CHAPTER 4

The Right to Work and Rights at Work

AMANDA REILLY*

Introduction

The right to work and rights at work are among the most fundamental of all human rights. Their fulfilment can reduce poverty and thus underpin the enjoyment of other fundamental rights. Work rights are also among the oldest and most widely ratified of rights, both internationally and domestically, through their promotion by the work of the International Labour Organization (ILO). The main aims of the ILO, now an agency of the United Nations, are "to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue in handling work-related issues".[1] To this end it draws up and oversees many international labour standards, which are particularly relevant here.

This chapter will focus on work rights as articulated in arts 6, 7 and 8 of the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)[2] and which are supplemented by the ILO's standards. It will consider the extent to which these rights have been realised in New Zealand with respect to New Zealand law and policy and other international conventions and will signal areas of shortcoming and possible future development.

To begin it is necessary to indicate the content of the relevant articles.

Article 6 recognises the right to work. This includes:

- the right to the opportunity to gain a living by work;
- which is freely chosen or accepted.

Article 7 recognises the right of everyone to the enjoyment of just and favourable conditions of work:

- including fair wages sufficient to provide a decent living for individuals and their families;
- non-discrimination including equal pay for equal work, and equal opportunity for promotion, in particular for women;
- safe and healthy working conditions;
- rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.[3]

Article 8 recognises the right to join and form trade unions and includes the right to strike, provided it is exercised in conformity with the laws of the particular state.

While discussion will focus on arts 6, 7 and 8 of the ICESCR, many other conventions are relevant and align with and strengthen these rights.[4] Most important in this regard are the eight core ILO conventions, which are highlighted as "fundamental" in the 1998 Declaration on Fundamental Freedoms and Rights at Work.[5] These cover four "core labour standards":

- Conventions 29 and 105 ban forced labour and slavery;[6]
- Conventions 87 and 98 require states to allow freedom of association and collective bargaining;[7]
- Conventions 100 and 111 ban workplace discrimination;
- Conventions 138 and 182 set a minimum working age of 15 and ban the worst forms of child labour.

Although the rights established by arts 6, 7 and 8 are ostensibly separate entities they are, in fact, inextricably interconnected.[8] The right to work, established in art 6, means a right to Decent Work – that is, work which is just and favourable, non-discriminatory and where there is a right to join and form trade unions. These are the rights established by arts 7 and 8. Furthermore, the ability to join and form trade unions helps to both protect and enforce the right to work that is just, favourable and non-discriminatory.

Translating these rights into action requires some understanding of the

3 See also the Universal Declaration of Human Rights (UDHR) GA Res 3/217A, A/810 (1948). Article 24 establishes the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

4 The essence of these rights is reflected in art 23(1) of the UDHR: "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment."

5 ILO Declaration on Fundamental Principles and Rights at Work (adopted by the International Labour Conference, 86th sess, Geneva, 18 June 1998) <www.ilo.org/declaration>.

6 See also: International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976), art 8.

7 Freedom of association, including into trades unions, is also guaranteed by art 22 of the ICCPR.

8 UN Committee on Economic, Social and Cultural Rights (CESCR) *General Comment No. 18: The Right to Work (art. 6 of the Covenant)* at [2], E/C.12/GC/18 (2006).

background historical context
Zealand's system of work regu
unions enjoyed a representatio
try or occupation in which they
many who would otherwise be
and home-workers, received th
award system. This system set le
the whole of any particular inc

All this changed in 1991 wi
Act, which abolished the nati
bargaining. The fundamental p
ers should negotiate directly wi
negotiate for their members the
The effect of this was that many
conferred by union representati

The Employment Relations
somewhat. While it did not re
employers to recognise and ba
Employment Relations Act also
employees for a collective agree
to bargain individually with em
are not unionised and the righ
available to those who can fit the
Effectively, in the current envir
rights and protections of collec
agreement.

The structure of the rest of t
implications of art 6 and the righ
a discussion of possible areas of p
by a discussion of the rights estab
potentially experiencing difficult
by a brief discussion of art 8 and
ILO Convention concerned with
with some brief observations as t
the New Zealand context.

9 See generally the introduction to th
Butterworths, Wellington, 2005).

background historical context of work law in New Zealand.[9] Prior to 1991 New Zealand's system of work regulation had the following characteristics: registered unions enjoyed a representational monopoly in respect of all workers in the industry or occupation in which they were registered. The majority of workers, including many who would otherwise be vulnerable to exploitation, such as casual workers and home-workers, received the benefits of the blanket coverage of the national award system. This system set legally enforceable minimum conditions throughout the whole of any particular industry or occupation.

All this changed in 1991 with the introduction of the Employment Contracts Act, which abolished the national award system and the union monopoly on bargaining. The fundamental presumption of this Act was that individual workers should negotiate directly with their employer. While unions were still able to negotiate for their members there was no encouragement of this in the legislation. The effect of this was that many workers lost the benefits and protection previously conferred by union representation and the award system.

The Employment Relations Act of 2000 strengthened the power of unions somewhat. While it did not reinstate the national award system it does require employers to recognise and bargain in good faith with registered unions. The Employment Relations Act also prohibits employers from bargaining directly with employees for a collective agreement. However, it is still possible for employers to bargain individually with employees for individual agreements. Many workers are not unionised and the rights associated with collective bargaining are only available to those who can fit themselves within the legal definition of "employee". Effectively, in the current environment, only some workers are able to enjoy the rights and protections of collective representation and a collectively bargained agreement.

The structure of the rest of this chapter will be as follows: the meaning and implications of art 6 and the right to work will be addressed and then there will be a discussion of possible areas of present and future concern. This will be followed by a discussion of the rights established in art 7 with particular reference to groups potentially experiencing difficulty in exercising these rights. This will be followed by a brief discussion of art 8 and the need for some movement on ratifying a core ILO Convention concerned with collective bargaining. The chapter will conclude with some brief observations as to how these rights might be further promoted in the New Zealand context.

9 See generally the introduction to the *LexisNexis Employment Law Guide* (7th ed, LexisNexis Butterworths, Wellington, 2005).

The Right to Work

> Article 6
>
> 1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
> 2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.[10]

What Does the Right to Work Mean?

The language of art 6 makes it clear that it refers to work of a paid nature whether it be as an employee or a self-employed worker. While it is not an absolute right it does require the State to take various steps to achieve the realisation of this right including organising training programmes and generally pursuing economic, social and cultural development policies while safeguarding fundamental political and economic freedoms.

In general, over the past few years New Zealand has done well in realising the right to work with the lowest unemployment rate of the OECD countries. In the year ended June 2007 the unemployment rate was 3.6 per cent of the labour force. However, New Zealand's unemployment rate rose dramatically in 2008 and 2009 in the wake of a worldwide recession, and was still a high 6.4 per cent in the September 2010 quarter.[11]

As already mentioned, the right to work is commonly viewed as fundamental for a variety of reasons. Work has a perceived intrinsic value. It provides opportunities for self-development and actualisation and a chance to contribute productively to the community. The income produced from working allows people to live independently and with dignity. It can thus be understood to underpin the realisation of other rights.

However, there is some danger in postulating this right as the fundamental underpinning of all other rights. It is arguable that work does not need to be paid for it to provide opportunities for self-development and contribution. An individual who cares for his or her elderly parents and who volunteers at a homeless shelter is not less actualised or making less of a contribution to the community than someone who has a paid job telemarketing overpriced time shares.

10 ICESCR, above n 2, art 6.

11 "Labour Market Update – November 2010" (2010) Department of Labour <www.dol.govt.nz>.

Moreover, the idea of ind
at heart. We are all dependent
ent babies and children and r
will end up old and frail and
or fall ill and require care.

The people most likely to
and most frequently women.'
such.[12] It is work which has it
frequently the people who ca
because their performance of
them to access paid work. Wh
as to accommodate some wor
that it is not possible to do t
by 3 p.m. to pick up a child fi
will accommodate this. The ca
cannot be left unsupervised wi
in terms of their ability to fin

Therefore, it is suggested t
a fundamental right and as a k
a certain degree of injustice be
the population unable to parti
ment, illness or disability or ir

This is not to say that peop
participate in paid work necess
However, the poorest people v
New Zealand are non-working

12 For further discussion see the en
2010 (NZHRC, Auckland, 201

13 Note under s 27A and s 27G o
support for those caring full-tir
pital, rest home or residential
(online ed) at [110]. See also th
Human Rights Review Tribunal
1; (2010) 8 HRNZ 902. The Tr
of Health to exclude the parents
disability support services as inco
Such action "limits the right to
the grounds of family status and
[231]. The Tribunal's decision w
HC Auckland CIV-2010-404-0
indicated that it will appeal that

14 Bryan Perry *Non-Income Measur*
2008 New Zealand Living Stand
Ministry of Social Development
around one in four children in N
in New Zealand: Trends in Indicat
Ministry of Social Development,

Moreover, the idea of independence as an attainable ideal is somewhat flawed at heart. We are all dependent at some point in our lives. We have all been dependent babies and children and needed care, there is a good chance at some point we will end up old and frail and needing care and at any point we could be injured or fall ill and require care.

The people most likely to perform this care-work are usually family members and most frequently women. This contribution is vital and should be recognised as such.[12] It is work which has its joys but it is important to acknowledge that all too frequently the people who carry out this work end up economically marginalised because their performance of unpaid care-work makes it difficult or impossible for them to access paid work. While it is, to a degree, possible to reshape paid work so as to accommodate some workers with care-work responsibilities the fact remains that it is not possible to do this for everyone. A parent who needs to leave work by 3 p.m. to pick up a child from school can very possibly find employment that will accommodate this. The carer of an individual who has advanced dementia and cannot be left unsupervised will probably find their options to be far more limited in terms of their ability to find suitable work outside the home.[13]

Therefore, it is suggested that when choices are made to privilege paid work as a fundamental right and as a key underpinning of other rights, the stage is set for a certain degree of injustice because at any given time there will be a percentage of the population unable to participate in paid work due to involuntary unemployment, illness or disability or involvement with unpaid care-work of dependants.

This is not to say that people in New Zealand who do not work in the sense of participate in paid work necessarily lack the right to housing and other necessities. However, the poorest people who suffer the severest hardship and deprivation in New Zealand are non-working income-tested beneficiaries and their children.[14]

---

12 For further discussion see the entry "Unpaid Work" in NZHRC *Human Rights in New Zealand 2010* (NZHRC, Auckland, 2010) at 193–194 <www.hrc.govt.nz>.

13 Note under s 27A and s 27G of the Social Security Act 1964 the State will provide income support for those caring full-time at home for an individual who would otherwise need hospital, rest home or residential home care: *Laws of New Zealand* Social Welfare: Caregivers (online ed) at [110]. See also the recent "Parents as Caregivers" decision of the New Zealand Human Rights Review Tribunal (NZHRRT): *Atkinson v Ministry of Health* [2010] NZHRRT 1; (2010) 8 HRNZ 902. The Tribunal declared the "practice and / or policy" of the Ministry of Health to exclude the parents of profoundly disabled adult children from accessing funded disability support services as inconsistent with s 19 of the New Zealand Bill of Rights Act 1990. Such action "limits the right to freedom from discrimination, both directly and indirectly, on the grounds of family status and is not, under section 5 of that Act, a justified limitation": at [231]. The Tribunal's decision was upheld in the High Court: *Ministry of Health v Atkinson* HC Auckland CIV-2010-404-000287, 17 December 2010, but the Government has recently indicated that it will appeal that finding to the Court of Appeal.

14 Bryan Perry *Non-Income Measures of Material Wellbeing and Hardship: First Results from the 2008 New Zealand Living Standards Survey, with International Comparisons* (prepared for the Ministry of Social Development, Wellington, 2009) at 27 <www.msd.govt.nz>. Shamefully, around one in four children in New Zealand lives in poverty: Bryan Perry *Household Incomes in New Zealand: Trends in Indicators of Inequality and Hardship 1982 to 2009* (prepared for the Ministry of Social Development, Wellington, 2010) at 9 <www.msd.govt.nz>.

Thus, to a certain degree, paid work is effectively a prerequisite to access to other rights. This is more specifically illustrated by the Government's In-Work Tax Credit which is part of its Working for Families package. This provides support to families with children on low and middle incomes. It is worth $60 per week for the poorest families with 1–3 children. However, those children whose parents cannot work the required number of hours or are on an income-tested benefit are not eligible for this money. The Child Poverty Action Group obtained a decision from the Human Rights Review Tribunal, currently under appeal, which confirmed the view that this payment was discriminatory and that children in families on an income-tested benefit are disadvantaged in a "real and substantive way". But the Tribunal nevertheless held that this discrimination was justified as being a "reasonable limitation" under s 5 of the New Zealand Bill of Rights Act 1990:[15]

> Our overall conclusion, in respect of the WFF package as it was adopted in 2004, is that the practical benefits to society were sufficient to outweigh the damage that was done to the right to freedom from discrimination on grounds of employment ... We therefore make it clear that, putting aside the effect of the 2005 changes, our conclusion is that although the off-benefit rule ... does limit the right to freedom from discrimination on the grounds of employment status somewhat, the limit is justified under s 5 NZBORA.

Therefore, it is suggested that caution should be exercised when characterising the right to work as the fundamental underpinning of other rights. Unless it is possible to guarantee paid work to every single person regardless of the state of the economy, an individual's state of health or their care responsibilities, tying the enjoyment of other rights too closely to the right to work can lead to injustice.

It should also be noted that art 11 of the ICESCR separately guarantees a right to an adequate standard of living which is not contingent on paid work. The decision of the Tribunal in the Child Poverty Action Group case that the discrimination and disadvantage suffered by the children of beneficiaries by the In-Work Tax Credit is justified because of the work incentive it provides to the parents of such children seems at odds with the Covenant read as a whole.

The Importance of the Right to Work Affirmed

The previous discussion was not intended to suggest that access to paid work should not be viewed as an extremely important right; merely that it should not be viewed as a necessary prerequisite to other rights. As stated previously, access to paid work is of vital importance to individuals and groups as a means of self-actualisation, of contribution and of providing for themselves and their families.

15 *Child Poverty Action Group Inc v Attorney-General* [2008] NZHRRT 31 at [272] and [283]. On this case see further Chapter 10.

For this reason s 21 of the Hu
in terms of access to employment
- age (from age 16 years);
- colour;
- disability;
- employment status;
- ethical belief;
- ethnic or national origin;
- family status;
- marital status;
- political opinion;
- race;
- religious belief;
- sex (includes childbirth and pr
- sexual orientation.

It is, therefore, of concern that th
(NZHRC) reports that ongoing st
of some disadvantaged groups in
complaints to the NZHRC betwee
discrimination relating to employr
relating to grounds of race.[17] Māori a
rates than the general community at
the year to December 2009.[18] The l
communities face difficulties acces
is continuing systemic discriminati
basis of Chinese and Indian names.
prejudice that affect their employme
that ageism is pervasive in the wor
encounter stigma and unlawful disc
the workforce after full-time famil
accessing employment.[22]

New Zealand can, and should, t
not just in terms of meeting the obl

16 NZHRC *Human Rights in New Zeal*
NZHRC *2010–2013 Statement of Inten*
<www.hrc.co.nz>; NZHRC *Human Rig*
17 NZHRC *Annual Report 2009* (present
co.nz>.
18 Ministry of Social Development *The So*
socialreport.msd.govt.nz>.
19 NZHRC, above n 12, at 24–25.
20 Ibid, at 198–199.
21 Ibid, at 194–195.
22 NZHRC *Human Rights in New Zealand*

For this reason s 21 of the Human Rights Act 1993 prohibits discrimination in terms of access to employment on the following grounds:

- age (from age 16 years);
- colour;
- disability;
- employment status;
- ethical belief;
- ethnic or national origin;
- family status;
- marital status;
- political opinion;
- race;
- religious belief;
- sex (includes childbirth and pregnancy);
- sexual orientation.

It is, therefore, of concern that the New Zealand Human Rights Commission (NZHRC) reports that ongoing structural disadvantages limit the participation of some disadvantaged groups in the labour market.[16] Some 43 per cent of all complaints to the NZHRC between July 2008 and June 2009 involved unlawful discrimination relating to employment, with 35.9 per cent of these complaints relating to grounds of race.[17] Māori and Pacific peoples have higher unemployment rates than the general community at 12.7 per cent and 13.4 per cent respectively in the year to December 2009.[18] The NZHRC also reports that refugees and ethnic communities face difficulties accessing appropriate employment and that there is continuing systemic discrimination and prejudice against job seekers on the basis of Chinese and Indian names.[19] Mature job seekers encounter "pockets" of prejudice that affect their employment possibilities and job retention and it seems that ageism is pervasive in the workplace against the young.[20] Disabled people encounter stigma and unlawful discrimination.[21] Men and women returning to the workforce after full-time family responsibilities also experience difficulties accessing employment.[22]

New Zealand can, and should, try to do better in these areas. This is an issue not just in terms of meeting the obligation of a right to work under art 6 of the

16 NZHRC *Human Rights in New Zealand Today* (NZHRC Auckland 2004) at 282–298; NZHRC *2010–2013 Statement of Intent and Service Performance* (Wellington, 2010) at 22–23 <www.hrc.co.nz>; NZHRC *Human Rights in New Zealand 2010*, above n 12, at 185.
17 NZHRC *Annual Report 2009* (presented to the House of Representatives) at 36 <www.hrc.co.nz>.
18 Ministry of Social Development *The Social Report 2010* (Wellington, 2010) at 50–53 <www.socialreport.msd.govt.nz>.
19 NZHRC, above n 12, at 24–25.
20 Ibid, at 198–199.
21 Ibid, at 194–195.
22 NZHRC *Human Rights in New Zealand Today*, above n 16, at 295.

ICESCR but also potentially of art 7, which recognises the right of everyone to the enjoyment of just and favourable conditions of work and to non-discrimination, including equal pay for equal work.

Finally, it should be noted that the right to work includes not only a right to the opportunity to access work but also a right to protection against unfair dismissal.[23] This is expanded by ILO Convention 158 concerning Termination of Employment (1982) which defines the lawfulness of dismissal in art 4 and in particular imposes the requirement to provide valid grounds for dismissal as well as the right to legal and other redress in the case of unjustified dismissal. The New Zealand Government has not ratified this Convention.

New Zealand legislation currently provides protection from unfair dismissal and the ability to bring a personal grievance under s 103 of the Employment Relations Act 2000, at least for those who fit within the definition of employee under s 6. Should these rights in the future be watered down it may be arguable that this is contrary to the right to work. For example, the Employment Relations Amendment Act 2008 is potentially problematic in this respect, particularly s 67, which provides that the employees of an employer who employs fewer than 20 persons may be dismissed with only limited recourse to remedies within the first 90 days of their employment. An amendment passed in November 2010 has further extended these so-called "trial periods" to all employees, regardless of the size of the employer.[24]

Work Should Be Freely Chosen or Accepted

Another important point about the right to work is that art 6 states that work is to be freely chosen or accepted. It thus provides no support for forced participation in work even if participation is framed as being for the benefit of the coerced workers. While not current policy in New Zealand, workfare practices where benefits are tied to compulsory employment schemes or where the level of benefit is reduced when recipients refuse to participate in employment schemes are situations where work cannot be said to be freely chosen.[25] Similarly, requiring solo parents to take part in a certain number of hours of paid work per week has to be seen as coercive. This is not to say, however, that the provision of freely chosen opportunities for training, and the like, are not sanctioned by art 6 and, indeed, one might say that they are strongly encouraged. However, if participation in such activities is coerced then it cannot be seen to be freely chosen.

In the New Zealand context there is reason to be vigilant for breaches of this

23 CESCR, above n 8, at [11].

24 Employment Relations Amendment Act 2010.

25 CESCR *Concluding Observations: Canada* at [30], E/C.12/1/Add.31 (1998):

> The Committee notes with concern that at least six provinces in Canada (including Quebec and Ontario) have adopted "workfare" programmes that either tie the right to social assistance to compulsory employment schemes or reduce the level of benefits when recipients ... assert their right to choose freely what type of work they wish to do.

right in the case of prison labour. The Corrections Inmate Employment (CIE) programme reported that 51 per cent of the total prison population and 66 per cent of sentenced inmates were involved in employment or training.[26]

The rationale for prisoners having the opportunity to work in prison is sensible and humane. There is a correlation between low skill levels and unemployment and criminal convictions. The 2003 Prison Census revealed that 52 per cent of prisoners had no formal qualifications and only 45 per cent were in paid work before going to prison.[27] Work can assist in prisoner rehabilitation. Gaining skills and qualifications increases the chances of prisoners finding jobs following their release and thus decreases the chances of prisoners re-offending.[28]

However, in terms of New Zealand's international human rights obligations there is reason to be concerned about the implementation of prison employment schemes. Prison labour is not free labour.[29] While participation in prison employment schemes in New Zealand is ostensibly voluntary the fact remains that individuals are incarcerated and so the nature of that consent must be questioned.[30] And the risk of exploitation cannot be denied, particularly when prisoners are made available to the private sector.[31]

Thus far discussion here has focused on art 6 of the ICESCR and the requirement that employment should be freely chosen. However, the ILO Convention Concerning Forced Labour 1938 (No 29) is also relevant. This Convention, in fact, permits forced labour for prisoners in some circumstances but *only* when the work is carried out "under the supervision and control of a public authority and that the said person is not hired or placed at the disposal of private individuals, companies or associations".[32] However, in New Zealand some of the work that prisoners do is carried out for the private sector. For example, prisoners have been

26 New Zealand Government "Photocopier Assembly Initiative for Prisoners" (press release, 17 July 2008).

27 "Census of Prison Inmates and Home Detainees" (2010) Department of Corrections <www.corrections.govt.nz>. See particularly Table 7.2 "Educational qualifications obtained by sentenced inmates" and Table 7.3 "Source of income prior to entering prison of sentenced inmates". Unfortunately, the successor to the census, the Offender Volumes Report, does not appear to have data on qualifications and work.

28 See generally Chapter 16 relating to prisoners.

29 Ironically, goods manufactured wholly or in part by prison labour are prohibited imports in New Zealand under the Customs and Excise Act 1996 s 54(1), yet prisoner-made goods are permitted to be manufactured and sold within New Zealand.

30 ILO *Report of the Director-General: Stopping Forced Labour – Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (International Labour Conference, 89th sess, 2001) at [191] <www.ilo.org>.

31 Ibid, at [195]–[196]:

> With prisoners already deprived of their liberty, there is an evident risk that private hiring of prison labour can involve exploitation, thus negating any pretence of the exercise of free will.

32 ILO Convention (No. 29) Concerning Forced or Compulsory Labour (adopted 28 June 1930, entered into force 1 May 1932), art 2. See also art 4: "The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals".

reported to be working as fruit pickers in the Hawke's Bay,[33] assembling photocopiers for Canon[34] and making pre-cast concrete blocks for a private development.[35]

If the rationale for prison labour is that the work is to facilitate rehabilitation then prisoners should only engage in work that will genuinely provide rehabilitation. It has to be questioned whether activities such as fruit picking, which is essentially unskilled labour, the performance of which does not provide an opportunity to obtain a qualification, fits this criteria. It is also important that vigilance is exerted to ensure the prison work is genuinely freely chosen and that refusal to work is not punished, for example, by loss of privileges or loss of the chance of early release.[36] This conclusion is in line with the ILO observation that if privatised prison labour is seen as positive this can only be so if "marketable skills are imparted and prisoners engage in such employment and training on an entirely voluntary basis".[37]

A further issue is the recently enacted Corrections (Contract Management of Prisons) Act 2009, which opens the way for the private management of prisons. This is potentially problematic if prisoners are to carry out work, such as, for example, cooking or laundry for the prison population, under the supervision of the prison in question. In 1998 the Australian Council of Trade Unions complained to the ILO that private prisons in Victoria breached Convention 29, as in private prisons the work is supervised by private operators (the prison) and prisoners are required to perform work for a private company (the company managing the prison).[38]

The ILO upheld the complaint. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) said that work exacted from a person as a consequence of a conviction in a court of law is compatible with the Convention only if two requirements are met: the work is carried out under the supervision and control of the public authority *and* the person is not hired to be or placed at the disposal of private individuals and companies. The Committee ruled that there is no exception to this prohibition which is absolute and which must be complied with.[39]

33 Simon Collins "Prisoners Paid 20c an Hour to Pick Fruit" *New Zealand Herald* (28 February 2006) <www.nzherald.co.nz>.

34 Hon Phil Goff, Minister of Corrections, New Zealand Government "Photocopier Assembly Initiative for Prisoners" (press release, 17 July 2008).

35 Stuart Dye "Prisoners Help Build Luxury City Tower" *New Zealand Herald* (22 January 2004) <www.nzherald.co.nz>.

36 See ILO, above n 30, at [193]:

> The International Confederation of Free Trade Unions (ICFTU) has criticised a number of aspects of [prison work schemes]. It points to instances of prisoners who refused such work losing their chance for early release and being deprived of privileges and time outside their cells.

37 Ibid, at [196].

38 For more information about the complaints processes of the ILO see chs 11 and 12 of Lee Swepston, Geraldo Von Potobsky and Héctor G Bartolomei de la Cruz *The International Labor Organization: The International Standards System and Basic Human Rights* (Westview Press, Boulder (CO), 1996).

39 ILO Committee of Experts on the Application of Conventions and Recommendations

The CEACR has subsequen
represent an insuperable barrie
However, it will be necessary to e
meets the conditions required b
that prisoners should give their f
as additional indicators that auth
Such work also needs to be effec
the State.[42]

Having considered the ramifi
who may find it problematic to e
consider arts 7 and 8.

Just and Favourable Condi

Article 7

The States Parties to the pres
to the enjoyment of just and fa
particular:

(a) Remuneration which provi
(i) fair wages and equal
distinction of any kind
tions of work not infer
equal work;
(ii) a decent living for the
the provisions of the p

(b) Safe and healthy working c

(c) Equal opportunity for every
appropriate higher level, su
seniority and competence;

(d) Rest, leisure and reasonal
holidays with pay, as well a

Article 7 recognises the right of ev
conditions of work and the right t

(CEACR) *Individual Observation C
(ratification: 1932)* (1999) at [4] <w

40 CEACR *Eradication of Forced Labou
1930 (no. 29), and the Abolition of F
1B), International Labour Office, G

41 Ibid, at [115].

42 Ibid, at [53]. For further discussion s
[2009] NZLJ 247 at 247–249.

43 ICESCR, above n 2, art 7.

The CEACR has subsequently indicated that ILO Convention 29 does not represent an insuperable barrier to the privatisation of prison management.[40] However, it will be necessary to ensure that any labour carried out in such a prison meets the conditions required by the Convention. These include a requirement that prisoners should give their formal written consent to work in prison, as well as additional indicators that authenticate that such consent is free and informed.[41] Such work also needs to be effectively, regularly and systematically supervised by the State.[42]

Having considered the ramifications of art 6 and the groups in New Zealand who may find it problematic to exercise their right to work, the next sections will consider arts 7 and 8.

Just and Favourable Conditions of Work

Article 7

The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) a decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.[43]

Article 7 recognises the right of everyone to the enjoyment of just and favourable conditions of work and the right to non-discrimination at work. New Zealand has

(CEACR) *Individual Observation Concerning Convention No 29, Forced Labour 1930 Australia (ratification: 1932)* (1999) at [4] <www.ilo.org>.

40 CEACR *Eradication of Forced Labour – General Survey Concerning the Forced Labour Convention, 1930 (no. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)* (Report III (Part 1B), International Labour Office, Geneva, 2007) at [122].

41 Ibid, at [115].

42 Ibid, at [53]. For further discussion see: Amanda Reilly "Privatised Prisons and Forced Labour" [2009] NZLJ 247 at 247–249.

43 ICESCR, above n 2, art 7.

historically enjoyed "a strong domestic framework of legislation that recognises the rights of employees in relation to pay, safe working conditions, holidays, employment protection and protection from discrimination".[44]

These rights have been enhanced over recent years, by a number of initiatives including, though not limited to:[45]

- the introduction and subsequent extension of paid parental leave to self-employed people;[46]
- increases in the minimum wage and the introduction of legislation to abolish youth minimum rates;[47]
- the introduction of four weeks' annual leave;[48]
- since December 2007 all employment law now applies to people with disabilities in sheltered workshops (unless individual workers have a minimum wage exemption permit);[49]
- "flexible work" legislation came into force July 2008, providing certain employees the right to request a variation in their working hours, days or place of work;[50]
- statutory provision for rest and meal breaks, together with measures to promote and protect infant breastfeeding at the workplace.[51]

However, there is still much work to be done to strengthen and enhance the rights established by art 7. Some groups continue to have difficulty accessing the rights to equality and fair and just conditions of work that should attach to their status as workers.

The groups identified as structurally disadvantaged above, under the discussion of the right to work, experience difficulty not only in accessing work but also in terms of outcome where they succeed in obtaining work.[52]

Women Particularly Disadvantaged

Article 7 recognises the right of everyone to the enjoyment of just and favourable conditions of work but it particularly emphasises a right to non-discrimination including equal pay for equal work, and equal opportunity for promotion, for

44 NZHRC *Human Rights in New Zealand 2010*, above n 12, at 201.
45 NZHRC *Annual Report 2007* (presented to the House of Representatives) at 22 <www.hrc.co.nz>; NZHRC *Annual Report 2009*, above n 17, at 19; NZHRC *The Right to Work: Draft for Discussion* (now in NZHRC 2010, see n 12).
46 Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002; Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006.
47 Minimum Wage (New Entrants) Amendment Act 2007.
48 Holidays Act 2003, s 16(1).
49 Disabled Persons Employment Promotion Repeal Act 2007.
50 Employment Relations (Flexible Working Arrangements) Amendment Act 2007.
51 Employment Relations (Rest Breaks, Infant Feeding and Other Matters) Amendment Act 2008.
52 NZHRC *Human Rights in New Zealand Today*, above n 16, at 298; NZHRC *Human Rights in New Zealand 2010*, above n 12, at 193–201.

women. However, in New Ze
disadvantaged!

Occupational segregation
to New Zealand's pay equalit
every dollar earned by men. N
other women.[53] The 2010 C
how well New Zealand is doi
in various fields, suggests tha
continue to be significantly u
judiciary and the law, media,
particularly under-represente
of the top 100 companies or
women on their boards. Wor
of the top 100 companies on

Temporary and Agency H

Also of concern is the fact t
working relationships do no
One group of particular conc
employees in so-called triang
contracts their services to a t
work.

The disadvantage these w
lowing example. In 2007 age
at the Heinz Wattie premises
employed staff. According to

> Heinz Wattie ha[d] a collec
> Labour Hire workers are al
> Collective agreement p
> Hire workers [were] paid
> ments are few and far betv
> lunch, there are no shift pa
> allowance, even though w
> of those things.

53 Ministry of Women's Affairs C
the United Nations Convention
(Wellington, 2006) at 40.
54 NZHRC *New Zealand Census*
in-depth discussion on womer
Rights of Women".
55 New Zealand Labour Party "N
2007).

women. However, in New Zealand, while progress has been made, women remain disadvantaged.

Occupational segregation of women in lower-paid occupations has contributed to New Zealand's pay equality gap with women earning on average 87 cents for every dollar earned by men. Māori and Pacific women earn significantly less than other women.[53] The 2010 Census of Women's Participation, which measures how well New Zealand is doing in the participation of women in leadership roles in various fields, suggests that there is much progress still to be made. Women continue to be significantly under-represented in governance and leadership, the judiciary and the law, media, universities and other areas of public life. They are particularly under-represented in leadership roles in the corporate sector. Sixty of the top 100 companies on the New Zealand Stock Market (NZSX) have no women on their boards. Women hold only 9.32 per cent of board directorships of the top 100 companies on the NZSX.[54]

Temporary and Agency Hire Workers

Also of concern is the fact that some groups of workers in particular types of working relationships do not enjoy access to all the rights they are entitled to. One group of particular concern is temporary and agency hire workers – that is, employees in so-called triangular employment relationships, where the employer contracts their services to a third party which effectively controls the employees' work.

The disadvantage these workers are often subjected to is illustrated by the following example. In 2007 agency workers employed by a Labour Hire Company at the Heinz Wattie premises in Hastings enjoyed fewer rights than their directly employed staff. According to one observer:[55]

> Heinz Wattie ha[d] a collective agreement for the directly employed staff but the Labour Hire workers are all on individual agreements.
>
> Collective agreement pays between $12.47 and 14.64 an hour while Labour Hire workers [were] paid between $11.25 and $13.00 an hour. Other entitlements are few and far between. There are no entitlements to breaks apart from lunch, there are no shift payments, no overtime rates, no weekend rates or other allowance, even though workers directly employed by Heinz Wattie receive all of those things.

53 Ministry of Women's Affairs *CEDAW Report: New Zealand's Sixth Report on its Implementation of the United Nations Convention on the Elimination of All Forms of Discrimination against Women* (Wellington, 2006) at 40.

54 NZHRC *New Zealand Census of Women's Participation 2010* (NZHRC, 2010) at 14. For a more in-depth discussion on women and ESC rights, see Chapter 9: "Economic, Social and Cultural Rights of Women".

55 New Zealand Labour Party "More Rights for Temporary Workers" (press release, 8 November, 2007).

The former Labour Government announced that the Employment Relations Act 2000 would be amended to strengthen the rights of employees who are in these sorts of triangular employment relationships. If this amendment were to go ahead employees in this situation who belong to a union would be entitled to terms and conditions at least as favourable as those enjoyed by unionised workers employed directly by the secondary employer under a collective agreement. Also, both primary employers and employees would be able to join a secondary employer in any grievance proceeding.[56]

The former Labour Government also announced that it would be putting in place measures to strengthen employment protections for casual work.[57] Research on casual workers and their employers shows a lack of knowledge about employment rights and obligations and casual workers often have:[58]

> ... limited access to holidays, sick leave, training, skill development and career pathways and that casual work [often] causes undue intrusion into family life, limiting the ability to budget and plan ahead.

Accordingly, the Department of Labour was instructed to develop a Code of Employment Practice for Casual and Non-Standard Employment and an awareness-raising campaign aimed to increase workers' knowledge of their statutory rights in the workplace was also planned.

It appears at this time that these planned measures will not go forward. It is suggested that since there is evidence to suggest that agency hire workers and casual workers are being disadvantaged in the workplace, failure to proceed with these measures, or similar ones, must be viewed as not in keeping with the rights and the equality that all workers are supposed to enjoy.

Prisoners

It is also questionable whether the terms and conditions under which New Zealand prisoners labour are compatible with the spirit of New Zealand's international obligations.[59] Prisoners are not defined as employees and do not have the same access to collective bargaining rights and remedies as free workers do. They work for a small "incentive allowance" which ranges from 20c to 60c an hour. It is surely arguable that this is not "a fair wage" that provides "a decent living for themselves and their families" as required by art 7 or as equitable remuneration as required by r 76(1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners.[60]

56 "New Bill – Employment Relations Amendment (No 3)" (2008) 31(35) TCL 8 at 9.
57 New Zealand Government "Stronger Protections for Casual and Temp Workers" (press release, 22 June 2008).
58 Ibid.
59 See earlier discussion on prisoners' rights under art 6 and below Chapter 16.
60 ILO *Report of the Director-General*, above n 30, at [193]: "Workers organisations in ... New Zealand ... have ... expressed serious concern over wage rates and/or prisoners' terms and conditions of work, especially when private enterprise is involved."

Rights to Form and Join T

Article 8

1. The States Parties to the
   (a) The right of everyone
   of his choice, subject
   for the promotion an
   ests. No restrictions
   than those prescribe
   cratic society in the i
   for the protection of t
   (b) The right of trade un
   federations and the
   trade-union organizat
   (c) The right of trade uni
   other than those pre
   democratic society in
   order or for the protec
   (d) The right to strike, pro
   laws of the particular

Article 8 recognises the right of
trade union of his or her choice, in
this must be read in conjunction
Convention 87 on Freedom of As
Organise and Bargain Collectively

Convention 98 is focused on
ent from employers so that they a
Convention 87 is focused on prot
trade unions of their own choosin

Historically these Conventions
when in 1993 the Council of Tr
Freedom of Association Committe
Act 1990 breached these Conventi
New Zealand had not at the time
they are defined as fundamental. Th
Contracts Act was contrary to Con

Subsequently the Employment
Contracts Act. Clear rights to for

61 ICESCR, above n 2, art 8.
62 For more background on this complain
New Zealand Government Record of
1990–98" (2000) 25(1) NZJIR 79.

Rights to Form and Join Trade Unions

Article 8

1. The States Parties to the present Covenant undertake to ensure:
   (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
   (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
   (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
   (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.[61]

Article 8 recognises the right of everyone to form trade unions and to join the trade union of his or her choice, including the right to strike. As previously stated, this must be read in conjunction with relevant ILO Conventions, in particular Convention 87 on Freedom of Association, and Convention 98 on the Right to Organise and Bargain Collectively.

Convention 98 is focused on ensuring workers' organisations are independent from employers so that they are able to represent the interests of employees. Convention 87 is focused on protecting the right of workers to organise freely in trade unions of their own choosing.

Historically these Conventions have been of some significance in New Zealand when in 1993 the Council of Trade Unions laid a complaint with the ILO's Freedom of Association Committee to the effect that the Employment Contracts Act 1990 breached these Conventions.[62] It was possible to do this even though New Zealand had not at the time ratified either of these Conventions because they are defined as fundamental. The Committee concluded that the Employment Contracts Act was contrary to Conventions 87 and 98.

Subsequently the Employment Relations Act 2000 replaced the Employment Contracts Act. Clear rights to form and join trade unions were extended to

61 ICESCR, above n 2, art 8.

62 For more background on this complaint see: Ross Wilson "The Decade of Non-Compliance; the New Zealand Government Record of Non-Compliance with International Labour Standards 1990–98" (2000) 25(1) NZJIR 79.

employees by the Employment Relations Act 2000, which lists promoting collective bargaining under s 3(a)(iii) as one of its objects. Another of the stated objects of the Employment Relations Act is to promote observance in New Zealand of the principles underlying ILO Conventions 87 and 98. Subsequently, Convention 98 was ratified in 2003.[63]

This is an area in which it is suggested New Zealand could do better. The main impediment to the ratification of Convention 87 lies in the fact that the ability to legally strike in New Zealand is tightly constrained under s 86 of the Employment Relations Act. It is not legal to strike on issues relating to economic and social policy. Nor are sympathy strikes legal. As stated by Roth, such forms of action are likely to be rare and it therefore seems that some movement in this area would not be a high risk.[64] It would certainly be appropriate given that the ILO has expressed concern about New Zealand's stance on this issue.[65]

As mentioned previously, this is a Convention that has been identified by the ILO's governing body as fundamental and it has been ratified by the vast majority of ILO member nations.[66] Therefore, ongoing movement towards ratification would seem to be desirable in terms of New Zealand's maintaining its credibility and status in the international community of nations. Such a course of action would also be consistent with the obligation of progressively realising the rights conferred by arts 6, 7 and 8.

Ratification of Convention 138 on the Minimum Age of Employment

New Zealand has also yet to ratify Convention 138 on the Minimum Age of Employment. The Government has not demonstrated any intention of late to ratify this Convention.[67]

It should be noted that despite non-ratification New Zealand has:[68]

63 New Zealand Government "NZ Ratifies ILO Convention 98 in Geneva" (press release, 11 June 2003). However, Convention 87 remains unratified.

64 Paul Roth "International Labour Organisation Conventions 87 and 98 and the Employment Relations Act" (2001) 26(2) NZJIR 145 at 168.

65 ILO *Country Baseline Under the 1998 ILO Declaration Annual Review (2000–2008): New Zealand – Freedom of Association and the Effective Recognition of the Right to Collective Bargaining (FACB)* (Programme for the Promotion of the Declaration, 2008) at 7 <www.ilo.org>: "The ILO Declaration Expert-Advisers (IDEAs) were concerned that the Government of New Zealand ... had indicated the current impossibility to ratify C. 87, without further justification."

66 ILO "Ratifications" (2010) ILOLEX: Database of International Labour Standards <www.ilo.org/ilolex/>.

67 Action for Children and Youth Aotearoa (ACYA) *New Zealand Non-Governmental Organisations Alternative Periodic Report to the United Nations Committee on the Rights of the Child* (ACYA, Auckland, 2010) at [1.6] <www.acya.org.nz>.

68 ILO Declaration on Fundamental Principles and Rights at Work, above n 5.

... an obligation arising from
to promote and to realize, in
mental rights which are the

One option that would demo
would be an amendment to th
27 Schedule 1 Prohibited Imp
factured by child labour.

Conclusion: Where Do W

To summarise the key points r

- The right to work is very i
pinning of all other rights a
unable to take part in paid
or the worsening economy.
- The right to work includes
- The right to work is a right
needs to be very careful wit
if the prison system becom
- In general New Zealand ha
recognises the rights of emp
- However, some groups still
work but also in enjoying ec
to work including just and
join trade unions. This shou

In the future there may be gre
Zealand. While existing rights
is also possible that vigilance
the Employment Relations An
and Employment Equity Uni
Employment Equity Plan of
imposes a duty on all parties to
towards progressively realising
ive measures that impede the

69 See above, Chapter 1.

70 UN Commission on Human Rig
the Netherlands to the United Nat
("The Limburg Principles on the In
and Cultural Rights") 8 January 1
A state party will be in violation
progressive realization of a right,
it does so due to a lack of availabl

> ... an obligation arising from the very fact of membership in the [ILO] to respect, to promote and to realize, in good faith ... the principles concerning the fundamental rights which are the subject of [the core Conventions].

One option that would demonstrate good faith with regard to Convention 138 would be an amendment to the New Zealand Customs and Excise Act 1996 No 27 Schedule 1 Prohibited Imports s 54(1) to ban the importation of goods manufactured by child labour.

Conclusion: Where Do We Go from Here?

To summarise the key points made in this chapter:

- The right to work is very important but should not be viewed as the underpinning of all other rights as this will result in unfairness and injustice to those unable to take part in paid work due to care responsibilities, health conditions or the worsening economy.
- The right to work includes a right to protection from unfair dismissal.
- The right to work is a right to freely chosen, non-coerced work. New Zealand needs to be very careful with regard to putting prisoners to work, particularly if the prison system becomes more privatised.
- In general New Zealand has a strong domestic framework of legislation that recognises the rights of employees under arts 6, 7 and 8.
- However, some groups still suffer from discrimination, not only in accessing work but also in enjoying equal opportunities and the rights that should attach to work including just and favourable conditions and the right to form and join trade unions. This should be addressed.

In the future there may be greater scope for the exercise of these rights in New Zealand. While existing rights may remain relatively stable in the years ahead it is also possible that vigilance will be needed to ensure this is so. In this respect the Employment Relations Amendment Act 2008 and the abolishing of the Pay and Employment Equity Unit, which formerly led the Government's Pay and Employment Equity Plan of Action, are troubling. Article 2 of the ICESCR imposes a duty on all parties to take steps to the maximum of available resources towards progressively realising the rights in the Covenant.[69] Deliberately regressive measures that impede the realisation of rights are ruled out.[70] It is arguable

---

69 See above, Chapter 1.

70 UN Commission on Human Rights *Note verbale dated 86/12/05 from the Permanent Mission of the Netherlands to the United Nations Office at Geneva addressed to the Centre for Human Rights ("The Limburg Principles on the Implementation of the International Covenant on Economic Social and Cultural Rights")* 8 January 1987 at 8, E/CN.4/1987/17. Principle 72 states:

> A state party will be in violation of the Covenant, *inter alia*, if ... it deliberately retards or halts the progressive realization of a right, unless it is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or *force majeure*. [emphasis original]

that both of these measures are backward steps. In any case, even if the status quo remains more or less unchanged, there are areas in which New Zealand should be striving to improve as has been discussed already.

In conclusion, the rights discussed here can potentially be used in a variety of ways to protect and enhance the quality of working life for all in New Zealand.

The CESCR has invited judges and other law enforcement authorities to pay greater attention to violations of the articles discussed here in the exercise of their functions.[71] The CESCR has also strongly encouraged "incorporation of international instruments relating to the right into the domestic legal order".[72] This would have the advantage of strengthening the effectiveness of measures taken to guarantee the right to work, as courts would then be empowered to adjudicate violations of the core content of the right to work by directly applying obligations under the Covenant.[73]

However, apart from strengthening the formal legal status of rights, another way that the language of work rights might be more utilised is for rhetorical persuasive purposes. There is a view that rights that are not evidently enforceable by the courts are meaningless and it is true that the affirmation of rights that everyone should enjoy does not automatically turn them into rights that everyone does enjoy.[74] However, as Jean-Michel Servais says, "this does not detract from the persuasive power of such proclamations. They also have rhetorical power".[75]

Rights provide a language for the expression of aspiration. They can perform an important role in focusing moral claims pursued by citizens either directly as individuals through the courts or as consumers, or through pressure groups, unions and non-governmental organisations. They thus may provide a programme for the development of more specific laws in the future through their educative and symbolic role.

The language of rights can also potentially be used to persuade individual employers to voluntarily reflect on and perhaps modify their practices. Lance Compa suggests that "a reputation for good workplace practices and high labor standards can be a powerful 'brand' asset for companies and for countries in the global economy".[76] He describes how, in response to public and consumer pressure, a number of international companies, such as Reebok and Nike, have developed

71 CESCR, above n 6, at [50].
72 Ibid, at [49].
73 New Zealand has already gone some way down this path. Section 3(b) of the Employment Relations Act 2000 specifies that the Object of the Act is "to promote observance in New Zealand of the principles underlying International Labour Organisation Convention 87 on Freedom of Association and Convention 98 on the Right to Organise and Bargain Collectively."
74 For an interesting historical discussion of different attitudes towards rights, see generally: Mary Ann Glendon *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (Random House, New York, 2001). See also Chapter 1.
75 Jean-Michel Servais "Globalization and Decent Work Policy: Reflections upon a New Legal Approach" (2004) 143 Int'l Lab. Rev. 185 at 188.
76 Lance Compa "Corporate Social Responsibility and Workers' Rights" (2008) 30 Comp. Lab. L & Pol'y J 1 at 10.

their own internal codes of co
other international human rig
There may be benefits to en
ity in New Zealand. There is, c
idea of corporate social respon
public relations manoeuvre wi
encouraging to note that Comp
concrete, positive results result
codes of conduct.[78]
And finally, to end on a fu
potential business gains attachi
possible also that rights-based ar
purely on the basis of the moral
of this is some research in the U
support for family-friendly poli
justice rather than on business-c

77 Ibid, at 4.
78 Ibid, at 1–2; and see below Chapte
79 Ian Roper, Ian Cunningham, Phil
the Government's Ethical Standpoi
article reports on a survey of how l
United Kingdom Government's "bu
The authors of the article suggest t
Government seriously wishes to n
greater emphasis on a social justice

their own internal codes of conduct utilising the UDHR, ILO Conventions and other international human rights instruments.[77]

There may be benefits to encouraging this view among the business community in New Zealand. There is, of course, a risk that lip service may be paid to the idea of corporate social responsibility and respect for human rights as a cynical public relations manoeuvre with no real shift in actual conduct. However, it is encouraging to note that Compa reports that internationally there have been some concrete, positive results resulting from the application of corporate-sponsored codes of conduct.[78]

And finally, to end on a further note of hope and optimism, apart from the potential business gains attaching to an appearance of social responsibility, it is possible also that rights-based arguments may prove compelling to some employers purely on the basis of the moral claims they articulate. One particular illustration of this is some research in the United Kingdom that suggests that where there is support for family-friendly policies in workplaces this tends to be based on social justice rather than on business-case arguments.[79]

77 Ibid, at 4.

78 Ibid, at 1–2; and see below Chapter 19.

79 Ian Roper, Ian Cunningham, Phil James "Promoting Family Friendly Policies: Is the Basis of the Government's Ethical Standpoint Viable?" (2003) 32(2) Personnel Review 211–230. This article reports on a survey of how human resource practitioners are responding to the former United Kingdom Government's "business case" approach to promoting family-friendly policies. The authors of the article suggest that, on the basis of their findings, if the United Kingdom Government seriously wishes to make employment more family friendly, it needs to place greater emphasis on a social justice- and rights-based approach to the issue.