

18 July 2023

Section 9(2)(a)

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Our ref: OIA 105425

Tēnā koe Section 9(2)(a)

Official Information Act request: International Covenant on Civil and Political Rights

Thank you for your email of 19 June 2023 in which you requested information relating to obligations, correspondence, derogation, and remedies under the International Covenant on Civil and Political Rights (ICCPR).

Your request has been referred to me for response, as it falls within my responsibilities as Acting General Manager, Civil & Constitutional Policy and is being managed in accordance with the provisions of the Official Information Act 1982 (the Act).

Your specific requests and the response to each one is set out below.

1. *Over the time period between 1st of October 2019 and 1st of June 2023, has New Zealand, the New Zealand Government, and/or the Ministry of Justice availed itself of the right of derogation under Article 4 of International Covenant on Civil and Political Rights?*

The New Zealand Bill of Rights Act 1990 (NZBORA) is the primary mechanism by which New Zealand has implemented the ICCPR. NZBORA provides that rights affirmed by NZBORA may be limited if this is demonstrably justified in a free and democratic society. In line with ICCPR, any limit on rights affirmed in NZBORA must be proportionate and no greater than necessary to achieve an objective. If a right is limited it is necessary to demonstrate that the objective is important enough that the limit of a right is justified. All bills introduced to Parliament are vetted for consistency with NZBORA and reports issued. These can be viewed at: justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/

2. *Can all documentation and communications sent, over the time period between 1st of October 2019 and 1st of June 2023, to other State Parties and/or the Secretary-General of the United Nations which relate to the International Covenant on Civil and Political Rights be released?*

There are no communications between the Ministry of Justice (the Ministry) and the United Nations which relate to the ICCPR. I must therefore refuse this part of your request under section 18(e) as the information sought does not exist.

3. *When was the Secretary-General of the United Nations, or the Human Rights Committee formed under the International Covenant on Civil and Political Rights, informed that the COVID-19 Public Health Response Act 2020 and/or any of that act's*

amendments or orders (including the COVID-19 Response (Vaccinations) Legislation Act 2021) represented a situation where the New Zealand Government was not fulfilling its obligations under the International Covenant on Civil and Political Rights?

As no such communication exists, this part of your request is also refused under section 18(e).

However, I can advise that New Zealand reports periodically to the United Nations on the ICCPR and the next report is yet to be scheduled. New Zealand will likely discuss the COVID-19 response in its next report. You can find out more about this at: justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/human-rights/international-human-rights/international-covenant-on-civil-and-political-rights/

4. *What domestic remedies have been invoked and effected to remedy the rights and freedoms violated by the COVID-19 Public Health Response Act 2020 and/or any of that act's amendments or orders, including the COVID-19 Response (Vaccinations) Legislation Act 2021?*

In New Zealand, if a person believes their rights have been violated, they are able to bring a claim for breach of rights under NZBORA. If a claim is successful, any outcome or any remedy would be determined by the Courts.

5. *When was the Ministry of Justice informed that the COVID-19 Public Health Response Act 2020 and/or COVID-19 Response (Vaccinations) Legislation Act 2021 could represent a situation where the New Zealand Government was not fulfilling its obligations under the International Covenant on Civil and Political Rights?*

Again, no such information exists, and therefore this part of your request is also refused under section 18(e).

However, I can advise and as noted above, NZBORA is the mechanism by which New Zealand has primarily implemented the ICCPR. The Ministry provides advice to the Attorney General on the consistency of Bills with NZBORA. Both the COVID-19 Public Health Response Act 2020 and the COVID-19 Response (Vaccinations) Legislation Act 2021 were vetted and found to be consistent with NZBORA. The reports can be found at:

- justice.govt.nz/assets/COVID-19-Public-Health-Response-Bill.pdf
- justice.govt.nz/assets/20211123-NZ-BORA-Advice-COVID-19-Vaccinations-Legislation-Bill.pdf

6. *When did the Ministry of Justice inform the Minister of Justice, Prime Minister, Attorney-General, and/or the Minister for COVID-19 Response that the COVID-19 Public Health Response Act 2020 and/or COVID-19 Response (Vaccinations) Legislation Act 2021 could represent a situation where the New Zealand Government was not fulfilling its obligations under the International Covenant on Civil and Political Rights?*

As indicated in response to question 5, the Ministry vetted both Bills for consistency with NZBORA and found that the limitations on rights were justified under NZBORA. NZBORA is the mechanism by which the ICCPR is largely implemented in New Zealand. The Ministry has not separately provided advice specifically on ICCPR.

The Ministry provides feedback to agencies on Cabinet papers, including feedback relating to human rights considerations. The Ministry may also raise concerns with the Minister of Justice. If the Ministry has significant concerns, then the Ministry may include a comment in the final paper to Cabinet outlining the concerns with the proposal. All COVID-19 Cabinet papers are publicly available at: covid19.govt.nz/about-our-covid-19-response/proactive-releases/

Can the Ministry of Justice provide all their correspondence and official documentation which relates to the matters raised in the above six questions?

There is no correspondence or official documentation relating to the ICCPR and the questions above. This part of your request is therefore refused under section 18(e) as the information sought does not exist.

If you require any further information, please contact Media & Social Media Manager Joe Locke at media@justice.govt.nz.

Please note that this response, with your personal details removed, may be published on the Ministry website at: justice.govt.nz/about/official-information-act-requests/oia-responses/.

If you are not satisfied with this response, you have the right to make a complaint to the Ombudsman under section 28(3) of the Act. The Office of the Ombudsman may be contacted by email to info@ombudsman.parliament.nz or by phone on 0800 802 602.

Nāku noa, nā



Anna Johnston
Acting General Manager, Civil & Constitutional Policy