

WeCan Submission

The Human Rights Impacts of the Canterbury Earthquakes

For the Universal Periodic Review of New Zealand (submitted 17 June 2013; for 18th Session of the Human Rights Council: January 2014)

This submission will focus on the Canterbury Earthquakes and the impacts on the human rights of the people of Canterbury.

The submission is endorsed, in whole or in part, by WeCan and Quake Outcasts

WeCan - Wider Earthquakes Communities Action Network
www.WeCan-NZ.com

WeCan was formed in September on 2011, a network of individuals and community groups that aim to: Publicly highlight injustices and issues affecting residents following the Canterbury Earthquakes.

Openly challenge decision, policies and practices that disadvantage a community or a residents recovery from the earthquakes

To Actively promote and support equitable, just and visionary solutions for all.

Quake Outcasts: In the aftermath of a series of earthquakes in Canterbury, New Zealand, Quake Outcasts was created in September 2011 as a support group for aggrieved residents harmed by the Government's quake policy. Later it gradually evolved into an advocacy organization aimed to protect the rights of residents. Quake Outcasts is a non-partisan organization composed of only affected residents.

www.SaveMyHomeNZ.org

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Background

The February 2011 Christchurch earthquake was a powerful natural event that severely damaged [New Zealand's](#) second-largest city, killing 185 people in one of [the nation's deadliest peacetime disasters](#).

The [magnitude](#) 6.3 (M_L) earthquake[1] struck the [Canterbury region](#) in New Zealand. It followed nearly six months after the magnitude 7.1 [Canterbury earthquake of 4 September 2010](#), which caused significant damage to Christchurch and the central Canterbury region, but no direct fatalities.

The earthquake caused widespread damage across Christchurch, especially in the central city and eastern suburbs, with damage exacerbated by buildings and infrastructure already being weakened by the 4 September 2010 earthquake and its aftershocks. Significant [liquefaction](#) affected the eastern suburbs, producing around 400,000 tonnes of silt.

In total, 185 people were killed in the earthquake,[6][7] making it the second-deadliest natural disaster recorded in New Zealand

The total cost to insurers of rebuilding was originally estimated at NZ\$15 billion,[12][13] At that point it was already predicted to be by far New Zealand's costliest natural disaster, and the third-costliest earthquake (nominally) worldwide.[14] But by April 2013, the total estimated cost had ballooned to \$40 billion.[15] Some economists have estimated it will take the New Zealand economy 50 to 100 years to completely recover.[16] The earthquake was the most damaging in a year-long earthquake swarm affecting the Christchurch area. (excerpts from wikipedia)

The Canterbury Earthquake Recovery Authority

(CERA) was established by the Government to work with the people of Canterbury to rebuild Christchurch and its surrounds following the 22 February 2011 earthquake.

CERA will report to the Minister for Canterbury Earthquake Recovery, who will be responsible for coordinating the planning, spending, and actual rebuilding work needed for the recovery. Special powers have been vested in the Minister for Canterbury Earthquake Recovery and the new Canterbury Earthquake Recovery Authority in order to enable an effective, timely and co-ordinated rebuilding and recovery effort. (www.cera.govt.nz)

Zoning

One of the Government initiatives was to zone areas of Canterbury into colour codes, Green and Red, Green meant you could rebuild and for the over 7000 Red Zone residents the Government would make a voluntary offer to purchase properties, this was done so they could move on with their lives and were described as generous, very very fair. Residential properties zoned red meant the land had been so badly damaged by the earthquakes it is unlikely it can be rebuilt on for a prolonged period. No one was killed or badly injured in a Residential Red Zone

The criteria for defining areas as residential red zone are:

- *There is significant and extensive area wide land damage;*
- *The success of engineering solutions may be uncertain in terms of design, it's success and possible commencement, given the ongoing seismic activity; and*
- *Any repair would be disruptive and protracted for landowners.*

Red Zoning - low ratable valued areas

Whilst one would assume that all zones that suffered the same damage would be treated the same, that was not the case, Red Zoning targeted areas that had low ratable value as being uneconomic to repair. Whilst wealth and power do not offer any immunity from the impact of earthquakes, it is in most cases the poor and socially disadvantaged who are worst affected and this was the case with Red Zoning.

Red Zone offers

The Government offered to buy the homeowners home and land or for the homeowners to negotiate with their insurance company and the government would purchase the land (1) the price paid was the most recent (2007- 2008) Ratable Value or RV (2).

RV was and has never been used before in New Zealand history as a means for a Government to acquire property, as it is only accurate at the time the valuation is conducted approx. 3 yearly and does not take into account quality of property, improvements, landscaping etc. The median RV of Red Zone properties was \$308K whilst median house price is \$394K,(3) Red Zoning and RV combined has created an affordability issue and the significant gap between median prices has placed households under financial stress trying to replace what they once had. There has been a significant loss of affordable rental accommodation and social housing. (4)The government stated there are large quantities of available land to rebuild on,(5) because the residents that were displaced were from the low ratable value areas, the issue isn't about the availability of land, it is all about affordability. Families have gone from home ownership to having to rent, through no fault of their own.

The Government to its credit offered to subsidize legal fees to facilitate the transaction, however a fairer offer would have been gained by the homeowner to have a registered valuer to ascertain Market Value (6), and payment made on that basis.

RV was the maximum payable, if the property was underinsured by more than 20 per cent (for example, because it is insured for a fixed sum which is less than the rating valuation or its size is under-declared on the policy), the Crown's offer to pay the most recent rating valuation was reduced by the percentage that you are underinsured. The Crown will work out whether you are underinsured by talking to your insurer and looking at information about your property.(CERA website)

For homeowners that either had bare land or were uninsured they were offered only 50% of ratable value.

In making the decision to only offer 50% RV the government has failed to meet their own recovery objectives: (7)

1. The government has failed to provide certainty of outcome as soon as possible due to uncertainty around future availability of services, compulsory acquisition and land use;
2. The government has failed to create confidence for people to be able to move forward with their lives because the financial losses, and the stress related to this, are too great to bear;
3. The government has failed to create confidence in this decision making process due to the lack of any transparent process or analysis in the consideration of this offer;
4. The government has failed to use the best available information on which to base decisions;
5. The government has failed to have a simple process in order to provide clarity and support for land-owners, due to poor communication and lack of credible information.

Recommendation

Change to Bill of Rights to include “the principle that every person is equal before the law”

Inclusion to New Zealand Bill of Rights/Private Property Legislation “ the right to not have private property expropriated by the Government except with “full compensation”

Red Zone warnings

Whilst the Government offers were voluntary, The Canterbury Earthquake Recovery Authority warned “of several risks facing those who refused the Government's buyout offer. It says basic services like water and sewerage may not be maintained, insurers might not renew their policies, and the authority retains the power to compulsorily acquire the land at a later date.” Threatening to discriminate and segregation in housing can result in poverty and marginalization.

Threats like this placed undue stress, were cruel, and inhuman they were felt worse by the infirm, the elderly, solo parents, families to accept an offer that for many left them financially disadvantaged.

The on going issues for the residents that have chosen to stay in the Red Zones, is the stigmatism and the ongoing threats from CERA and council ie removal of essential services, threats to compulsory purchase etc.

We believe that mis-information surrounding what a Red Zone is, is a breach of their private property rights. It is well documented that a red zone has no legal status(8)...yet there are businesses not wishing to deal with those residents just because they live in a red zone. Residents are unable to sell their homes, they are unable to renew their insurance, they are unable to secure finance and use their home as collateral. However the residents are expected to pay full council rates.

Recommendation

Inclusion to New Zealand Bill of Rights/Private Property Legislation - the right to adequate housing, essential infrastructure, security of tenure. The principle that a person’s liberty; personal security; freedom of choice or action; and rights to own, use and dispose of property should not be diminished.

Insurance

In New Zealand if residents were insured and their land was so badly damaged ie “Red Zoned deemed unsuitable for continued residential occupation”, they were statutorily entitled too the maximum payout which would be full market value upto the minimum parcel of land for the area they were living in, and they were entitled to retain title to the land by EQC (EQC is the Government insurer)

Recommendation

Inclusion to New Zealand Bill of Rights/Private Property Legislation “When an administrative decision can affect a person’s legal rights, privileges or legitimate expectations, there should be a right of appeal to, or review by, an independent body.

Community Forum

The Community Forum has been established by Canterbury Earthquake Recovery Minister Gerry Brownlee to provide him with information and advice on earthquake recovery matters. It consisted of 31 members from a wide cross-section of the Canterbury community representing business and ethnic interests, as well as residents associations and groups. The first meeting was held on the 7th July 2011, yet it took a year for any minutes to be published. The forum has been invisible in their

activities , the group is without a mandate or a process for groups/residents to communicate with the group

Recommendation

If there is a statutory obligation to have community input, then develop and provide that group with a mandate, the ability for groups and individuals to provide the group with input, the group to be open and transparent in what is being suggested and there is a creative means for the affected communities to participate

Review

A Red/Green Zoning review was conducted.

However, the review did not revisit the original criteria. It checked that the red/green criteria were consistently applied and that boundary lines have been drawn sensibly. (cera.govt.nz)

Recommendation

Inclusion to New Zealand Bill of Rights/Private Property Legislation When an administrative decision can affect a person's legal rights, privileges or legitimate expectations, there should be a right of appeal to, or a full review by, an independent body.

Cause and Effect

With Red Zoning over 7000 residential properties, The Government admit that they did not consult or consider the effect of property values. (9) This shortsightedness has exacerbated the need for social and affordable housing, has forced many red zone residents to outer suburbs to find affordable housing, this combined with increasing cost of fuels, will place additional financial pressure on families whilst minimizing the cost to the Crown(10)

Through the earthquakes we have seen that the affected communities that were to participate in the planning of the recovery, a crucial aspect/safeguard and one of the purposes of the CERA legislation, yet the communities have been railroaded and ignored.

Recommendation

New Zealand Government to develop an overarching supreme Constitution, that would include private property rights