

STATEMENT: UPR Pre-session on New Zealand – 32nd session – 3rd Cycle, Geneva, 13 December 2018

New Zealand Human Rights Commission

Delivered by: Ms Paula Tesoriero MNZM, acting Chief Commissioner and Disability Rights Commissioner

Introduction

It is my pleasure to address you today as the acting Chief Commissioner and Disability Rights Commissioner at the Human Rights Commission, NZ's national human rights institution. The Commission welcomes the opportunity provided by the UPR to enter into a dialogue with representatives of UN Member States regarding the status of human rights in New Zealand.

National consultations and civil society engagement

The Commission has actively participated at the national and international levels in each of New Zealand's cyclical reviews under the UPR. For this third cycle, the Commission participated in national consultations held by the Ministry of Foreign Affairs and Trade in nine regions throughout New Zealand between February and April 2018. While these consultations were principally held to inform the Government's national report, the Commission informed civil society participants on how to participate in the UPR submission process.

In-country UPR pre-session: Wellington, 26 October 2018

New Zealand is a long distance from Geneva and attendance at UN events is beyond the means of most civil society organisations. To enable civil society to have direct engagement with this aspect of the UPR reporting mechanism, the Commission facilitated, with the support of UPR-Info, New Zealand's inaugural in-country pre-session, held in Wellington on 26 October 2018. This was preceded by UPR training sessions for civil society organisations held in Auckland, Christchurch and Wellington.

The in-country pre-session was attended by representatives from over 30 diplomatic embassies, who heard from a panel of 13 civil society organisations, each addressing a diverse range of human rights challenges facing New Zealand. The process was observed by over 60 civil society attendees.

A list of the panel organisations, as well as copies of their advocacy fact sheets and presentations is available at the Human Rights Commission website at the following hyper-link:

<https://www.hrc.co.nz/international-reporting/universal-periodic-review/>

For a fuller picture of the human rights issues currently active in New Zealand, we strongly encourage your consideration of this information.

Progress since the last review

In the five years since New Zealand was examined during the second cycle of the Universal Periodic Review, the New Zealand Government has undertaken a variety of actions to address UPR recommendations it accepted.

For example, New Zealand has:

- Ratified the Optional Protocol on Rights of Persons with Disabilities (as recommended by Spain and Hungary)
- Brought the upper age threshold of our youth justice system into conformity with international obligations, (Czech Republic)
- Introduced a Child Poverty Reduction Bill (which addresses the recommendations of the Ukraine, Australia, Cape Verde, Canada, Malaysia and Mexico)
- Taken steps towards eliminating the gender pay gap, including the introduction of updated pay equity legislation (recommended by Australia, France, Malaysia, Iraq, Sri Lanka)
- Introduced reforms to legislation and policy to address family violence against women (which responds to recommendations made by several Member States)

Current context

This UPR cycle also falls within the beginning stages of an extensive reform agenda in the social sector. The Government is currently undertaking comprehensive reviews and inquiries in several areas, including mental health, education, housing, welfare, tax, and historical abuse in State care.

These reforms provide an important opportunity to address current shortcomings in New Zealand's domestic human rights record, particularly as regards the realisation of economic, social and cultural rights. There have been some encouraging signs. As Disability Rights Commissioner, I have been encouraged that the Government has recently announced that the discriminatory statutory provisions that currently apply to home-based care of disabled people will be repealed and a fairer, more accessible system will be introduced. Furthermore, the introduction in 2019 of the first "well-being" budget is a positive step towards an approach to economic and fiscal decision-making that is more aligned with human rights principles and objectives.

Challenges

However, the social inequities and barriers to social inclusion that existed for many New Zealanders at the last UPR review remain entrenched. For example, waiting lists for social housing have doubled in the last two years and continue to increase rapidly. Rates of family violence and child abuse remain among the highest in the OECD. In addition, family violence legislation does not adequately protect disabled people experiencing abuse in home-care/live in support situations. As was the case at the last UPR Review, almost 30% of New Zealand children live in households whose income falls below the official poverty line. In Canterbury, the effects of the 2010 and 2011 earthquakes continue to manifest in increased mental health and suicide statistics and systemic barriers remain for residents seeking recovery of loss from damage to their properties. Structural discrimination in New Zealand remains pervasive. Māori, Pasifika, women, migrants, refugees and disabled people continue to experience negative disparities across a range of key socio-economic indicators. Disparities also exist in terms of accessing services. For example, despite having higher-than-average rates of disability, Pasifika are under-represented in disability support services.

In the Commission's view, a policy and legal framework in which all human rights commitments are fully integrated, including under the SDGs and the Treaty of Waitangi, is required if sustainable progress in reducing current disparities in outcomes is to be made. This includes:

- A. Bringing New Zealand human rights legislation and policy into conformity with international human rights obligations

- B. Elevating the status of the Treaty of Waitangi and indigenous rights
- C. Developing and resourcing the National Plan of Action on Human Rights

A. New Zealand's Human Rights Legislation and Policy

On this issue I wish to highlight four recommendations from our UPR submission that address New Zealand's policy and legislative framework.

Firstly, we recommend that the Government:

Implement a standard human rights impact assessment process for assessing all prospective policies and legislation, for consistency with domestic and international human rights obligations.

At the last UPR, recommendations were made regarding processes to ensure that legislation is consistent with New Zealand's ratified human rights treaty obligations.¹ These recommendations were supported by the New Zealand Government. However, there have been no formal changes made to the policy and legislative process in this respect.

Currently, mechanisms for assessing whether new policies or legislation under development comply with domestic and international human rights obligations are somewhat ad hoc. The Commission considers the implementation of a standard procedural mechanism (such as a human rights impact assessment process) would help ensure that all Government policy and legislation under development complies with, and is informed by, human rights principles.

Secondly, we recommend that the Government:

Amend the New Zealand Bill of Rights Act 1990 to incorporate all rights in the International Covenant for Civil and Political Rights and the International Covenant for Economic, Social and Cultural Rights.

At the previous review, a number of States recommended the incorporation of economic, social and cultural rights into the New Zealand Bill of Rights Act 1990.²

While our charter of rights, the New Zealand Bill of Rights Act, contains most of the human rights set out in the International Covenant on Civil and Political Rights, it does not include all of these rights, such as the right to privacy. Nor does it include any of the rights set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR), such as the rights to health, education, and housing. It is also an ordinary statute that can be repealed by a simple Parliamentary majority.

Thirdly, we recommend that the Government:

Amend the Human Rights Act 1993 to explicitly include gender identity, gender expression and sex characteristics as a prohibited ground of discrimination.

Currently, New Zealand's anti-discrimination statute, the Human Rights Act 1993, does not include "gender identity, gender expression, and sex characteristics" under its definition of "sex discrimination". The recent review of New Zealand by the CEDAW Committee recommended that the Act be amended with a view to including specific prohibitions of discrimination on the grounds of

¹ Nicaragua, Viet Nam, Niger

² Spain, Togo, Ukraine, Uruguay

gender identity, gender expression and sex characteristics.³ The Commission considers that such an amendment should also be accompanied by public guidance on the protection that this will provide for trans, non-binary and intersex people in New Zealand.

I note that UPR reviews of New Zealand to date have not addressed human rights issues pertaining to sexual orientation, gender identity, gender expression and sex characteristics.

Fourthly, we recommend that the Government:

Appoints a lead Minister on the SDGs and take immediate steps towards implementing a cross-government policy and data strategy to meet New Zealand's commitments under the SDGs.

The Commission welcomes the recent work of the Government towards the 2030 SDG Targets. This includes the development of an Indicator Framework and the submission of a Voluntary National Review report on SDG progress at the 2019 UN High-Level Political Forum.

The Commission considers that a high level and visible political and policy commitment will be essential in ensuring that momentum towards meeting the 2030 targets is maintained.

B. Elevating the status of the Treaty of Waitangi and indigenous rights

The Treaty of Waitangi (the Treaty), signed in 1840 between the British Crown and Māori, is considered New Zealand's founding constitutional document. However, the Treaty is not binding on the legislature.

Both the Constitutional Advisory Panel and a forum of Iwi (Māori tribal) leaders have recommended that the Government continue to develop a national dialogue regarding the role of the Treaty in New Zealand's constitutional framework. The Government also supported recommendations made at the last UPR Review to advance its constitutional review process including constitutional issues affecting Māori.⁴ However, no concrete progress has been made in this respect.

We recommend that the Government:

Takes immediate steps, in partnership with Māori, to implement the recommendations of the Constitutional Advisory Panel and the Iwi Chairs Forum regarding the role of the Treaty of Waitangi within New Zealand's constitutional arrangements

Furthermore, the principles of the Treaty are compatible with fundamental human rights principles, including those set out in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). While the Government has officially endorsed the UNDRIP, a plan of action for its implementation is yet to be developed, despite international commitments to do so.⁵

We recommend that the Government:

Develop, in partnership with Māori, a national strategy or plan of action to align public policy and legislation with the United Nations Declaration on the Rights of Indigenous Peoples.

³ CEDAW Committee, Concluding Observations on New Zealand, CEDAW/C/NZL/CO/8, 25 July 2018, paragraph 12(a)

⁴ Recommendations of Angola, Slovenia

⁵ Outcome Document of the World Conference on Indigenous Peoples A/RES/69/2 2014

C. Develop and resource the National Plan of Action on Human Rights

Since the 2nd cycle of the UPR, the Commission has developed an online National Plan of Action for Human Rights (NPA). The NPA tracks the Government's progress in implementing recommendations from the second cycle of the UPR.

At the same time, the Ministry of Justice has been co-ordinating the development of the International Human Rights Governance Group (IHRGG), an integrated government framework that will monitor and report on the Government's progress in meeting its obligations under the UN human rights treaties it has ratified. These developments have been encouraging, although an increased and ongoing commitment by the Government is required to ensure that both the NPA and IHRGG processes are effective and sustainable.

We recommend that the Government:

Increase funding and support to the Human Rights Commission for the development and co-ordination of the National Plan of Action for Human Rights (NPA).

Incorporate the NPA into the International Human Rights Governance Group monitoring mechanism and develop an indicator framework to track, measure and assess Government actions.

D. UPR Report of New Zealand's National Preventative Mechanisms

I will also briefly report on the UPR Report of New Zealand's National Preventative Mechanisms.

The Commission lodged a submission to the UPR on behalf of New Zealand's National Preventative Mechanism (NPM) under the Optional Protocol on the Convention Against Torture. The NPM consists of the Commission (the Central NPM), the Ombudsman, the Children's Commissioner, the Independent Police Conduct Authority and the Inspector of Service Penal Establishments. A fact sheet summarising the NPM submission is available.

The submission notes, among other things, that people with mental health issues are not receiving optimal care and treatment while detained or may be detained in an inappropriate environment. Over the past 20 years the number of incidents of acute mental distress responded to by Police increased by 350 per cent. At the same time, incidents involving threatened or attempted suicide increased by 800 per cent.⁶ Police are not the appropriate agency to deal with those in mental distress. Often these people end up detained in a police cell due to a lack of other suitable facilities and mental health professionals not being available.

The NPM recommends that the Government:

Take urgent steps to ensure the availability and appropriate provision of mental health services for people in detention.

⁶ New Zealand National Preventive Mechanisms (2015) *2014/15 Monitoring Places of Detention*, Available: https://www.hrc.co.nz/files/6814/4971/3990/Monitoring_Places_of_Detention_final_2015.pdf