal. Exceptions are made where land is disposed of for bona fide purposes.

Under the Public Works Act 1928, the Government has power to take land for the purposes of public works, and this power has recently been exercised to purchase land within or near to urban areas to provide low cost housing for people under disadvantaged economic conditions.

3. Right to necessary social services

In addition to those services mentioned above, assistance and care has been offered for some years to many sections of the community, including socially disadvantaged, neglected or delinquent children, persons disabled through sickness, accident or war, physically or intellectually handicapped children, the elderly and chronically ill, and nursing mothers.

4. Right to continuous improvement of living conditions

Specific instances of this right have already been cited in other sections dealing with conditions of work (Industrial Relations Act), adequate remuneration (General Wage Order Act), Social Security, Accident Compensation and social and consumer services.

5. Right to the protection and improvement of the human environment

Public consciousness of the need to preserve the environment and to recycle and conserve resources has grown markedly in recent years. Along with this, concern has developed about pollutants resulting from increased industrialization and affecting both urban and rural areas.

A diversity of legislation (an estimated 60 statutes) empowering central and regional authorities to deal with environmental problems was already in existence before 1 July 1969.

New developments in environmental preservation came with the passing of the Clean Air Act 1972 and the Marine Pollution Act 1974.

The Clean Air Act sets out to promote the "conservation of the air and the abatement of (its) pollution". To achieve these aims, the Act places a general obligation on the occupiers of all premises, whether domestic or industrial to control and render harmless any pollutant deriving from their premises. Strict provisions must be complied with before any substance may be allowed to be emitted into the atmosphere.

In addition to the general powers of control invested in local authorities to limit air pollution, the Act makes provision for the creation of clean air zones on the application by the local council to the Governor-General. An Order in Council made under this provision may authorize or permit the use in the clean air zone either generally or in any specified class of fuel burning equipment, or any specified fuel or specified class of fuel; it may authorize or permit the use of any specified class of fuel burning equipment; prescribe the manner of operation of any specified class of fuel burning equipment; and may specify certain exemptions until a certain date.

The Act also creates a Clean Air Council whose principal functions are -

(a) To make recommendations to the Minister of Health on matters relating to the prevention and control of air pollution;

(b) To make recommendations to the Minister on such matters relating to the performance of the functions conferred on him by the Act as may be referred to it by the Minister.

The Marine Pollution Act 1974 is designed, amongst other things, to give effect to five international conventions: The International Convention for the Prevention of Pollution of the Sea by Oil 1954 as amended in 1962; the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution 1969; the International Convention on Civil Liability for Oil Pollution Damage 1969; the International Convention on the Establishment of an International Fund for Oil Pollution Damage 1971; and the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972.

Part I of the Act relates to the prevention of pollution. It includes provisions for preventing or dealing with the discharge of oil or other pollutants and it allows regulations to be made requiring ships to be fitted with equipment to prevent or reduce discharges or escapes of oil or other pollutants into the sea. A permit system is established for all waste and matter which is to be dumped.

Part II confers authority to deal with shipping or other types of marine casualty which by virtue of the casualty or the cargo being carried constitutes a threat of pollution in or to New Zealand waters or to the shoreline or to related interests.

Part III deals with civil liability for pollution damage and provides, inter alia, for civil liability in the case of off-shore installations and for the case of ships where the International Convention on Civil Liability does not apply.

Part IV deals with additional compensation and indemnification which is to be provided from a fund to be established under article 2 of the Fund Convention under which it is intended to ensure that there is full compensation for those who have suffered damage that has not been fully met by the shipowner.

Consequent on the recommendation of the Physical Environment Conference 1970, the Environmental Council was established. It comprises persons who, because of their expertise in environmental matters are able to exercise considerable influence. The council includes representatives of science, architecture, industry and agriculture, as well as of regional, country and municipal authorities and appropriate Government departments. The Council meets monthly and is thus able to maintain a continuing programme of inquiry and research into the preservation and development of the quality of the environment and to review the policies, measures and resources necessary to their attainment. It advises the Minister for the Environment so that consistency between developmental and environmental

objectives is ensured. The Council's governmental counterpart, the Commission for the Environment, also services the new environmental portfolio. Acknowledgement of the conflict between economic and environmental objectives resulted in 1972 in the creation of the Land Use Advisory Council which has the task of establishing the criteria on which sound land use decisions can be made. Its order of reference requires it take into consideration physical, ecological, economic, social and environmental factors, and to determine measures by which these may be more precisely defined. Although its decisions are primarily intended to guide the use of lands belonging to the State, it is hoped that they will help all those who need to make such decisions.

D. THE RIGHT TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH

New Zealand has a long established tradition of free or Government-subsidized medical care covering nearly all aspects of health and including medical benefits applying to medical treatment as it is ordinarily given by medical practitioners in the course of a general practice. Part II of the Social Security Act 1964, administered by the Department of Health and dealing with such benefits, makes provision for medical, pharmaceutical, hospital and other related benefits to be made available to all persons normally resident in New Zealand. Responsibility for the nation's health is undertaken by partnership of central and local government, private medical practitioners, para-medical workers, charitable and religious organizations and private citizens, with Central Government providing encouragement, financial assistance and incentives and assuming over-all responsibility.

1. The reduction of the still birth-rate and of infant mortality, and for the healthy development of the child

Maternal and child health are the responsibilities of the Department of Health. They include the licensing and supervision of maternity hospitals, medical and nursing supervision of infant, pre-school and school children, inspection of schools and child care centres and immunization of infants against epidemic diseases.

New Zealand's still birth and infant mortality rate is already one of the lowest in the world, and every effort is being made to reduce it still further through careful application of long existent health policies.

2. The improvement of all aspects of environmental and industrial hygiene

The Department of Health and local authorities are concerned with such matters as the provision of and protection of public water supplies, sewage treatment and disposal, food hygiene and housing standards. Their objectives are the maintenance of a healthy environment by the application of the principles of preventive medicine. The Department of Health, in conjunction with the Department of Labour, is also charged with the care for the health of industrial and agricultural workers. This includes co-operation in accident prevention and attention to the safe use of agricultural chemicals. The Department of Labour calls to the attention of the medical officers of health, whose responsibility occupational health has been since 1957, any questions which the factory inspectors may encounter. Their joint efforts cover such contingencies as the suspension of workers on health grounds, approval of respirators and similar protective equipment, the medical examination of workers and minimum first-aid standards.

Other aspects of environmental and industrial hygiene have been dealt with in sections III A2 and C5.

3. The prevention, treatment and control of epidemic, endemic, occupational and other diseases

Due to the legal requirement to notify cases of epidemic diseases and their subsequent isolation for treatment, New Zealand has in recent years been almost completely free of such scourges as cholera, small-pox and typhus. Intensive immunization campaigns among school children have also eliminated diseases such as poliomyelitis and diphtheria. The improved standard of living combined with immunization and child medical-care facilities have made cases of tuberculosis rare.

4. The creation of conditions which would ensure to all medical service and medical attention in the event of sickness

The creation of such conditions has been dealt with in sections III 3 and 4 above.

E. THE RIGHT OF THE FAMILY, MOTHERHOOD AND CHILDHOOD TO PROTECTION AND ASSISTANCE

1. Right of the family to protection and assistance

New Zealand has, in addition to its comprehensive social security and welfare system, an extensive set of laws aimed at maintaining, strengthening and protecting the family. The most important of these, which predate July 1969, are the Domestic Proceedings Act 1968 and the Matrimonial Proceedings Act 1963. There are a number of income maintenance schemes that a family in financial difficulties can call upon, while Government-sponsored and voluntary family support services cover child-welfare, family health and matrimonial guidance.

2. Right of mothers to special care and assistance, including the provision of child care facilities adequate to permit women to pursue careers

Medical practitioners have been giving for a number of years ante-natal, neo-natal and post-natal attention under the Social Security Act. Free ante-natal clinics are established in connexion with all public maternity hospitals and maternity wards. A network of ante-natal classes is also being developed. In the case of women living far from main towns, ante-natal work is carried out by public health nurses employed by the Department of Health or by district nurses.

3. Right of children and young persons to special care and assistance

During the period under consideration the only significant new legislation affecting child welfare is the Status of Children Act 1969 which is discussed in section IV of this report.

However, new legislation came into force on 1 August 1973 affecting various changes in the administrative structure of the Children's Health Camps. The functions and objectives of these camps will remain unchanged under the Health Camp Act 1972. The camps, originally set up to provide children from the lower economic groups with the facilities to regain health in a short time, are now valuable in that they allow children to escape from the tensions of their every-day environment into a relaxed atmosphere, where a balanced diet is combined with a reasonably organized régime and remedial teaching.

As noted in section III B above, the Department of Social Welfare Act 1971 was enacted to provide for the co-ordination and efficient administration of all organs of social welfare within one government department. One of the principle functions of this Department is the administration of the Child Welfare Act 1925 whose objective is to make better provision for the maintenance, care and control of children who are under the protection of the State and to provide generally for the protection and training of indigent, neglected and delinquent children.

The Age of Majority Act 1970 now give adult status at the age of 20 years.

4. Right of parents to determine freely and responsibly the number and spacing of their children

In New Zealand, family planning is regarded officially as a health measure

/...

and has been practised extensively, on a purely voluntary basis, for many years. While the normal general medical services benefit is payable by the Government for family planning consultations, general practitioners' and specialist fees additional to this are met by the patient in the normal way. The cost of contraceptives, too, must be met by the patient. Clinical services are being extended gradually in New Zealand, and although a small charge is made for consultations, no one is refused assistance because of inability to pay. In recognition of the desirability of making family planning material available to all, the Government has in recent years extended the role of Department of Health officers from an educational one to one of active participation in Family Planning Association clinics. Hospital boards are also being encouraged to open clinics, which provide a free service to the public and at the same time give doctors and nurses experience in the field of family planning.

F. THE RIGHT TO EDUCATION

1. Right to free primary education

Since 1877 New Zealand children between the ages of 5 and 15 have enjoyed free education without distinction on the grounds of race. The Education Act 1964 provides for free and secular education in State and secondary schools between the ages of 5 and 19 years, and compulsory education for all children between the ages of 6 and 15 years, unless a specific exemption is applicable under Section 109 of the Act.

2. Right to equal access to higher education on the basis of capacity or merit, including technical, vocational and professional education

Throughout the range of secondary educations available to New Zealand children, there has been a tendency in recent years to conform to a pattern of core subjects such as English, mathematics, social and natural sciences, music and crafts. Vocational guidance is also made available at both secondary and tertiary level.

Abolition of the proficiency examination in 1936 removed the last barrier of access to secondary education. For some years now, entrance to university has not necessarily been conditional on the passing of an examination and, since 1968, passes in individual subjects rather than a total pass in School Certificate has become law. The trend has been away from the rigid and arbitrary stratification of the student's ability by national examination and towards a more personal assessment by his teachers.

University education is provided under the Universities Act 1961, and is subsidized by a sliding scale of bursaries and allowances according to the level of ability and degree of need displayed by the student.

3. Right of parents to choose the kind of education that shall be given their children

Subject to the proviso which places a duty on every parent to allow his children to participate in education, he may choose the kind of education that he

/...

wishes for his children. In addition to State primary and secondary schools, where free education is available as of right, parents may also enrol their children in private schools registered under the Education Act 1964.

Denominational schools receive State assistance for the purchase of basic equipment and certain running expenses on the same scale as primary and secondary schools in the national system. The 1962 Act permits religious instruction on a flexible basis in State primary schools for half an hour a week, but such instruction is in no way compulsory.

Private schools may be established upon application for registration to the Director-General of Education and where he is satisfied that the premises, staffing, equipment and curriculum are adequate, such schools are subject to the same educational standards and the same inspectorial system as schools in the national system.

C. THE RIGHT TO PARTICIPATE FREELY IN CULTURAL LIFE

1. The right to take part in cultural life and to enjoy the benefits of scientific progress and its application

New Zealanders take as axiomatic their right to participate freely in all spheres of New Zealand life and culture. In 1971 this generally accepted right was further promoted by the incorporation in the Race Relations Act of provisions to protect inter alia the rights to enjoy various forms of culture by the establishment of cultural associations without hindrance, while discrimination on the grounds of colour, race or ethnic or national origins was prohibited with respect to:

- (a) Access by the public to places, vehicles and facilities;
- (b) Provision of goods and services;
- (c) Employment; and
- (d) Land, housing and other accommodation.

Section 9 of the Race Relations Act, however, stipulates that any act which would have been in contravention of the above does not constitute a breach if:

(a) It is done or omitted in good faith for the purpose of assessing or advancing particular persons or groups of persons or persons of a particular colour, race, ethnic or national origin; and

(b) Those groups or persons will or may reasonably be supposed to need assistance on advancement in order to achieve an equal place with other members of the community.

The New Zealand Government is concerned not only to safeguard cultural rights but also to offer encouragement in the development of a culturally rich society.

/...

It is argued that if New Zealanders do not work to preserve their heritage of mixed European, Polynesian and Asian origins, their distinctive national identity could be eroded by an international, commercialized culture.

Every attempt is made to ensure that, although children from all sections of the community receive their schooling under exactly the same conditions, equal education does not mean uniform education. The early 1930s saw a radical departure from the educational tendency to create a uniformly "European" society. Today every effort is made to foster awareness and pride in Maori culture by inclusion in the school syllabus of materials from Maori Culture and history. Concurrently, the necessity to equip Maori and other Polynesian children for their role in a multiracial society is recognized.

With the creation of the Maori Education Foundation in 1961, efforts have been better focused on encouraging Maoris to take advantage of the educational opportunities offered.

An appreciation that all New Zealanders stand to gain from a plurality of cultures has led to an upsurge of interest in Polynesian, and in particular Maori culture and heritage. To take some examples, interest in the Maori language has led to its inclusion as a university course, the presentation of more radio and television programmes in the Maori language and to proposals to have the language taught to all New Zealanders as a second language in secondary schools. In addition, a bill is presently before Parliament which is designed to afford official status to the Maori language, a status which only English now enjoys.

Further indications of the wish to preserve New Zealand's Polynesian heritage may be seen in legislation currently before Parliament which provides for all Maori artifacts found in New Zealand after 1 February 1975 to be the property of the State; for permission for the export of such antiquities to be available only from the Secretary of Internal Affairs; for the establishment and recording ownership of Maori artifacts; for the prohibition of the sale of artifacts other than to a registered collector, a public museum, a licensed auctioneer or second-hand dealer.

The Arts Council was set up by the Government to give support to playwrights, painters, sculptors and a full range of performing artists. Its subsidies of ballet, opera and the theatre ensure that a wider spectrum of the public is able to enjoy these cultural facilities. The Council also offers assistance to film societies, a Maori Writers' and Artists' Conference, Polynesian arts festivals, literary journals, Maori language publications, art galleries and cultural centres. It also sponsors visiting artists from abroad who, in its view would make a valuable contribution to New Zealand culture. The Council is at present engaged in the publication of books which will preserve a careful record of New Zealand's indigenous art forms. A significant policy change began in 1973 when a grant from the State Lottery Board of approximately \$300,000 was made on the recommendation of the Council, to subsidize concert halls, theatres and museums.

2. Rights to the protection of the moral and material interests arising out of scientific, literary or artistic work

In 1973 the right of New Zealand authors to benefit from the fact their works

were made available in public libraries was acknowledged by the introduction of a system of payments from the State Literary Fund. A writer must have been resident in New Zealand for more than two years and have more than 50 copies of his work lodged in the public library system in order to qualify for a grant. Allocations are made according to the number of copies in circulation.

Machinery to protect the interests arising out of scientific, literary or artistic works existed in New Zealand prior to 1969 by virtue of the Copyright Act of 1962 and the Trade Marks Act 1953. These acts consolidated earlier laws relating to trade marks and copyright, which had existed since 1908.

The Copyright Act 1962 provides protection for original works and gives the exclusive right upon application to do and to authorize other persons to do, certain acts in relation to that work. Copyright may exist in respect of literary, dramatic, musical and artistic works; sound recordings; television broadcasts and sound broadcasts; cinematograph films; published editions of work. Certain exceptions are provided, for example, in libraries, universities and schools.

The Trade Marks Act 1908 recognizes two types of trade mark which may be registered under the Act and assigns different rights in respect of each. The Register, in which proprietorship of the marks is recorded, is divided therefore into part A and part B.

Registration under part A gives to the person seeking registration the exclusive right to the use of the trade mark in respect of goods. That right is deemed to have been infringed by any person who is not the proprietor of the trade mark or a registered user of it if he uses a mark identical with it or one which so closely resembles it that it is likely to deserve or cause confusion in the course of trade.

For a trade mark to be registrable in part A, it must comply with one of the following particulars:

- (a) The name of the company, individual or firm must be registered in a special or particular manner.
- (b) It must contain the name of the applicant or some predecessor in his business.
- (c) It must contain an invented word or invented words.
- (d) It must contain a word or words having no direct reference to the character or quality of the goods and is not according to its ordinary signification a geographical name or a surname.
- (e) It must contain a distinctive mark.

Registration under part B of the Register gives to the person the same rights as those enumerated above in respect of registration under part A. Certain judicial remedies available by registration in the latter, however, are not

/...

available if a defendant is able to prove that the use of which the plaintiff complains is not likely to deceive or cause confusion or to be taken as indicating a connexion in the course of trade between the goods and some other person having the right as proprietor or as registered user to use the trade mark.

For an application for registration under part B, the trade mark must be capable of distinguishing goods with which the proprietor of the trade mark is, or may be, connected from goods where no such connexion exists. In determining this, regard must be paid to the extent to which:

- (a) The trade mark is inherently capable of distinction;
- (b) The trade mark is in fact capable of distinction by reason of its use or of any other circumstances.

IV. ACTION TO ENSURE THAT RIGHTS UNDER SECTION III
ARE ENJOYED WITHOUT DISTINCTION OF ANY KIND

Because of the remarkably even distribution of wealth and resources in New Zealand and the narrow range of social strata, it has in the past been considered neither necessary nor desirable to legislate social attitudes. However, in cases where such attitudes may result in discrimination against minorities within the community, legislation has been passed to ensure the rights of such groups.

An example of such a piece of legislation is the Status of Children Act 1969, designed to rectify a specific social situation where the attitude held by certain sections of the community lagged behind the desirable norm posited in article 10 of the International Covenant on Economic, Social and Cultural Rights.

This Act which came into force on 1 January 1970 swept away, with a few jurisdictional, procedural and evidentiary exceptions, the legal status of illegitimacy and has removed the term "illegitimate" from New Zealand legislation. The philosophy behind the Act is that the law should not discriminate against any child or impose disabilities on him merely by reason of the accident of his birth.

The Race Relations Act was enacted in 1971. The purpose of this Act is to ensure to all people, regardless of colour, race or national origins, the right to access to places, vehicles, facilities, goods, services, employment, land, housing and other accommodation, and prohibits advertising which might reasonably be regarded as an incitement to racial prejudices.

To achieve these aims, the position of Race Relations Conciliator was created. His principal functions are to investigate, either at his own initiative or upon complaint, any act or omission or any practice which is or appears to be a breach of Sections 3 to 7 of the Race Relations Act. (These Sections cover incitement to disharmony, discrimination in employment, access to public places etc., the provision of goods or services, housing and other accommodation.) In addition, he is to act as conciliator in relation to any such act, omission or practice and to take further action as contemplated by the Act.

If, after investigation of the complaint, the Conciliator is satisfied that a breach has occurred, he must attempt to secure a settlement between the parties concerned and to obtain an assurance that the behaviour which is the subject of the complaint does not recur. Where he is unable to do this, civil proceedings may be issued against the offender. Where the Court is satisfied that there has been a breach of the provisions of the Act, it may award:

- (a) A declaration that the defendant has committed a breach of the Act;
- (b) An injunction restraining the defendant from future behaviour against the Act and from repeating the breach;
- (c) Damages calculated in accordance with pecuniary loss and cost, any loss of benefit and any humiliation, loss of dignity and injury to the feelings of the aggrieved person;

(d) A declaration that any contract entered into or performed in contravention of any of the provisions of sections 3 to 7 to an illegal contract;

(e) Relief in accordance with the Illegal Contracts Act; or

(f) Such other relief as the Court thinks just.

The Act also provides for a maximum fine of \$400 where a conviction has been entered in pursuance of criminal proceedings for refusal to allow access to public facilities and services solely by reason of a person's race, colour, ethnic or national origins. Imprisonment for a term not exceeding three months or a fine will be imposed upon any person who incites racial disharmony by publishing or distributing written matter or broadcasting matter which is threatening, abusive or insulting, or using in any place such words which are likely to excite hostility, or ill-will or bring into contempt or ridicule any group of people in New Zealand on the grounds of the colour, race or ethnic or national origins of that group of people.

In pursuance of its aims of eliminating and prohibiting actions and behaviour of a racially or ethnically discriminatory nature, the Act further provides that conditions expressed orally or contained in a written instrument to restrain marriage for those reasons are void and shall have no effect.

V. DIFFICULTIES EXPERIENCED IN ENSURING THE ENJOYMENT OF THE
RIGHTS REFERRED TO UNDER SECTION III ABOVE AND METHODS AND
MEASURES APPLIED TO OVERCOME SUCH DIFFICULTIES

As was stated in the substantive report on section III A above, the only limitation in theory on choice of employment is the level of qualification of the job applicant. In practice employers may for example show reluctance to employ anyone nearing retirement age because of the necessity to find someone else for the job in a few years' time. Women of child-bearing age are likely to be limited in their choice of employment for the same reason. However, the degree of discrimination against sections of the community is difficult to gauge. In general, New Zealand suffers from a chronic labour shortage and, therefore, faces problems of overemployment rather than unemployment. The necessity to give notice of dismissal can often discriminate against the employer in cases where he has no redress against unreliable employees.

Examination by New Zealand labour authorities of the Government Service Equal Pay Act 1960 revealed some deficiency in the Act when it was compared with the later Equal Pay Act 1972. In the earlier Act, no adequate definition was provided of the terms "wages" or "salary", equality being applied only to the bare salary or wage; additional emoluments, such as allowances, commissions and bonuses were not covered.

The Industrial Relations Act 1973 recognized that previous legislation had only partially taken into account the fact that industrial relations cannot be divorced from the general social and economic development and that in times of difficult labour conditions, employer and union self-interest is not sufficient to protect the public interest. It also acknowledges that a breakdown in communication between the parties to a conflict has often resulted in failure to reach a satisfactory resolution of grievances. To this end skilled negotiators should be employed and easily accessible channels be available to allow complaints to be dealt with promptly.

In 1969 the Royal Commission on Social Security examined the position of small groups of socially or economically disadvantaged people within New Zealand society. It was discovered that although such people as solo parents, unmarried mothers, deserted wives and the wives of mental-hospital patients were covered by emergency benefits under previous legislation, they had no statutory right to such benefits and often failed to realize their eligibility for Government assistance. As a result, legislation was enacted making this right statutory in November 1973 under the Domestic Purposes Act.

Notwithstanding the low infant and mortality rates achieved as a result of New Zealand's extensive health and welfare services, statistics leave room for improvement. The perinatal rate, in which progress has been good, is a reflection of the mother's capacity to reproduce and of the quality of her obstetric care. New Zealand figures in these spheres are close to those of Scandinavian countries. These improvements have been brought about mainly through better standards of

obstetric and neonatal paediatric care. Consideration of post-neonatal rates, however, shows clearly where New Zealand is falling behind. These reflect the environment outside the hospital and the inadequate care given by some parents who are ill prepared for their role. Deaths in this age group are commonly due to epidemic diseases, gastroenteritis, respiratory infections and accidents.

The tendency of women to re-enter the work force at an early age, particularly in the case of Maori women who tend to have their children at a younger age than their European counterparts, also imposes strains upon the family, particularly if the children are very young and if the mother is working between pregnancies out of economic necessity. Earlier fertility among Polynesian women combined with the stresses of urbanization is giving cause for concern because of health and social problems associated with physical and emotional immaturity.

Greater provision of child care facilities needs to be made to facilitate women's choice of roles within society and to thus ensure the well-being of the family. The earlier view that a girl's education should principally be directed towards equipping her for a role as a wife and mother has given way to recognition of the need to take better advantage of equal education opportunities. Developing awareness of the importance of interpersonal relationships as part of the education process is now acknowledged. It is hoped that courses dealing with the structure of contemporary family life will shortly be introduced into secondary school courses.

Family planning is now widely accepted, but not, as yet, universally practised. To some the cost is a barrier, some are influenced by cultural tradition or religious beliefs, and some fail to use the services available through lack of thought, motivation or understanding.

The introduction of free and compulsory education brought with it many problems which are being overcome with time. These included increased pressure on educational resources such as accommodation, staffing and equipment. Further problems were met in the move away from the rigid system of traditional schooling towards more liberal forms; this has been countered by an intensive overhauling of the syllabus and efforts to restrain teachers while keeping up levels of recruitment into the profession.

Measures have been introduced to prevent social groups of children from being disadvantaged in any way. Children in isolated rural communities have their schooling supplemented by correspondence courses and boarding bursaries which enable them to attend city or district high schools. In the Island territories even more radical measures have been necessary in order that the local population should not be deprived of the sustaining force of their own culture before they have reached a more than superficial understanding of European society.

As regards the question of participation in cultural life, the difficulty most frequently encountered is not how to prevent abuses of the right, but how to make New Zealanders more aware of this right and of the many fields that lie open for their endeavour.

The only noticeable problem in the protection of copyright in recent years has been that of the extent to which distribution of written material should be permitted in photocopy form. This problem has been posed by the difficulty of obtaining sufficient copies of works to be made available to university classes within the limited period of study. As a result of considerable public debate on this subject, it is now generally accepted that some change in the copyright laws will be necessary.

Now that Maori schools, which were originally created to ease the transition of the rural Maori into the complexities of European society, have been integrated into the national education system, attempts to overcome difficulties of language and motivation have been facilitated. The increasing emphasis on the equal importance of Maori values has enabled the cultural differences perceived by a child between home and school to be more easily reconciled while concurrently engendering an appreciation of them. (Discussion on this point appeared in section III G.) There is still, however, a need to recruit Maori teachers to work in areas where there is not yet full appreciation of the national desire to accomplish a New Zealand identity of which a component part is attributable to Maori culture and tradition.
