

1. My name is Peter Hosking – I chair the Human Rights Foundation of Aotearoa New Zealand.
2. The HRF coordinated a group of 26 NGOS to develop an HRF Coalition Stakeholders Report. Our main issues are prioritised as below (an asterisk* indicates that a relevant recommendation was made to New Zealand in the 2014 UPR (2nd cycle)).

Scope of international obligations

3. It is not accurate to claim, as New Zealand does, that existing domestic legislation is adequate to protect all human rights without ratification of certain treaties. For example, amendments to labour legislation four years ago further weakened the right to collective bargaining. While we acknowledge that the new administration intends to repeal this legislation, the original Bill would have come under more robust scrutiny had ILO Convention 87 been ratified. In the 2014 UPR (2nd cycle), New Zealand accepted the three recommendations to consider ratifying the CPED, as it did to a similar recommendation in the 2009 UPR (1st cycle), but has not done so.

Recommendations:

- Ratify the CRMWF*, CPED*, and the core ILO Conventions*
- Ratify the OP-ICESCR* and the OP-CRC*
- Make the optional declaration in Article 14 ICERD*

New Zealand constitutional legislative framework

Economic, social and cultural rights and some civil and political rights omitted from the NZBORA

4. New Zealand has failed to implement previous UPR and Treaty Body recommendations (as recently as April 2018 in the case of the CESCR) to strengthen the NZ Bill of Rights Act 1990.
5. New Zealand has argued, for example, that ESC rights are already protected by individual statutes. However, there are major advantages in a statement of commitment to ESC rights as being on a par with civil and political rights and equally justiciable, particularly in the light of the new Government's stated reforms in the area of ESC rights

– it will have the added advantage of providing a single framework for the Government’s reforms, based on international human rights law which New Zealand has accepted as legally binding.

Recommendations:

- Incorporate into NZBORA: ESC rights; a right to privacy; the right to a remedy for NZBORA breaches, including by the judiciary; and the right to a sustainable and healthy environment.*
- Amend the NZBORA so that it over-rides ordinary statutes*
- Procedurally entrench the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993*

The Status of the Treaty of Waitangi 1840

6. At the 2014 UPR (2nd Cycle) New Zealand received several recommendations to strengthen the constitutional status of the Treaty of Waitangi, and address Maori concerns regarding the Treaty settlement process. However, the former Government shelved the similar recommendations of the Constitutional Review. As recommended by CERD and the CESCR, steps must be taken - in partnership with representative Maori institutions - to debate and implement the Review and the proposals in the Matike Mai Aotearoa report regarding the role of the Treaty in the constitutional arrangements.

Recommendation:

- Review and where appropriate implement the recommendations of the Constitutional Review and provide for appropriate constitutional or legislative recognition of the Treaty of Waitangi/Te Tiriti o Waitangi.*

Institutional and human rights infrastructure and policy measures

Appointment of Human Rights Commissioners

7. Human Rights Commissioners are currently appointed entirely by the Executive, contrary to the Paris Principles (1991). At its 2014 UPR (2nd cycle), New Zealand received a recommendation (Ukraine) to “Consider participation of the Parliament in a human rights commissioner’s appointment process”. The Government of the day did not accept the recommendation. However, for recent appointments the new Minister responsible consulted the Parliamentary opposition. Nevertheless, the process requires formalising by involving the Human Rights Select Committee recommended below, or as recommended by a recent Review of the NZHRC by a Judge: “consideration be given to

whether the Commissioners of the HRC should be officers of Parliament, similar to the Ombudsman, Auditor-General and Office of the Parliamentary Commissioner for the Environment”.

8. Further, although New Zealand has a longstanding commitment to the development of international human rights standards, those international standards are generally not given adequate consideration in public policy and legislative decision making.
9. New Zealand has to date ignored the recommendation at the 2014 UPR (2nd cycle) and from several treaty bodies to establish a Parliamentary Human Rights Select Committee.
10. The HRC has prepared a so-called Human Rights National Plan of Action, although in reality it is simply a monitoring mechanism. Like the previous NHRAP prepared by the HRC, it has not been adopted by the Government and is not, therefore, a *national* Plan.

Recommendations:

- Establish a Human Rights Commissioner appointment process that provides for the involvement of Parliament, possibly as one responsibility of a Parliamentary Select Committee on Human Rights.*
- Establish a Parliamentary Select Committee for Human Rights.*
- In cooperation with civil society, establish mechanisms, including a National Human Rights Action Plan developed and funded by the Government (rather than the Human Rights Commission), to independently monitor, against robust human rights indicators, the government’s implementation of ratified human rights treaties and UPR recommendations

Administration of justice, including impunity, and the rule of law

Prisoners’ Right to Vote

11. Legislation was passed in 2010 to prohibit any prisoners from voting in elections regardless of the seriousness of their offending or the length of their imprisonment. This is in breach of New Zealand’s obligations under the ICCPR and NZBORA and was passed despite the Attorney-General’s finding of inconsistency with NZBORA.

Recommendation:

- Amend the law to ensure that restrictions on prisoners’ right to vote are reasonable and proportionate, consistent with New Zealand’s international human rights obligations.

Rights of migrants, refugees and asylum seekers

12. The Immigration (Mass Arrivals) Amendment Act 2013 made radical changes in the name of “enhancing New Zealand's ability to deter people-smuggling to New Zealand” and to “enable the effective and efficient management of a mass arrival of illegal migrants”. The Act establishes a definition of ‘mass arrival group of 30 people’ and imposes upon this group mandatory detention, a restriction on judicial review and a limitation on family reunification rights, among other human rights breach of the UDHR and the Refugee Convention.

Recommendation:

- Repeal the Immigration (Mass Arrivals) Amendment Act 2013

Off-shore detention Centres

13. In February 2013, New Zealand made an arrangement with Australia by which New Zealand will resettle 150 of Australia's refugees per year). The 150 refugees will form part of the New Zealand UNHCR quota which is now being incrementally raised from 750 to 1500 by 2020, a step we support. However, the arrangement with Australia fails to meet New Zealand's international obligations under the 1951 Refugee Convention as it denies asylum seekers the right to claim protection in New Zealand and excludes them from New Zealand's justice system a related recommendation was made in the 2014 UPR (2nd cycle).

Recommendation:

- Renegotiate the 2013 Queenstown arrangement, stipulating clearly that New Zealand will not participate in Australia's offshore detention centres and wishes them closed.
- Reiterate New Zealand's offer to resettle at least 150 Australian refugees from Nauru and Manus Island
- Withdraw the annual offer to take 150 of Australia's refugees in perpetuity.

Equality and non-discrimination

Police pursuits

14. Deaths of drivers, passengers and innocent bystanders resulting from Police pursuits of fleeing drivers have reached epidemic proportions. In some Australian States, where such pursuits for traffic offences and stolen cars are banned, crashes, deaths and injuries are much lower. New Zealand police chase between 2000 and 2500 vehicles every year – three times as many as in Victoria, which has a population of a million more, and seven times as many as Queensland, with a roughly similar population.
15. A review of police pursuits is underway by the Independent Police Conduct Authority and the Police. However, the issue engages the right to life and civil society should also be involved, given the wide-ranging effect of such pursuits on the community.

| Recommendation |
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| <p>➤ Ensure that civil society be meaningfully included in the current review of Police pursuits by the Independent Police Conduct Authority and the NZ Police.</p> |

Domestic and Sexual Violence

16. Domestic and sexual violence remain a major impediment to women's equality in New Zealand, the first country to give women the right to vote (1893), New Zealand has the highest rate of domestic violence in the developed world. New Zealand is yet to formally recognise violence against women as a gross breach of women's and children's human rights and ensure that women and children have a right to safety and to be free from gender-based violence, coercive control, and exposure to domestic and sexual violence.
17. All political parties need to commit to a long-term collaboration to end gender-based violence against women and children regardless of which party/s is in power. An evidence-based approach with a well-trained and resourced workforce is required.

18. Policies to address these issues have often been ineffectual, counter-productive and not evidence-based, for example the practice of Family Court Judges and other Court professionals applying the internationally discredited concept of parental alienation which is jeopardising the safety of many women and children.

Recommendations:

➤ Develop, in collaboration with domestic and sexual violence service providers and users, an integrated system for domestic and sexual violence where all agencies and individuals directly or indirectly involved operate as one system to end gender-based violence against women and children.

Ensure policies and practice standards make it clear that non evidence-based concepts such as parental alienation must not be applied by the Family Court in cases of violence and abuse.

Undertake a Royal Commission of Inquiry into reported widespread systemic failures in the way the Family Court is responding to cases of violence and abuse.

Invite the Special Rapporteurs on Violence against Women and Child Protection to conduct a country visit to New Zealand

Consultation

19. Finally, we note that the State under Review is expected to undertake “broad consultation process at the national level with all relevant stakeholders.” However, New Zealand’s draft National Report was released with the stipulation that comments were limited to 500 words – a ridiculously short word length that can only indicate that the State has no intention of engaging in genuine consultation.

Recommendation

➤ That New Zealand meet the expectation of relevant UN HRC resolutions and undertake broad and meaningful consultations over UPR National Reports.

Our submissions are available at www.nzupr.org