



Incorporating Race Relations

An Introduction to Developing a National Plan of Action for Human Rights in New Zealand

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AN INTRODUCTION TO DEVELOPING A NATIONAL PLAN OF ACTION FOR HUMAN RIGHTS IN NEW ZEALAND

This paper is designed to outline what a National Plan of Action is and what it sets out to achieve, and to provide a framework of issues that can be used to stimulate discussion in the course of consultation.

The Origin of National Plans of Action

The concept of National Plans of Action originated in 1993 at the Vienna Conference on Human Rights. Conference participants agreed that as no country could claim a perfect human rights record, each country should identify areas where they did not measure up and draw up a plan of action identifying ways to improve the situation.

The United Nations subsequently described the purpose of National Plans of Action as being to:¹

- Establish or strengthen national and local human rights institutions and organisations
- Initiate steps towards national programmes for the promotion and protection of human rights
- Prevent human rights violations that result in human, social, cultural, environmental and economic costs
- Identify those people in society who are presently deprived of their full human rights and ensure that effective steps are taken to redress their situation
- Enable a comprehensive response to rapid social and economic changes that might otherwise result in chaos and dislocation
- Promote diversity of sources, approaches, methodologies and institutions in the field of human rights education
- Enhance opportunities for cooperation in human rights education activities among government agencies, non-governmental organisations, professional groups and other institutions of civil society
- Emphasise the role of human rights in sustainable national development
- Help Governments meet their prior commitments to human rights under the international instruments and programmes.

National Plans of Action establish goals for Governments. However, there must also be a commitment by States to make the goals a reality. In New Zealand, this commitment to mainstreaming human rights and the development of a National Plan of Action is reflected in the Human Rights Amendment Act 2001.²

¹ UN General Assembly A/52/469/Add.1: 20/10/97

² Section 5(2)(m)

What are human rights?

Before considering what New Zealand can do to improve its human rights situation, it is necessary to define what is meant by human rights.

The Universal Declaration of Human Rights, which is based on the idea that human rights are universal, indivisible and interdependent, provides a starting point. Article 1 states that:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

The Declaration then goes on to list a collection of civil, political, social, economic and cultural rights. When the Human Rights Commission refers to human rights, it means this full range of rights, not just civil and political rights or the right to freedom from discrimination. However, the Declaration has also been described as the *basic* condition for global diversity,³ indicating that there is no one single model for implementing human rights.

New Zealand's approach to human rights is reflected in a number of ways. International human rights standards have been incorporated into laws such as the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. The judiciary has relied on international human rights jurisprudence to interpret domestic law. Institutions such as the Office of the Ombudsman and the Office of the Commissioner for Children recognise international human rights standards in carrying out their roles.

Parliament's understanding of what is meant by human rights is found in the long title to the Human Rights Act 1993. This clearly directs the Commission to better protect human rights ... *in accordance with the United Nations Covenants and Conventions on Human Rights*. The recent Amendment to the Act clarifies that the Treaty of Waitangi, too, has human rights dimensions.

What is a national plan of action?

- A national plan of action is a plan drawn up by a country identifying steps to improve the promotion and protection of human rights.
- To be successful, it is necessary to identify where the country is performing well and where it could improve.
- The plan will be developed consultatively and will be informative as well as ensuring that the concerns of specific groups are not overlooked.

The process of identifying a framework for the consultations

National Plans of Action do not apply simply to the actions of government agencies. They must be developed in consultation with the community. This allows a dialogue to take place about the relative importance of different rights, ensuring that a variety of perspectives and options are included in the final plan. More information about

³ Kofi Annan, Secretary General of the United Nations on 50th anniversary of the UNDHR

how the Commission proposes developing New Zealand's National Plan of Action can be found in a fact sheet available from the Human Rights Commission, or on the web at <u>www.hrc.co.nz</u>.

Proposed structure for the NPA:

1) <u>Project Team</u>

An NPA Project Team has been established within the Commission to co-ordinate the project. The Human Rights Commission will oversee the project.

2) <u>National Advisory Council</u>

It is proposed that a National Advisory Council (NAC) be established which is representative of the Government, public sector, NGOs and civil society, with primary responsibility for advising on the development of the NPA with executive leadership from the Commission.

3) <u>Sectoral Reference Groups</u>

Reference groups made up of 5-6 representatives drawn from the private, public and community sectors would work with the Director of Research to develop a discussion paper canvassing all issues and outlining current situation and areas of priority concern.

Both the NAC and the Reference Groups would help the Project Team to develop and carry out and extensive and comprehensive consultation process (see below).

Proposed process:

The proposed process at this stage includes the development of discussion papers and broad public consultation, drafting a plan, implementing the plan and monitoring and evaluating the project and the plan itself.

1) <u>Consultation</u>

Consultation will be undertaken in several stages using a wide variety of approaches in order to ensure the greatest accessibility to the widest number of interested individuals and groups. This will include regional consultation, working locally and regionally to identify and discuss local issues. The consultations will also need to reach population-based communities, including Maori, Pacific people, migrant, ethnic and rural communities, youth, older people, and people with disabilities.

2) <u>Drafting the NPA</u>

The NAC, with support from the HRC project team, will review the action plans developed after the consultations and develop a draft national plan of action. This will then be returned for consultation. The NAC, with support from the HRC project team, will then compile the feedback and develop a NPA which is practical in orientation, sets achievable targets and proposes wide ranging, practical, realistic activities to reach those targets and improve the promotion and protection of human rights in New Zealand.

3) <u>Implementation of the NPA</u>

The NPA will need to be adopted by Cabinet, and preferably endorsed by Parliament. Implementation of the NPA will require mobilisation of resources and allocation of responsibilities and duties among implementing partners (particularly key implementing public sector agencies). The plan will need to be incorporated into their policies and clear time frames will need to be established.

4) <u>Monitoring and Evaluation</u>

Ongoing monitoring and evaluation is pivotal to ensuring that the NPA is operative and relevant to the changing political and social environment. Some aspects include:

- Developing appropriate methods for monitoring and evaluation
- The development of research and analysis of emerging human rights problems due to implementation
- Recommendations for reviewing and making revisions as necessary

How human rights are realised in practice will reflect a particular country's commitment to human rights. Therefore the development of a National Plan of Action *start[s] from the actual situation ... and articulate[s] a comprehensive and pragmatic programme of activities aimed at progressively bringing about improvements.*⁴

While the consultation process will provide an indication of how well New Zealand is doing at present, there are other ways of pinpointing areas where a country's observance of human rights may be improved. These are outlined below.

• Experience from other countries

Experience from other countries suggests that the following issues are likely to be raised in national plans of action:

- i. Improving the country's ratification of international instruments, their implementation, and reporting on this under treaties and instruments;
- ii. International co-operation, including co-operation with appropriate regional organisations;
- iii. The country's legal and institutional framework;
- iv. Promoting National Human Rights Institutions;
- v. Human rights education and training;
- vi. Civil, political, economic, social and cultural rights, and the right to development;
- vii. The situation of vulnerable groups.
 - Comments on country performance by UN monitoring bodies

⁴ OHCHR: Handbook on National Human Rights Plans of Action, 2000

The United Nations Declaration on Human Rights is essentially a statement of principles that are refined in a variety of conventions, protocols and declarations.

When a country signs one of these international instruments, it undertakes to implement the provisions domestically.⁵ UN monitoring bodies scrutinise the country's performance through regular reporting mechanisms, to determine how well it does this. The reports of these bodies indicate where a country is performing well, and where its performance could be improved.

In New Zealand's case, recent comments from the Committees which monitor performance under the Covenant on the Elimination on All Forms of Racial Discrimination (CERD) and the Covenant on Civil and Political Rights (ICCPR) commended New Zealand on passing relevant legislation; on the Judiciary's awareness and use of the international instruments; and on the progress made in addressing the needs of disadvantaged groups.

They were less positive about New Zealand's treatment of refugees and asylum seekers; the continued disadvantage of Maori, including the low representation of Maori women in key sectors, the level of domestic violence experienced by Maori women, and the levels of imprisonment of Maori and Pacific people; the restrictive approach to affirmative action programmes resulting from case law decisions; and the lack of information about the enjoyment of social, economic and cultural rights by groups other than Maori.

• Systemic issues identified through complaints systems administered by rights based institutions

National Human Rights Institutions, such as the New Zealand Human Rights Commission, administer a complaints jurisdiction and have the power to receive representations relating to human rights issues. This means that they can identify systemic issues through direct contact with the public. In New Zealand the Commission can also draw on the experience of a variety of other rights based institutions, such as the Offices of the Privacy Commissioner, the Health and Disability Commissioner and the Commissioner for Children.

• Consistency 2000

In 1995, the Human Rights Commission initiated a project called Consistency 2000. The purpose of the project was to identify human rights inconsistencies in legislation and in Government policies and practices. As a result of a statutory amendment, the project was eventually replaced by Consistency 2001, in which Government departments, rather than the Commission, undertook to review their policies and practices and identify human rights inconsistencies in the legislation that they administered. Both projects provide some indication of where further work is necessary.

⁵ Schedule 1 lists the instruments that New Zealand has ratified

FRAMEWORK FOR CONSULTATION

From all these sources, the Commission has identified a number of themes and has presented them to public meetings in three centres. The following framework reflects both the original topics and a range of specific issues that emerged from these meetings.

Civil and Political Rights

The New Zealand Bill of Rights Act 1990 reflects New Zealand's commitment to the principles in the International Covenant on Civil and Political Rights. It complements aspects of the Human Rights Act 1993 and the Human Rights Amendment Act 2001. However, it is important to stress that rights are not absolute. Section 5 of the Bill of Rights, for example, explicitly states that the rights and freedoms in that Act may be subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Certain issues around a number of civil and political rights have been suggested for consideration in the course of developing the NPA. Some examples of these are outlined below.

• Freedom of expression

The issue of freedom of expression raises fundamental questions about the rule of law in a pluralistic society. In New Zealand, challenges to freedom of expression most frequently arise in relation to race, pornography and, more recently, religion. Significant issues have also surfaced in the use and regulation of the internet, censorship, and the scope of the *Films, Videos and Publications Classification Act 1993*.

Right to security of the person

The right to security of the person relates to physical integrity and is often associated with rights such as freedom from arbitrary detention. However, it is also relevant in a variety of other contexts, ranging from the way in which the State keeps its citizens safe from the threat of terrorism to domestic violence.

• Right to justice

Access to justice, the rights of victims in the judicial process, and the granting of legal aid continue to be issues. The Law Commission, which is currently working on a review of the courts, has said that evidence suggests the courts are seen by many as "captured by an elitist minority, operating in an environment that is alien and excluding, and where the possibility of obtaining redress or assistance is beyond reach".⁶

Rights of minorities

⁶ Rural Bulletin, Sept 2002

The rights of minorities include not only the right to be free from discrimination, but also the right to be protected from assimilation.⁷ To protect the language, customs and religion of minorities, extra measures may be required, including the provision of education in languages other than English or Maori.

Right to refuse medical treatment

While the *Mental Health (Compulsory Treatment and Assessment) Act 1992* makes it mandatory for some people with mental illness to accept treatment against their will, the element of compulsion has been questioned as unduly discriminatory, principally because it compounds the stigma that is often the lot of people with mental illness.

There are also certain groups of people who, for a variety of reasons, have reservations about medical treatment. This has led to considerable media attention, particularly where parents have sought alternative health care for their children, or have refused blood transfusions, or where the issue of euthanasia has been raised.

Genetic testing and related ethical issues are becoming controversial, particularly where there are privacy implications.

• Rights relating to imprisonment

Human rights standards apply as equally to prisoners as they do to other citizens. Some, such as the right not to be subjected to cruel and unusual treatment and punishment, and the right to security of the person, have more relevance and take on greater significance in the prison context. This makes it important that prisoners have access to an adequate complaints system, particularly where prisons have been privatised, or where inmates do not speak English or have certain requirements as a result of their religious beliefs.

Social Economic and Cultural Rights

The following social, economic and cultural issues are amongst those that have been suggested for consideration in the development of the National Plan of Action.

- *The right to an adequate standard of living,* including access to healthy, affordable housing (which is a precondition for the realisation of so many other rights). Examples include the provision of community housing on non-discriminatory terms for vulnerable people such as people with mental illness, and appropriate housing for those with disabilities.
- *The right to health* is much more than simply freedom from illness or disease. It involves the creation of an environment that promotes better health overall, while at the same time empowering individuals to make decisions about their health. A human rights framework provides a useful guide for evaluating competing claims on finite resources in the area of public health initiatives. More specific issues include the effect of rationing and funding of treatment, genetics and bioethics, and access to health insurance.

⁷ Human Rights Quarterly, Vol.21 (1999): *Cultural Genocide*, 1013

- *The right to work.* Specific issues include the difficulties apparently faced by certain groups in obtaining work, including older people and people with disabilities, and also the lack of qualifications among certain groups of school leavers, affordable early childhood education and care, and pay equity. The employment barriers faced by new migrants have also been raised as issues for consideration.
- *The right to education,* including the right to adequate, accessible, affordable and appropriate education. Some examples of specific issues include the access of disabled people to education; the differential impact of student loans; suspensions and exclusions (including de facto suspension); and access to good quality, affordable and culturally appropriate early childhood education and care.

The National Plan of Action may also examine the desirability of introducing legislative measures that specifically recognise economic, social and cultural rights, and of developing mechanisms to monitor the observance of economic, cultural and social rights, such as evaluation programmes that measure human rights outcomes.

Specific Groups

National Plans of Action tend to focus on broad national goals. Inevitably, however, there are some groups who, for a variety of reasons, require special attention and the development of special measures to protect and promote their rights.

The following list is not exhaustive and is not in order of priority (the list is in alphabetical order):

- Children
- Maori
- Older people
- Pacific peoples
- People with experience of mental illness
- People with disabilities
- Refugees and migrants
- Trans-gendered, gay, lesbian, and bisexual people

Race Relations

A key recommendation from the World Conference Against Racism, held in Durban in 2001, was that countries should develop specific Plans of Action identifying ways of combating racism, racial discrimination, xenophobia and related forms of intolerance more effectively at a national level.

This recommendation should be respected in developing New Zealand's National Plan of Action, since it would:

Reinforce New Zealand's commitment to the outcomes of the Durban conference;

- Reassure the different ethnic communities who felt that their concerns might be submerged in broader human rights issues, following the merger of the Office of the Race Relations Commissioner with the Human Rights Commission; and
- Highlight issues where the CERD Committee considered New Zealand's performance could be improved, for example, the scope of affirmative action programmes and the implementation of provisions relating to preventing the incitement of racial hatred.

Sustainable Development

Human rights are increasingly being seen as fundamental to economic progress. The links between human rights and sustainable development were reaffirmed at the United Nations Millennium Summit in 2000. Integrating human rights and sustainable development requires bringing together the standards and principles of human rights and the plans, policies and processes of economic and social development. Sustainable development based on human rights principles will ensure that social need is taken into account and the rights of future generations are protected.

The Treaty and Human Rights

One of the new statutory functions of the Human Rights Commission is to promote by research, education and discussion, a better understanding of the human rights dimensions of the Treaty of Waitangi and their relationship with domestic and international human rights.⁸

The Commission plans to do this by:

- Issuing a discussion paper to promote public dialogue on the Treaty and its relationship to domestic and international human rights law, including how the Treaty relates to New Zealand's position on human rights generally, and how human rights thinking can inform debate about the content of the Treaty itself;
- Facilitating public dialogue around the paper and collating the resulting information;
- Using this information to inform public knowledge and perceptions about the human rights dimensions of the Treaty;
- Incorporating the information into the National Plan of Action.

International Obligations and Domestic Legislation

International instruments establish certain universally agreed standards. On ratifying an international agreement, signatories are required to translate those standards into local legislation. While New Zealand has a relatively good record of ratifying

⁸ Section 5(2)(d)

international instruments,⁹it could improve how it implements them locally. This could include considering:

- the present status and content of the New Zealand Bill of Rights Act 1990;
- whether complaints about rights in the Bill of Rights (other than the right to freedom from discrimination) should be accessible through the Human Rights Commission's complaints system;
- extension of the grounds on which it is unlawful to discriminate, possibly to include gender, trade union membership, language, human genetic information and body size;
- whether the provisions relating to exciting racial hatred should apply to other grounds, such as religion and sexual orientation;
- alignment of the two standards relating to affirmative action in Part II and Part IA of the *Human Rights Act 1993*.

The Commission has the power *to report to the Prime Minister on the desirability of New Zealand becoming bound by any international instruments on human rights.*¹⁰ The Commission has begun work to assess the desirability or otherwise of New Zealand ratifying the following instruments:

- United Nations Convention on the Protection of the Rights of All Migrant Workers & their Families;
- ILO Convention 143 Migrant workers (Supplementary Provisions);
- Convention on the Reduction of Statelessness;
- ILO Convention 87 Freedom of Association & Protection of the Right to Organise;
- ILO Convention 98 Right to Organise & Collective Bargaining;
- ILO Convention 169 Indigenous & Tribal Peoples in Independent Countries

The UN General Assembly has also established an Ad Hoc Committee to consider proposals for the development of a Convention on the Rights of People with Disabilities. The National Plan of Action provides an opportunity to promote discussion on contributions to the development of the Convention.

This paper is not intended to be an exhaustive summary of what might be addressed during the consultation process. The process is designed to give the Commission an opportunity to hear what New Zealanders think of the human rights situation and to enable them to raise any matters that may warrant attention.

⁹See Appendix 1 for a list of the agreements that New Zealand has ratified

¹⁰ Section 5(2)(k)(ii)

New Zealand's Ratification Record

Convention	Ratification date	Status
C2 Unemployment Convention, 1919	29-Mar-1938	ratified
C8 Unemployment Indemnity (Shipwreck) Convention, 1920	11-Jan-1980	ratified
C9 Placing of Seamen Convention, 1920	29-Mar-1938	ratified
C10 Minimum Age (Agriculture) Convention, 1921	8-Jul-1947	ratified
C11 Right of Association (Agriculture) Convention, 1921	29-Mar-1938	ratified
C12 Workmen's Compensation (Agriculture) Convention, 1921	29-Mar-1938	ratified
C14 Weekly Rest (Industry) Convention, 1921	29-Mar-1938	ratified
C15 Minimum Age (Trimmers and Stokers) Convention, 1921	26-Nov-1959	ratified
C16 Medical Examination of Young Persons (Sea) Convention, 1921	5-Dec-1961	ratified
C17 Workmen's Compensation (Accidents) Convention, 1925	29-Mar-1938	ratified
C22 Seamen's Articles of Agreement Convention, 1926	29-Mar-1938	ratified
C23 Repatriation of Seamen Convention, 1926	11-Jan-1980	ratified
C26 Minimum Wage-Fixing Machinery Convention, 1928	29-Mar-1938	ratified
C29 Forced Labour Convention, 1930	29-Mar-1938	ratified
C32 Protection against Accidents (Dockers) Convention (Revised), 1932	29-Mar-1938	ratified
C42 Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934	29-Mar-1938	ratified
C44 Unemployment Provision Convention, 1934	29-Mar-1938	ratified
C47 Forty-Hour Week Convention, 1935	29-Mar-1938	ratified
C50 Recruiting of Indigenous Workers Convention, 1936	8-Jul-1947	ratified
C52 Holidays with Pay Convention, 1936	10-Nov-1950	ratified
C53 Officers' Competency Certificates Convention, 1936	29-Mar-1938	ratified
C58 Minimum Age (Sea) Convention (Revised), 1936	7-Jun-1946	ratified

C59 Minimum Age (Industry) Convention		
(Revised), 1937	8-Jul-1947	ratified
C64 Contracts of Employment (Indigenous Workers) Convention, 1939	8-Jul-1947	ratified
C65 Penal Sanctions (Indigenous Workers) Convention, 1939	8-Jul-1947	ratified
C68 Food and Catering (Ships' Crews) Convention, 1946	31-May-1977	ratified
C69 Certification of Ships' Cooks Convention 1946	11-Jan-1980	ratified
C74 Certification of Able Seamen Convention, 1946	5-Dec-1961	ratified
C80 Final Articles Revision Convention, 1946	8-Jul-1947	ratified
C81 Labour Inspection Convention, 1947	30-Nov-1959	ratified
C82 Social Policy (Non-Metropolitan Territories) Convention, 1947	19-Jun-1954	ratified
C84 Right of Association (Non-Metropolitan Territories) Convention, 1947	1-Jul-1952	ratified
C88 Employment Service Convention, 1948	3-Dec-1949	ratified
C92 Accommodation of Crews Convention (Revised), 1949	31-May-1977	ratified
C97 Migration for Employment Convention (Revised), 1949	10-Nov-1950	ratified
C99 Minimum Wage Fixing Machinery (Agriculture) Convention, 1951	1-Jul-1952	ratified
C100 Equal Remuneration Convention, 1951	3-Jun-1983	ratified
C101 Holidays with Pay (Agriculture) Convention, 1952	24-Jul-1953	ratified
C104 Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955	29-Jun-1956	ratified
C105 Abolition of Forced Labour Convention, 1957	14-Jun-1968	ratified
C111 Discrimination (Employment and Occupation) Convention, 1958	3-Jun-1983	ratified
C116 Final Articles Revision Convention, 1961	1-Mar-1963	ratified
C122 Employment Policy Convention, 1964	15-Jul-1965	ratified
C133 Accommodation of Crews (Supplementary Provisions) Convention, 1970	31-May-1977	ratified

C134 Prevention of Accidents (Seafarers)		
Convention, 1970	31-May-1977	ratified
C144 Tripartite Consultation (International Labour Standards) Convention, 1976	5-Jun-1987	ratified
C145 Continuity of Employment (Seafarers) Convention, 1976	11-Jan-1980	ratified
C160 Labour Statistics Convention, 1985	6-Nov-2001	ratified
C182 Worst Forms of Child Labour Conventions, 1999	14-Jun-2001	ratified
CAT-Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	10-Dec-1989	ratified
CCPR-International Covenant on Civil and Political Rights	28-Dec-1978	ratified
CCPR-OP1-Optional Protocol to the International Covenant on Civil and Political Rights	26-May-1989	acceeded
CCPR-OP2-DP-Second Optional Protocol to the International Covenant on Civil and Political Rights	22-Feb-1990	ratified
CEDAW-Convention on the Elimination of All Forms of Discrimination against Women	10-Jan-1985	ratified
CEDAW-OP-Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	7-Sep-2000	ratified
CERD-International Convention on the Elimination of All Forms of Racial Discrimination	22-Nov-1972	ratified
CESCR-International Covenant on Economic, Social and Cultural Rights	28-Dec-1978	ratified
CRC-Convention on the Rights of the Child	6-Apr-1993	ratified
CRC-OP-AC-Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	12-Nov-2001	ratified
CRC-OP-SC-Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	7-Sep-2000	signed only
NWC-International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	n/a	no action

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