



Law and Emergencies: A Comparative Overview

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Emergency Laws and Regulations in New Zealand: Executive Summary

Legislative Framework

In the absence of a written formal constitution concentrated in a single document (similar to the situation in Israel), the main and generic law in New Zealand that regulates the general framework for dealing with states of emergency is the Civil Defense Emergency Management Act 2002 (henceforth: CDEMA). This law concerns emergency situations that arise from natural disasters, but its definition of "state of emergency" (henceforth) also refers to acts of war. Other specific laws concerning emergencies focus on issues such as epidemics, biosecurity, hazardous substances, terrorism and more. In the following review, we shall detail the legislation.

Entrance into a State of Emergency

According to Section 4 of CDEMA, an "emergency" occurs in the presence of the three following cumulative conditions:

"(a) is the result of any happening, whether natural or otherwise, including, without limitation, any explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, technological failure, infestation, plague, epidemic, failure of or disruption to an emergency service or a lifeline utility, or actual or imminent attack or warlike act; and

(b) causes or may cause loss of life or injury or illness or distress or in any way endangers the safety of the public or property in New Zealand or any part of New Zealand; and

(c) cannot be dealt with by emergency services, or otherwise requires a significant and coordinated response under this Act."

It is also noteworthy that the law distinguishes between state of "local emergency" and state of "national emergency," with the power to declare either one of them vested, with a certain exception, in various parties: the power to declare a national state of emergency is vested in the Minister of Civil Defense and Emergency Management, whereas the power to declare a local state of emergency, in the relevant area, is vested in the person appointed under the Act by a Civil Defense Emergency Management Group (see below) as authorized to declare a local state of emergency in its area, or the mayor of a territorial authority, or in his absence a person designated to act on behalf of him. The conditions for declaring a "national state of emergency" are naturally different from those that apply to declaring a "local state of emergency."

Most of the specific laws concerned with emergencies provide specific definitions for "state of emergency," depending on the matter at hand. Thus, for example, the International Terrorism (Emergency Powers) Act, 1987 provides a definition of "international terrorist emergency."

Legal Powers

By Virtue of the CDEMA, Civil Defense Emergency Management Groups were established. These Groups perform at the regional level, in cooperation with emergency and rescue services and government agencies to help the area in which they operate to deal with states of emergency. The groups are comprised of local authorities in the relevant area, with one of their duties being preparation of a civil defense emergency management group plan that must provide for, among other things, the arrangements for coordination and cooperation with other groups in the management of states of emergency.

CDEMA grants a number of parties (including Civil Defense Emergency Management Groups, constables and the Minister of Civil Defense and Emergency Management) a range of emergency powers both during the state of emergency and in preparation for it. For example, a constable has the power, during a state of emergency, to evacuate premises and places; to enter premises; to close roads

and public places and so on, and Civil Defense Emergency Management Groups have, among others, the powers to advice and provision of information to the public; provide for first aid to be given to disaster victims and for their transfer to hospital, other site of treatment or safe areas; provide clothing, food, shelter and any other vital service.

Rights in State of Emergency

CDEMA does not refer specifically to human rights in general or the New Zealand Bill of Rights Act 1990. Nor do the other laws. It is noteworthy that this review is based only on enactments and it can be assumed that a study of case law would provide further information on the implications of emergency arrangements for human rights.

Emergency Laws and Regulations in New Zealand: Synopsis

Introduction

New Zealand is a country that should be studied systematically by scholars and practitioners interested in emergency management. With its relatively isolated location in the South Pacific Ocean and its rugged and diverse landscape, New Zealand is at risk from a variety of hazards. However, New Zealand provides a model for others wishing to reduce the risks from hazards and respond more effectively to disasters due to its progressive approaches to emergency management.¹

1. The Legislative Framework

New Zealand does not have a formal "written" constitution concentrated in a single document.

References to states of emergency can be found in a series of laws, with the main and generic law regulating the general framework for dealing with states of emergency being the Civil Defense Emergency Management Act 2002 (henceforth: CDEMA). This law concerns, broadly, natural disasters (including earthquakes, tsunamis, fires, epidemics and more), but its definition of "state of emergency" refer also to acts of war. Alongside the aforementioned generic law, there are additional laws that regulate the issue of dealing with states of emergency. Among them are the following laws, arranged in the table below according to their subjects: ²

¹ Chris Webb and David A. McEntire, COMPARATIVE EMERGENCY MANAGEMENT: UNDERSTANDING DISASTER POLICIES, ORGANIZATIONS, AND INITIATIVES FROM AROUND THE WORLD, Chapter 12 ,12-13 in **Emergency Management in New Zealand: Potential Disasters and Opportunities for Resilience**. (David A. McEntire ed.).

² Id. P. 1

Natural disasters	Terrorism and war	Socioeconomic states of emergency
<ul style="list-style-type: none"> • Hazardous Substances and New Organisms Act 1996, providing for the treatment and the prevention of negative impacts of those substances and organisms. • Biosecurity Act 1993, which is the legal basis for the prevention, extermination and effective management of pests and unwanted organisms. • Epidemic Preparedness Act 2006. • Fire Service Act 1975, mainly dealing with fires and other emergencies, including emergencies caused by the eruption of a hazardous substance. • Health Act 1956, which regulates all aspects of states of emergency that relate to public health (and allows the Minister of Health to declare a drinking-water emergency). • Resource management act 1991, which regulates the management of natural resources (for instance, if a state of emergency was declared under CDEMA, the Resource Management Act excepts the application of certain restrictions in the law regarding the use of land, lakes and rivers, on acts by a person exercising emergency powers). 	<ul style="list-style-type: none"> • The International Terrorism Act (Emergency Powers) 1987. • Terrorism Suppression Act 2002. • The law added to the government's existing powers to fight terror, among other things allowing the Prime Minister to declare a "terrorist entity," forbid financing terror, participation in organizations declared as terrorist organizations and recruitment of members to such organizations. • The Immigration Act 2009, which grants powers to arrest persons that an immigration officer or constable have reasonable suspicion that they consist a "threat or risk to security" 	<p>Our research did not find laws about socioeconomic states of emergency.</p>

Various emergency laws in New Zealand define "state of emergency" differently and grant numerous, varied and broad emergency powers to different parties. Other laws, on the other hand, treat states of emergency indirectly and minimally and grant only minimal meaningful powers (see for example: Local Government Act 2002).

Because of the space limit and nature of this abstract, we cannot address all the laws and therefore will focus on the main law, CDEMA, and a small number of additional examples.

By virtue of the CDEMA, Civil Defense Emergency Management Groups were established as a joint committee of local authorities to help, on the regional level, the area in which they operate to deal with all matters concerning states of emergency (including reducing the impact of the emergency and its likelihood, respond to, be ready for and recover from it).³

2. Declaration of a State of Emergency: A Table of Analysis

Situation	Definition of an "emergency"	Who may declare the state of emergency and under what conditions?	How does a state of emergency end?
General	According to CDEMA, an emergency is a situation that meets the following three cumulative conditions: "(a) is the result of any happening, whether natural or otherwise, including, without limitation, any explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, technological failure, infestation, plague, epidemic, failure of or disruption to an emergency service or a lifeline utility, or actual or imminent attack or warlike act; and (b) causes or may cause loss of life or injury or illness or distress or in any way endangers the safety of the public or property in New Zealand or any	The law distinguishes between national emergencies and local emergencies. National emergency: The Minister of Civil Defense and Emergency Management may declare a national disaster if: (a) an emergency has occurred or may occur; and (b) the emergency is, or is likely to be, of such extent, magnitude, or severity that the civil defense emergency management necessary or desirable in respect of it is, or is likely to be, beyond the resources of the Civil Defense Emergency Management Groups whose areas may be affected by the emergency. According to the civil defense emergency management regulations 2003 the minister must advise the house of representatives as soon as practicable of the making of this declaration. In addition, the declaration must be notified to the public immediately as well as being published in the gazette.	A state of emergency, whether local or national, expires seven days after the date and time on which it comes into effect; or When a person authorized to declare a state of emergency decides to declare its termination, whether or not the declaration of the state of emergency was made by that person. The state of emergency may be extended by the Minister of Civil Defense and Emergency

³ Ministry of Civil Defence and Emergency Management, *Response Management: Director's Guideline for CDEM Group and Local Controllers* 11)(2008) [DGL 06/08].

Situation	Definition of an "emergency"	Who may declare the state of emergency and under what conditions?	How does a state of emergency end?
	<p>part of New Zealand; and (c) cannot be dealt with by emergency services, or otherwise requires a significant and coordinated response under this Act".</p>	<p>It is noteworthy that a national emergency was declared in New Zealand for the first time just The law distinguishes between a national state of emergency and a local state of emergency.</p> <p>National emergency: The Minister of Civil Defense and Emergency Management may declare that a state of national emergency exists if: "(a) an emergency has occurred or may occur; and (b) the emergency is, or is likely to be, of such extent, magnitude, or severity that the civil defense emergency management necessary or desirable in respect of it is, or is likely to be, beyond the resources of the Civil Defense Emergency Management Groups whose areas may be affected by the emergency".</p> <p>It is noteworthy that a national emergency was declared in New Zealand for the first time just recently, following the Christchurch earthquake on February 22, 2011.⁴</p> <p>The state of emergency was extended repeatedly for 10 weeks, until it was finally lifted on April 30, 2011.⁵</p>	<p>Management. A person authorized to declare a state of local emergency is allowed to extend the declaration of the local state of emergency. An extension of a state of emergency expires seven days after the time and date on which the extension of the state of emergency comes into force.</p> <p>The law allows a further extension of an emergency after it was extended and does not limit the number of extensions. According to the civil defense emergency management regulations 2003, declaration by</p>

⁴ The Ministry of Civil Defence and Emergency Management, Background information to the Review of the Civil Defence Emergency Management Response to the 22 February Christchurch Earthquake (2012). <http://www.civildefence.govt.nz/resources/review-of-the-civil-defence-emergency-management-response-to-the-22-february-christchurch-earthquake/> (last visited 12/24/2015)

⁵ State of emergency lifted in Christchurch, May 1, 2011, 3News, www.3news.co.nz/nznews/state-of-emergency-lifted-in-christchurch-2011050110#.UnTdfhCA04I (last visited 12/24/2015)

Situation	Definition of an "emergency"	Who may declare the state of emergency and under what conditions?	How does a state of emergency end?
		<p>State of local emergency: The power to declare a state of local emergency (in the entire area of a Civil Defense Emergency Management Group or only in a certain district or ward) is vested in a number of parties, if it appears to them that an emergency has occurred or may occur in the relevant area:</p> <ul style="list-style-type: none"> • A person appointed by law by a civil Defense Emergency Management Group as authorized to declare a state of emergency its area. Such person must be elected out of the representatives of the authorities who are members of the Group; or • The mayor (or in his absence a substitute) of a territorial authority. <p>Likewise, the Minister of Civil Defense and Emergency Management may declare a state of local emergency when it appears to the Minister that an emergency has occurred or may occur in an area of Civil Defense Emergency Management Group, and a state of local emergency has not been declared by the aforesaid parties.</p>	<p>minister terminating state of national/ local emergency must be notified to the public immediately and be published in the gazette as soon as possible. In addition, if any extension of the state of emergency was made, the minister must specify the time and date when each extension took effect, as well as the time and date when the state of emergency was first declared.</p>

Situation	Definition of an "emergency"	Who may declare the state of emergency and under what conditions?	How does a state of emergency end?
Fire	The Fire Service Act 1975 also defines state of emergency. However, the definition does not refer to fires, as could have been expected, but rather to "hazardous substance emergency". Such a state of emergency is defined as the release or potential accidental release of any hazardous substance.	The law does not require a formal declaration of a state of emergency.	
Epidemic	The subject of epidemics is addressed in the Epidemic Preparedness Act 2006. The law does not contain a definition of emergency or the possibility to declare an emergency. However, the law does allow the issue of an epidemic notice.	"With the agreement of the Minister of Health, the Prime Minister may, by notice in the Gazette, declare that he or she is satisfied that the effects of an outbreak of a stated quarantinable disease (within the meaning of the Health Act 1956) are likely to disrupt or continue to disrupt essential governmental and business activity in New Zealand (or stated parts of New Zealand) significantly" (See section 5(1) of the Act).	<p>If the notice is not renewed, it expires on the earliest of the following (see section 5(3) of the Act):</p> <ol style="list-style-type: none"> 1. "the day 3 months after its commencement: 2. a day stated in the notice: 3. a day stated for the purpose by the Prime Minister by further notice in the Gazette." <p>After the notice expires, a new notice can be given in respect of the same disease. With the agreement of the Minister of Health, the Prime Minister may, by notice in the Gazette given before an epidemic notice expires, renew that notice.</p> <p>If renewed, an epidemic notice expires on the earliest of the following (see section 7 of the Act):</p>

Situation	Definition of an "emergency"	Who may declare the state of emergency and under what conditions?	How does a state of emergency end?
			<p>4. "the day 3 months after the commencement of the most recent notice renewing it;</p> <p>5. a day stated in the most recent notice renewing it:</p> <p>a day stated for the purpose by the Prime Minister by further notice in the Gazette".</p>
Terrorism event	<p>The International Terrorism Act (Emergency Powers) refers to an "international terrorist emergency" and defines it, under section 2 of the Act. as" a situation in which any person is threatening, causing, or attempting to cause—</p> <ol style="list-style-type: none"> 1. the death of, or serious injury or serious harm to, any person or persons;" or 2. the destruction of, or serious damage or serious injury to any premises, vehicle, land, natural feature whose preservation is in the national interest, chattel of any kind which is of significant historical, archaeological, scientific, 	<p>The law does not require a formal declaration of a state of emergency. However, according to section 5 of the Act, where the Commissioner of Police believes" (a) that an emergency is occurring; and (b) that the emergency may be an international terrorist emergency; and (c) that the exercise of emergency powers is or may be necessary to deal with that emergency", the Commissioner may call a meeting of no less than three Ministers of the Crown to be held for the purpose of considering whether to authorize the exercise emergency powers.</p> <p>The Ministers of the Crown, present at the meeting may, if they believe, on reasonable grounds, — "(a) that an emergency is occurring; and (b) that the emergency may be an international terrorist emergency;</p>	<p>According the section 6(4) of the Act, the authority to exercise emergency powers expires "once the Commissioner of Police is satisfied that the emergency is not an international terrorist emergency; or when the international terrorist emergency ends; or at the close of the day specified in the notice as the day when that notice expires; or at the close of the seventh day after the day on which the notice is given, whichever occurs first".</p> <p>However, the legislator (and in certain cases the Governor-General) may from time to time extend that authority to exercise emergency powers for a period not exceeding 7 days, as long as the extension in aggregate does not exceed 14 days. Likewise, the legislator may revoke the authority to exercise emergency powers.</p>

Situation	Definition of an "emergency"	Who may declare the state of emergency and under what conditions?	How does a state of emergency end?
	<p>cultural, literary, or artistic value or importance, or any animal, "in order to coerce, deter, or intimidate the Government of New Zealand, or any agency of the Government of New Zealand, or the Government of any other country, or any agency of the Government of any other country; or any body or group of persons, whether inside or outside New Zealand, for the purpose of furthering, outside New Zealand, any political aim".</p>	<p>and (c) that the exercise of emergency powers is necessary to deal with that emergency", under section 6 of the Act, authorize the exercise, by the Police, of emergency powers.</p>	

Situation	Definition of an "emergency"	Who may declare the state of emergency and under what conditions?	How does a state of emergency end?
Organisms and Pests	<p>The law concerning organisms and pests is the Biosecurity Act 1993.</p> <p>The law does not “formally” define a state of emergency, but the definition can be extracted from the exigencies for the declaration of a "biosecurity emergency", under section 144 of the Act.</p> <p>A state in which:</p> <p>a." it is likely that:</p> <ul style="list-style-type: none"> • there has been an outbreak or occurrence in New Zealand of an organism (being an organism not previously known to be established in New Zealand) that has the potential to cause significant economic loss, significant environmental loss, or both; or • there has been an outbreak or occurrence in New Zealand of an organism (being an organism not previously known to be established in New Zealand) that has the potential to cause significant economic loss, significant environmental loss, or both, if it becomes established in other parts of New Zealand; or • an organism previously thought to be of restricted distribution or abundance (or both) in New Zealand is becoming or has become so distributed and abundant in New Zealand or any part of New Zealand that it has the potential to cause significant economic loss, significant 	<p>According to section 144 of the Act, "on the recommendation of a Minister, the Governor-General may, by Proclamation, declare a biosecurity emergency if satisfied on reasonable grounds after having regard to all available information" that the aforesaid conditions that establish a state of emergency are present.</p>	<p>On the recommendation of the Minister, the Governor-General may by further Proclamation extend or revoke the Proclamation.</p> <p>According to section 146 of the Act, "a declaration of biosecurity emergency ceases to have effect at the end of 4 months after it comes into force". A declaration of biosecurity emergency may be extended by the Governor-General, and then it ceases to have effect at the end of 4 months (pending additional extensions); or by a resolution of the House of Representatives, and then it is extended for the period stated in the resolution. Likewise, before a declaration ceases to have effect, it may be revoked by another Proclamation by the Governor-General or a resolution of the House of Representatives.</p>

	<p>environmental loss, or both; or</p> <ul style="list-style-type: none"> • a pest is, or threatens to be, beyond control by the application of the national pest management plan for that pest; and <p>b. it is in the public interest that action be taken immediately to eradicate or manage the organism and sufficient powers are not otherwise available to enable the organism to be eradicated or effectively managed".</p>		
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3. Legal Powers

The CDEMA grants broad powers to numerous parties: The powers of the Director of Civil Defense Emergency Management:⁶

The Director's powers before the declaration of a state of emergency include the following:

- Advise in relation to, and assist in the planning, preparation, co-ordination, and carrying out of, civil defense emergency management.
- Provide advice to the Minister on matters relating to civil defense emergency management:
- Disseminate information and advice on matters relating to civil defense emergency management:
- Enter into arrangements, including employment arrangements, with any person for the purpose of carrying out civil defense emergency management as may be agreed;
- Devise, promote, and carry out, or cause to be carried out, research and investigations into matters relating to civil defense emergency management:
- Issue or cause to be issued warnings of hazards:
- Promote and carry out, or cause to be carried out, the training of personnel for civil defense emergency management purposes:
- Identify hazards and risks that the Director considers are of national significance:

⁶ Civil Defence Emergency Management Act 2002, section 9-10 ,67.

- Develop, monitor, and evaluate the national civil defense emergency management plan:
- Monitor and evaluate the national civil defense emergency management strategy:
- Promote civil defense emergency management that is consistent with the purpose of the Act:
- Develop, in consultation with the relevant persons and organizations that have responsibilities under the Act, any guidelines, codes, or technical standards that may be required for the purposes of the Act:
- Monitor the performance of Civil Defense Emergency Management Groups and persons who have responsibilities under the Act:
- Co-ordinate the planning of civil defense emergency management among Civil Defense Emergency Management Groups:
- Require any person to give information, subject to certain conditions, he deems reasonably necessary for the exercise of civil defense emergency management
- Issue guidelines, codes or technical standards to any person or organization with responsibilities under the Act.

The director's powers regarding the people and property during a national emergency include the following (these powers do not apply to the declaration of a local state of emergency):

- Direct and control the resources available for civil defense emergency management
- Control the exercise and performance of the functions, duties and powers of civil defense emergency management groups and Group Controllers (people appointed under the Act as Group Controllers who have the power during local states of emergency to use various resources).

Powers of Civil Defense Emergency Management Groups⁷ regarding people and property:

The powers of the CDEM groups in "regular times" when there is no effective state of emergency, are similar to those vested in the Director at this point, including:

- The power to request information
- Identify, assess and manage hazards and risks

⁷ Id. Civil Defence Emergency Management Act 2002, 17-18 ,76 ,85.

- Raise public awareness of the Act and legislative provisions relevant to its purpose
- Monitor and report on compliance within its area with the Act and legislative provisions relevant to its purpose
- Recruit and train volunteers for civil defense emergency management tasks
- Participate in the development of the national civil defense emergency management strategy and the national civil defense emergency management plan:
- Promote civil defense emergency management within its area that is consistent with the purpose of the Act:
- Develop, approve, implement, and monitor a civil defense emergency management group plan and regularly review the plan:
- Conduct civil defense emergency management training exercises, practices, and rehearsals:
- Issue and control the use of signs, badges, insignia, and identification passes authorized under the Act, regulations made under the Act, or any civil defense emergency management plan:
- Provide communications, equipment, accommodation, and facilities for the exercise of its functions and powers during an emergency.

Powers of Civil Defense Emergency Management Groups during a state of emergency (whether national or local) include the following:

- "disseminate information and advice to the public":
- "carry out or require to be carried out works and/or clearing roads and other public places and/or removing or disposing of, or securing or otherwise making safe, dangerous structures and materials wherever they may be":
- "set up first aid posts, and provide for first aid to be given to casualties and for their movement to hospital, other place of treatment, or areas of safety":
- "provide for the rescue of endangered persons and their removal to areas of safety":
- "enter into arrangements, including employment arrangements, with any person for the purpose of carrying out civil defense emergency management as may be agreed":
- "undertake emergency measures for the disposal of dead persons or animals if it is satisfied that the measures are urgently necessary in the interests of public health":
- provide clothing, food, shelter and any other vital service:
- prohibit or regulate land, air, and water traffic within the area or district to the extent necessary to conduct civil defense

emergency management:

- "provide for the relief of distress, including emergency food, clothing, and shelter":
- "provide equipment, accommodation, and facilities for the exercise" of any of the powers conferred by subsection 85 of the Act.
- According to section 94 of the CDMA, "despite anything in the Public Bodies Contracts Act 1959" the chairperson of the Group; the Group Controller; the deputy chairperson of the Group; "any employee of the Group who is authorized for the purpose in the Group's civil defense emergency management plan" may "enter into any contract on behalf of a Civil Defense Emergency Management Group for any of the purposes" of the CDEMA.

Powers of Civil Defense Emergency Management Groups after the state of emergency:

One of the powers of the Civil Defense Emergency Management Group is to carry out recovery activities. However, according to section 29 of the CDEMA, "if the Minister is satisfied that a Civil Defense Emergency Management Group is, or is likely to be, unable to ensure the effective carrying out of recovery activities in its area", the Minister may appoint "a suitably qualified and experienced person as the Recovery Co-ordinator for the area".

The law defines, under section 4, "recovery activities" as "activities carried out under this Act or any civil defense emergency management plan after an emergency occurs, including, without limitation:

- Assessment of the needs of a community affected by the emergency
- Co-ordination of resources made available to the community; and
- Actions relating to community rehabilitation and restoration; and
- New measures to reduce hazards and risks"

It is noteworthy that this definition of recovery activities and the powers of the groups or recovery coordinators to execute them is one of the only specific indications found in the law (except for the Articles on the appointment of a recovery coordinator) regarding recovery activities after an emergency.⁸

⁸ Ministry of Civil Defence & Emergency Management, *Focus on Recovery: A holistic framework for recovery in New Zealand* 3 (2005) [IS 5/05].

The powers of constables and Controllers⁹ concerning people and property:¹⁰

During a state of emergency (national or local):

- The power to evacuate any premises or places
- The power of entry on premises
- The power of closing roads and public places
- The power of removal of any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle impeding civil defense emergency management;
- The power to requisition any land, building, vehicle, animal, goods (food, medicines, medical supplies, food, etc.) or any other equipment, materials, or supplies
- The power to direct any person to stop any activity that may cause or substantially contribute to an emergency: or request him to take any action to prevent or limit the extent of the emergency.
- The power to carry out inspections (examine, mark, disinfect, or destroy) any property, animal, or any other thing
- Likewise, every constable has indirect power to enter and search any premises, not being a dwelling house, to obtain information if authorized by a District Court Judge by warrant, if the judge is satisfied by a number of conditions specified by the law.

The Minister of Civil Defense Emergency Management may, under section 84 of the CDMA, if "a state of emergency is in force, or the Minister considers that an imminent threat of an emergency exists; and the Minister considers that, having regard to all the circumstances, it is expedient" to exercise the following power, direct the Director or any Civil Defense Emergency Management Group or person to perform or cease to perform or exercise any of the functions, duties, or powers conferred on that person or Group under the Act.

Another kind of emergency powers - the making of regulations - can be found, among other places, in the Biosecurity Act 1993.

When a state of emergency is declared under the Biosecurity Act 1993, the Governor-General may, on the recommendation of the

⁹ Controller means Group Controller (above) or National Controller (a person empowered by Article 10 of the Act), and in the absence of such delegation, the Controller is the National Controller.

¹⁰ FN 6, 78, 86-92.

Minister of Biosecurity, make regulations by Order in Council for the eradication or management of organisms for which the state of emergency was called or to effectively manage the state of emergency.

Regarding terrorism, the International Terrorism (Emergency Powers) Act 1987 grants similar powers to those granted by the CDEMA, including the authority to evacuate premises and places; the power to enter premises, places or vehicles; the power to remove vehicles from any road or public place, and requisitioning powers. It is noteworthy that the International Terrorism Act also grants powers that the CDEMA does not, such as the power of a constable to connect "any additional apparatus to, or otherwise interfere with the operation of, any part of the telecommunications system; and intercept private communications in the area in which the emergency is occurring".¹¹

There is no specific law in New Zealand that allows the arrest of persons suspected of committing acts of terrorism, but it is worth mentioning in the context of anti-terrorism the Immigration Act 2009 (which overwrote the old immigration act from 1987¹²), which allows the imposition of administrative detentions. The Act allows for the detention and arrest of persons "who are, on reasonable grounds, suspected by an immigration officer or a constable of constituting a threat or risk to security".¹³ Under the Act, this power can be used to detain such a person until a deportation order is issued.

The law provides a number of conditions for arrest including:

- A person arrested by a constable without a warrant may be detained only as long as is necessary to achieve the purpose of the arrest, but must not be detained for a period longer than 96 hours (inclusive of any time during which the person was detained by an immigration officer, as follows).
- When a constable is requested by an immigration officer to arrest someone (when there is legal grounds for arrest) he must perform the arrest.
- Detention of a person by an immigration officer will not last more than 4 hours (and must end earlier if: a constable used his power to arrest and detain that person; the person was taken into custody under the immigration act; the person is no longer liable for arrest and detention or the purpose of the detention was achieved).

¹¹ International Terrorism (Emergency Powers) Act 1987, section 10.

¹² For more about the arrangements the old law provided on this matter, see John Ip, *Comparative Perspectives on the Detention of Terrorist Suspects*, 16 *Transnat'l L. & Contemp. Probs.* 773, 805 (2007).

¹³ The Immigration Act 2009 provides additional grounds for arrest. See section 309 of the Act.

Likewise, the Fire Service Act grants powers to a person in charge of the fire brigade in a state of fire or other emergency, including:¹⁴

- The power to "enter upon any land, building, or structure and, if necessary, break into any building or structure which may be on fire or otherwise endangered or which is in the near neighborhood of the emergency"
- The power to cause any "motorway, highway, road, street, private road, right of way", etc. to be closed to traffic
- The power to "remove, using reasonable force if necessary, any person who, by his presence or otherwise, interferes with operations to deal with the fire or emergency or who, in his opinion, is in danger".

Furthermore, the law allows the Minister to order the New Zealand Fire service commission in a state of war or state of emergency declared under the CDEMA, to make special provisions for (among other things) the protection of Crown property from fire.

On the matter of war, the Citizenship Act 1977 empowers the Minister to decline a person's declaration of renunciation of New Zealand citizenship (allowed under certain conditions). Furthermore, the Governor-General has certain powers under the Defense act 1990, which allow him, for example, in a state of war (or in a similar state of emergency), to extend the service of soldiers in the regular army.

On the matter of epidemics the Epidemic Preparedness Act 2006¹⁵ grants the following emergency response powers¹⁶:

- According to section 5 of the Act, with the agreement of the Minister of Health, the Prime Minister may declare "that he or she is satisfied that the effects of an outbreak of a stated quarantinable disease [...] are likely to disrupt or continue to disrupt essential governmental and business activity in New Zealand" (such declaration is titled "epidemic notice"). While the notice is in force, further notices may be given, lifting or extending its effect to stated parts of New Zealand.

While an epidemic notice is in force:

- The Prime Minister may, with the agreement of the Minister responsible for the administration of the enactment concerned, "state any matter that must be stated in order for action, or a particular action, to be taken under some other enactment referring to an epidemic management notice".
- The Governor-General may, by Order in Council made on the recommendation of the Minister of Health, modify "any

¹⁴ The Fire Services Act 1975, section 28-29.

¹⁵ The Epidemic Preparedness Act 2006 contains powers referring to the emergency preparedness stage, which are not detailed herein. For further *information*, see sections 11-12 of the Act.

¹⁶ *Id.* section 8, 11-15, 24.

requirement or restriction imposed by any enactment administered by the Ministry of Health".

- The Governor-General may modify any requirement or restriction imposed by the enactment, subject to certain restrictions and terms.
- Judges to whom section 24 of the Epidemic Preparedness Act applies may "in any particular cases modify any rule of court, and to any extent, that he or she thinks necessary in the interests of justice to take account of the effects of the quarantinable disease stated in the notice".

4. Rights in a State of Emergency

CDEMA does not refer specifically to human rights in general or the New Zealand Bill of Rights Act 1990, nor do the other laws. The emergency laws appear to make no clear exception for rights that may be violated, if any, or for the manner and extent of the violation. Hence, there is no indication (in the legislative framework reviewed, apart from case law study) of the extent to which the legislation infringes the New Zealand Bill of Rights Act, if at all.¹⁷ On the other hand, there are no provisions among the New Zealand legislation that specifically protect human rights in states of emergency. Nonetheless, there are minor indications in specific laws that human rights may be temporarily weakened. For example, according to The Land Transport Act 1988 (section 122), enforcement officer may seize and impound vehicle for up to 12 hours in emergency. It is noteworthy that a general reference to human rights in states of emergency can be found within the international law.¹⁸

¹⁷ It is interesting to note that the Epidemic Preparedness Act 2006 does state that while a person's rights, available remedies or courses of action, or legal situation under an enactment are affected by the effect of a modification order (see in abstract above), that a person must be told of those rights, those remedies or courses of action, or that situation, as modified by the effect of the order.

¹⁸ According to section 4(1) of the International Covenant on Civil and Political Rights (ICCPR), "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed", the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that certain rights can not be violated, including the right to life, freedom of thought, freedom of religion, the prohibition of torture and cruel punishment, prohibition of retroactive punishment and prohibition of slavery. New Zealand's submission to the Covenant, if at all, is reflected by the fact that the New Zealand Bill of Rights is based on it and on the declarative enactments that appear therein stating the bill establishes New Zealand's commitment to the aforesaid covenant. Matthew J McKillop, *Emergency Powers of the New Zealand Government: Sources, Limitations, and the Canterbury Earthquake 32-35*, Bachelor of Laws (partial fulfillment) dissertation, University of Otago, Dunedin (2010).

5. Regulation

By information and licensing:

Regulation through information in New Zealand is done through Emergency Information Management, whose objective is to "promote the effective management and exchange of information to aid decision making" before, during and after a state of emergency. Among other things, the information includes "(a) hazard and risk status information, (b) readiness information including resources and assets, (c) emergency impact assessments [...] (f) [...] contact lists, standard operating procedures, (g) reports, briefings, public notices", etc.¹⁹

In 2007 the Ministry of Civil Defense and Emergency Management first issued Public Information Management (PIM) guidelines. Public information management during an emergency "involves collecting, analysing, and disseminating information to the public. It promotes effective leadership and decision-making, and enables the people affected by the emergency to understand what is happening and take the appropriate actions to protect themselves"²⁰. PIM actions are undertaken throughout the stages of emergency preparation and response as well as throughout the recovery stages.²¹ The purposes of the PIM include promoting public security through information to the public, affecting public behavior through information and increasing public security as to managing the response to the state of emergency.²² The guidelines (which were updated in 2013), also provide for the review of powers and responsibilities regarding PIM, a detailed explanation of the parties responsible for providing the information and so on, in order to create a consistent approach on this matter among the various agencies in New Zealand.²³

¹⁹ Ministry of Civil Defence and Emergency Management, Guide to the National Civil Defence Emergency Management Plan, Section 21: Emergency information management (2006) www.civildefence.govt.nz/memwebsite.nsf/wpg_URL/For-the-CDEM-Sector-Publications-The-Guide?OpenDocument.

²⁰ Public Information Management (PIM), from the official website of the Ministry of Civil Defense and Emergency Management and reference there to Ministry of Civil Defense & Emergency Management, Public Information Management: Director's Guideline *for Civil Defence Emergency Management Groups* (2013) [DGL14/13].

²¹ Id. DGL14/13 .

²² Id. 20.

²³ Id. DGL14/13

In the years 2005-2006, the Ministry of Civil Defense and Emergency Management managed to obtain crown funding to establish a National Public Education Programme. The long-term aim of the program is actually to improve the individual and community's preparedness and awareness for states of emergency. The program includes, among other things:²⁴

- A strategic framework for the Activity of the Ministry of Civil Defense and Emergency Management and the Civil Defense Emergency Management Groups.
- Media campaigns.
- A website targeted specifically at providing user-friendly information and advice for the public on what to do to be better prepared.
- Resources for schools aimed at getting the message into homes through kids at school.
- Research to understand "current national levels of awareness, understanding and preparedness" and to "evaluate the effectiveness of initiatives undertaken and identify areas for improvement".

Additional regulation can be found in the Building Code and the Building Act 2004, whose purpose, as it is stated under section 3 of the law, is "to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings" to ensure public safety.²⁵

Criminal liability

The CDEMA contains provisions concerning a person's liability for failure to comply with specific provisions of the law, for example a failure to comply with direction to evacuate premises or place or Requisition of his property.

Other provisions concern more general offenses, such as personation, meaning [a person] intentionally personating or falsely representing himself or herself to be the Director, a Controller, a member of a Civil Defense Emergency Management Group or any person duly authorized or employed for carrying out any provision of the Act or any civil defense emergency management plan.

²⁴ The National Public Education Programme. The Ministry of Civil Defense and Emergency Management: <http://www.civildefence.govt.nz/cdem-sector/public-education/> (last visited 12/24/2015)

²⁵ FN 1, Webb and McEntire.

It is also an offense to threaten, assault, or intentionally obstruct or hinder any person in that person's exercise or performance of a function, power, or duty under the Act.

Insurance

Regulation through insurance is undertaken by the Earthquake Commission (EQC), which is a government entity.

The EQC "provides natural disaster insurance for residential property, administers the Natural Disaster Fund [NDF], and funds research and education on natural disasters and ways of reducing their impact".²⁶

"The Natural Disaster Fund has its origins in the Earthquake and War Damage Fund", but today war damage is no longer covered, nor is disaster insurance of commercial property.

"Until the Canterbury earthquakes in 2010 and 2011, there had not been any major claims on the Natural Disaster Fund. Hundreds of millions of dollars had been paid out on claims for smaller events".²⁷

Earth Quakes Cover (which is not considered as private insurance) provides insurance for residential homes, land and contents against loss or damage from earthquakes, volcanic eruptions, a tsunami, hydrothermal activity and natural land slips.²⁸ It also insures residential land (within limits) against storm and flood damage and from fire resulting from any of these natural disasters.

²⁶ About EQC, The Earthquake Commission, EQC website, www.eqc.govt.nz/about-etc (last visited 12/24/2015)

²⁷ Managing the Natural Disaster Fund, EQC website, www.eqc.govt.nz/about-etc/our-role/ndf (last visited 12/24/2015)

²⁸ EQC Insurance, EQC website, www.eqc.govt.nz/what-we-do/eqc-insurance (last visited 12/24/2015)