

Report on New Zealand's Human Rights Performance



Human Rights Commission

If you have a discrimination complaint
or want more information:

Tāmaki Makaurau – Auckland

Level 10, Tower Centre,
45 Queen Street, Auckland 1141
PO Box 6751, Wellesley Street, Auckland
Ph: 09 309 0874 Fax: 09 377 3593

Te Whanganui ā Tara – Wellington

Level 8, Vogel Building, 8 Aitken Street,
Thorndon, Wellington
PO Box 12411, Thorndon, Wellington 6144
Ph: 04 473 9981 Fax: 04 471 6759

Otautahi – Christchurch

KPMG at Cranmer (Ground Floor),
34-36 Cranmer Square, Christchurch
PO Box 1578, Christchurch 8140
Ph: 03 379 2015 Fax: 03 353 0959

Toll free Infoline 0800 496 877

TTY (Teletypewriter): 0800 150 111
Website: www.hrc.co.nz
Email: infoline@hrc.co.nz
Language Line available
Appointment with sign language
interpreter available

Aotearoa – New Zealand

Published 2008

Cover image: iStock

ISBN: 978-0-478-32930-8 (Printed)

ISBN: 978-0-478-32931-5 (PDF)

Report on New Zealand's Human Rights Performance



Human Rights
Commission
Te Kāhui Tika Tangata



NEW ZEALAND'S NATIONAL UNIVERSAL PERIODIC REVIEW (UPR) REPORT

During 2008 two significant human rights milestones were celebrated. It was 60 years since the General Assembly adopted the Universal Declaration of Human Rights and, in New Zealand, 30 years since the Human Rights Commission Act 1977 came into force with the establishment of the New Zealand Human Rights Commission on 1 September 1978.

In 2006, the United Nations General Assembly established the Human Rights Council (UNHRC). The UNHRC is also mandated with undertaking a Universal Periodic Review (UPR) of each state.

The UPR is a significant new human rights mechanism that provides an important opportunity for states to assess and evaluate each other on the basis of reliable and objective information on whether each is fulfilling its human rights obligations and commitments. New Zealand will be reviewed every four years under the UPR mechanism. Subsequent reviews will also focus on the implementation of the agreed on recommendations contained in the UPR document of the previous review. New Zealand's first UPR examination takes place in Geneva in May 2009.

Introduction

1. The New Zealand Human Rights Commission is an independent national human rights institution with 'A' status accreditation. It derives its statutory mandate from the Human Rights Act 1993.
2. In 2004 the Commission published a comprehensive baseline review of human rights in New Zealand.¹ The review found that New Zealand met international human rights standards in many respects and had most of the elements necessary for the effective protection, promotion and fulfilment of human rights. At the same time it highlighted a failure to wholeheartedly accept difference and diversity; the extent to which poverty undermined the realisation of the most basic human rights; the presence of violence, bullying and harassment in too many New Zealand homes, schools and workplaces; the persistence of structural disadvantage and discrimination; and the need for explicit recognition of human rights standards at all levels of New Zealand society.
3. The review provided the evidential basis for *Mana ki te Tangata*, the New Zealand Action Plan for Human Rights, published in 2005. It identified actions required to address the most pressing human rights issues identified in the review and better promote and protect human rights for the five years to 2010.²

Achievements, best practices, challenges, & constraints

4. In response to the Commission's monitoring of progress on Action Plan priorities, government agencies and others identified a wide range of human rights related initiatives and achievements,³ including:
 - ◆ actions to reduce violence against children & young people including the repeal of section 59 of the Crimes Act dealing with corporal punishment by parents and guardians
 - ◆ policies designed to reduce poverty including increases in the minimum wage and the introduction of income related rents for state housing
 - ◆ improved access to primary health care
 - ◆ improvements in key social and economic indicators for Māori & Pacific peoples
 - ◆ introduction of a revised national curriculum for primary and secondary schools and introduction of 20 free hours of early childhood education for three & four year olds
 - ◆ greater recognition of the right to equality of gay, lesbian, bisexual and transgender people including the Civil Union Act 2005
 - ◆ positive developments in the promotion and use of the Māori language
 - ◆ initiatives to foster Pacific languages
 - ◆ development of a range of settlement support initiatives for new migrants
 - ◆ NZAID's integration of human rights into all development assistance policies, strategies, programming and organisational practices.

5. Non-governmental organisations, community groups, businesses and trade unions have been crucial to the growing understanding and respect for human rights across all sectors of New Zealand society. Evidence of the greater valuing of diversity can be found for example amongst the 250 organisations that are members of the Diversity Action Programme.⁴
6. Significant challenges remain, however, to fully realising human rights for everyone in New Zealand. This submission highlights where further action is required.
7. This is a time of global insecurity. Without a strong human rights approach further economic deterioration is likely to impact disproportionately on those whose realisation of economic, social and cultural rights is already tenuous. In the three years since its publication, the New Zealand Action Plan for Human Rights has been an important catalyst in increasing the understanding of the value of human rights to New Zealand society and consideration of human rights standards in state sector policy development generally. It has also provided a valuable framework for human rights advocacy by civil society and has been used internationally as an example of good practice.
8. It is recommended that the government support the Human Rights Commission to develop, in consultation with all interested parties, a further national plan of action, for the promotion and protection of human rights in New Zealand, for 2010 – 2015.

THE UPR PROCESS

9. In addition to *Human Rights in New Zealand Today* and the Action Plan, this submission draws on evidence from the Commission's mid-term review of progress on the priorities identified in the Action Plan; the annual review of race relations; the biennial Census on Women's Participation; findings from the Commission's Inquiries into accessible public land transport and into the discrimination experienced by transgender people; material from its complaints database; and the Commission's engagement with government and non-government agencies and organisations (see www.hrc.co.nz).
10. The Commission worked with the Ministry of Foreign Affairs and Trade to provide information about the UPR to NGOs, human rights practitioners and public sector agencies to encourage their participation in the process. Time constraints prevented a more extensive engagement with civil society.
11. The Commission recommends that **government establish a comprehensive UPR and Treaty body reporting process that includes engagement with civil society, greater integration across public agencies, and clearer accountability for coordinating and publicising reports and following up on their recommendations.**

Background and framework

A. SCOPE OF INTERNATIONAL OBLIGATIONS

12. New Zealand has a longstanding commitment to the development of international human rights standards. Most recently it contributed significantly to the negotiation of the Convention on the Rights of Persons with Disabilities, which it ratified without reservations or interpretations in October 2008. During the period under review it also ratified the Optional Protocol to the Convention against Torture and established national preventive mechanisms to give it effect (June 2007).
13. The Commission acknowledges recent work to review reservations to United Nations human rights treaties and to consider ratification of ILO Conventions 87 on Freedom of Association and Protection of the Right to Organise and 138 on the Minimum Age for Admission to Employment. The Commission recommends that the government should, as a priority, withdraw the remaining reservations to the Convention on the Rights of the Child.
14. New Zealand has a good record of ratifying human rights treaties, after checking for any inconsistencies in New Zealand law. It is less consistent in fully incorporating those human rights standards in domestic law and applying them in the development of legislation and policy, so that human rights and responsibilities are a reality in the lives of all New Zealanders. To better fulfil New Zealand's international human rights obligations, **the Commission recommends explicit government commitment to the full and effective incorporation of ratified international human rights standards in domestic legislation, in policy development and in public sector professional development and training.**

B. CONSTITUTIONAL AND LEGAL FRAMEWORK

15. The Treaty of Waitangi is New Zealand's founding document and has major significance for human rights and harmonious race relations in New Zealand. The three articles of the Treaty reflect fundamental human rights principles.
16. New Zealand's human rights protections are fragile, in the absence of a comprehensive constitutional document or entrenched legal provisions. Economic, social and cultural rights, at present mainly provided for through policy and practice, are particularly insecure.
17. **The Commission recommends a review of New Zealand's constitutional arrangements to give greater effect to the Treaty of Waitangi and human rights protections.**
18. Although the New Zealand government expressed disagreement with some of the articles in the United Nations Declaration on the Rights of Indigenous Peoples (2007), **the Commission recommends that the government should engage with Māori and the wider community to promote greater recognition and realisation of indigenous rights as set out in the Declaration on the Rights of Indigenous Peoples.**

Promotion & protection of human rights on the ground: implementation of the international human rights obligations

EQUALITY & NON-DISCRIMINATION

19. **Persons with Disabilities:** New Zealand has had legislation to address discrimination against people with disabilities since 1993. Data from the Commission's complaints service, among other sources, however, demonstrate that disabled people continue to face significant barriers to full participation in society.
20. The Commission recommends that in implementing the Convention on the Rights of Persons with Disabilities, the government prioritise the rights to education and employment (establishing targets for participation in the public sector) and commit to fully accessible public transport by 2020.
21. **Māori:** Although there have been improvements in key social and economic indicators for Māori,⁵ particularly in life expectancy and employment, inequalities persist, most graphically and despite some government initiatives, in imprisonment rates. Though forming just 12.5% of the population aged 15 and over, 42% of all criminal apprehensions involve a person identifying as Māori, as do 50% of all persons in prison⁶. To a large extent this can be attributed to the lower social and economic circumstances of Māori overall, but there is an element of bias in the justice system which leads to Māori being more likely to be apprehended and more severely punished than non-Māori⁷.
22. The Commission recommends that the government commits to specific targets and timelines for reducing the high levels of imprisonment and the disproportionate number of Māori in prison.
23. **Women:** New Zealand women have made significant progress in participation in many areas of the labour market, professional and public life, senior constitutional positions and in local and national politics. The Commission's Census report shows that levels of participation are not, however, matched by levels of representation and that New Zealand suffers from two enduring equity issues. The first is the very low percentage of women in corporate governance (8.65% in the NZSX top 100) and in senior management in the public and private sectors. The second is the systemic gender pay gap which disadvantages women and which is significantly worse for Māori and Pacific women.
24. The Commission recommends that the government establishes targets for improving representation of women in senior management in the public service, and sets a minimum target of halving the gender pay gap by 2012 and eliminating it by 2020.

Right to life, liberty & security of the person

- 25. Safety:** For the most part New Zealand's legislative framework and structures for protecting security of the person are robust and consistent with international human rights standards but some groups continue to experience threats to their safety.⁸
- 26.** In 2003 the UN Committee on Economic, Social and Cultural Rights (CESCR) recommended that New Zealand intensify measures to combat domestic violence and provide disaggregated statistical data on domestic violence.⁹ There have been a number of significant government initiatives such as community based interventions and a review of legislation to address family violence. The government has recently published a Victims' Charter. Reviews of services for victims of crime and on the issue of compensation for victims of crime are underway. While these initiatives are commendable, the UPR provides an opportunity for government to commit to a continued integrated focus on reducing violence and to action on the results of the reviews.
- 27.** The Commission recommends that interventions to reduce violence should be actively monitored, adjusted and extended on the basis of robust empirical evidence; and that victims' rights should be further strengthened, particularly in relation to participation in the criminal justice system and access to compensation.

Right to an adequate standard of living

- 28.** The government has introduced a range of measures to alleviate poverty. Some are already having a measurable impact. With deteriorating economic circumstances, however, increasing numbers of people are facing serious hardship, as reflected in the numbers having to seek assistance from foodbanks. Poverty is exacerbating existing disadvantage and ethnic disparities. New Zealand is in the bottom quarter of OECD countries for income inequality and 11% of New Zealanders live in poverty. Although inequality has fallen since 2000, reversing a long-term trend, it is still well above the OECD average.¹⁰ The effect on children is particularly invidious. Children in poor families are more likely to be sick and injured, they are at greater risk of abuse and neglect and their educational achievement and subsequent employment opportunities are affected.¹¹
- 29.** There is no universally accepted poverty indicator in New Zealand. The Ministry of Social Development relies on a measure which identifies poverty as 60% of the median household income after housing costs. Using this measure, the proportion of children living in poverty in families with one or more adults in employment has decreased from 45% to 32% since 2004 but the proportion of children living in poverty in families totally reliant on welfare benefits has increased to 52%.¹² In 2003 CESCR noted its concern at the lack of clear indicators to estimate the effectiveness of measures to combat poverty.¹³

30. The Commission recommends that New Zealand adopt a national plan to combat poverty with targets and a timeline and with clear indicators to assess its impact particularly on children, marginalised groups and Māori and Pacific people.¹⁴

Right to education

31. New Zealand recently revised the curriculum for New Zealand schools. The new curriculum, which will come into effect in 2010, explicitly refers to “respect for self, others and human rights” as values to be encouraged, modelled and explored in a school’s “philosophy, structures, curriculum, classrooms and relationships”.
32. New Zealand’s education system generally performs well, but inequalities in access, participation and achievement indicate that the right to education is not fully realised for all students – particularly among Māori and Pacific students, children with disabilities and students from poor families.¹⁵
33. **The Commission recommends that the government commit to fully realising the right to education for all students by removing remaining barriers to access, participation and achievement.**

Migrants, refugees and asylum seekers

34. Over the past four years New Zealand has made a practical commitment to honouring the human rights of migrants, refugees and – to a lesser extent – asylum seekers. Notable developments include the provision of refuge for some of the world’s most vulnerable refugees and the development of a national settlement strategy and settlement action plan.
35. In other respects immigration policy has become less human rights compliant. The practice of interdiction has meant fewer asylum seekers reach New Zealand and those that do are automatically detained. People refused residency can be detained for lengthy periods if they refuse to sign papers permitting them to be deported.
36. An Immigration Bill developed in 2007 has bipartisan support and is likely to become law. Despite a comprehensive consultation process which led to some changes, the Bill and accompanying regulations have some serious deficiencies including the special advocate mechanism that applies to people deemed to be a security risk; the lack of an explicit presumption in the Bill against detaining children and young people; the reluctance to consider granting residency to people with disabilities or their families if they are considered likely to be a burden on the health system (even if they meet all the other criteria) and a proscription against the Human Rights Commission becoming involved in matters relating to immigration.¹⁶

37. Similarly counter-terrorism legislation contains ambiguous and poorly defined terms that allow for a degree of surveillance amounting to unwarranted intrusion into the rights to freedom of association and expression.
38. The Commission recommends that the Government reviews immigration and counter-terrorism legislation to ensure it is fully compliant with human rights standards.

Capacity building & technical assistance

39. International developments have a significant impact on human rights and harmonious race relations in New Zealand. Human rights are vital to peace, security and sustainable development worldwide.
40. The Commission recommends that the government ensure that its foreign affairs and trade policies, as with its international development assistance policies, incorporate and promote international human rights standards and that it expand its support for the protection and promotion of human rights in the Asia-Pacific region.

ANNEX 1

Summary of key national priorities, initiatives and commitments

The key national priorities, initiatives and commitments that the New Zealand Human Rights Commission recommends to the government to improve human rights on the ground are:

INTERNATIONAL OBLIGATIONS

The Commission recommends that government establish a comprehensive UPR and Treaty body reporting process that includes engagement with civil society, greater integration across public agencies, and clearer accountability for coordinating and publicising reports and following up on their recommendations.

The Commission recommends that the government should, as a priority, withdraw the remaining reservations to the Convention on the Rights of the Child.

The Commission recommends explicit government commitment to the full and effective incorporation of ratified international human rights standards in domestic legislation, in policy development and in public sector professional development and training.

CONSTITUTIONAL & LEGAL FRAMEWORK

The Commission recommends a review of New Zealand's constitutional arrangements to give greater effect to the Treaty of Waitangi and human rights protections.

The Commission recommends that the government should engage with Māori and the wider community to promote greater recognition and realisation of indigenous rights as set out in the Declaration on the Rights of Indigenous Peoples.

PROMOTION & PROTECTION OF HUMAN RIGHTS ON THE GROUND

It is recommended that the government support the Human Rights Commission to develop, in consultation with all interested parties, a further national plan of action, for the promotion and protection of human rights in New Zealand, for 2010 – 2015.

Equality & Non-Discrimination

Persons with disabilities: The Commission recommends that in implementing the Convention on the Rights of Persons with Disabilities, the government prioritise the rights to education and employment (establishing targets for participation in the public sector) and commit to fully accessible public transport by 2020.

Māori: The Commission recommends that the government commits to specific targets and timelines for reducing the high levels of imprisonment and the disproportionate number of Māori in prison.

Women: The Commission recommends that the government establishes targets for improving representation of women in senior management in the public service, and sets a minimum target of halving the gender pay gap by 2012 and eliminating it by 2020.

Right to life, liberty & security of the person

The Commission recommends that interventions to reduce violence should be actively monitored, adjusted and extended on the basis of robust empirical evidence; and that victims' rights should be further strengthened, particularly in relation to participation in the criminal justice system and access to compensation.

Right to an adequate standard of living

The Commission recommends that New Zealand adopt a national plan to combat poverty with targets and a timeline and with clear indicators to assess its impact particularly on children, marginalised groups and Māori and Pacific people.

Right to education

The Commission recommends that the government commit to fully realising the right to education for all students by removing remaining barriers to access, participation and achievement.

Migrants, refugees and asylum seekers

The Commission recommends that the Government reviews immigration and counter-terrorism legislation to ensure it is fully compliant with human rights standards.

CAPACITY BUILDING & TECHNICAL ASSISTANCE

The Commission recommends that the government ensure that its foreign affairs and trade policies, as with its international development assistance policies, incorporate and promote international human rights standards and that it expand its support for the protection and promotion of human rights in the Asia-Pacific region.

Notes

1. Human Rights Commission, *Human Rights in New Zealand Today: Nga Tika Tangata O Te Motu (HRNZT)*, Wellington (2004) www.hrc.co.nz/report
2. Human Rights Commission, *The New Zealand Action Plan for Human Rights: Mana ki te Tangata*, Wellington (2005) www.hrc.co.nz/actionplan/0foreword.html
3. A summary of progress will be posted on the Commission's website on 10 December 2008.
4. www.hrc.co.nz/home/hrc/racerelations/tengirathenzdiversityactionprogramme/tengirathenzdiversityactionprogramme.php
5. *2008 the social report/ te puronga orange tangata 2008*, Ministry of Social Development (2008) Wellington at p.128
6. *Over-representation of Māori in the criminal justice system: An exploratory report*, Department of Corrections (2007) at 6
7. *Ibid.* at 39
8. HRNZT supra at fn 2 p.124
9. E/C.12/1/Add.88 at para 30
10. *Growing Unequal? Income Distribution and Policy in OECD Countries*, OECD (October 2008)
11. Fletcher M & Dwyer M, *A Fair Go for all Children: Actions to address child poverty in New Zealand. A Report for the Children's Commissioner* (2008)
12. <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/monitoring/household-incomes/index/html>
13. Supra fn 11 at para 17
14. *Ibid* at para 32
15. Supra fn 16 at 53
16. Clause 350 Immigration Bill 2007 (replicating the present s.149D Immigration Act 1987).