



**NZ
Human
Rights.**

Te Kāhui Tika Tangata
Human Rights Commission

Reflections on the Report of the Royal Commission of Inquiry into the terrorist attacks on Christchurch Masjidain on 15th March 2019

Human rights of affected whānau, survivors and witnesses to accountability
and remedies in the aftermath of the Report





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The New Zealand Human Rights Commission was set up in 1977 and works under the Human Rights Act 1993. Our purpose is to promote and protect the human rights of all people in Aotearoa New Zealand. We work for a free, fair, safe and just New Zealand, where diversity is valued, and human dignity and rights are respected.

For more information, please visit our website: www.hrc.co.nz

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March 2021

قال رسول الله ﷺ: مثل المؤمنين في توادهم وتراحمهم وتعاطفهم
مثل الجسد إذا اشتكى منه عضو تداعى له سائر الجسد بالسهر والحمى.

*The similitude of believers in regard to mutual love, affection,
and fellow-feeling is that of one body; when
any limb of it aches, the whole body aches.*

The Prophet Mohammed PBUH



Tuhia ki te rangi
Tuhia ki te whenua
Tuhia ki te ngakau tangata
Ko te mea nui
Ko te aroha
Tihei Mauri Ora

Write it in the sky
Write it in the land
Write it in the heart of the people
The greatest thing is love
Behold there is life

Foreword

The terrorist attack on 15th March 2019 confronted Aotearoa New Zealand with some of the hardest questions any country could ever face.

Questions about our national identity - past, present and future.

About our values.

About the fabric of our society, public service, and governance.

The questions are made infinitely harder because they raise global issues of deep importance.

No person – and no country – is truly an island.

Aotearoa is an island state, but, in the modern world, it is not. In my opinion, overall, New Zealand's response to the terrorist attack has been commendable.

The public outpouring of aroha across all communities.

The local and national political leadership.

The empathic role of mana whenua and tangata whenua.

The extraordinary dignity, grace and strength of our Muslim communities.

The Royal Commission of Inquiry which grew in stature before our eyes.

The remarkable volume on social cohesion in the Inquiry's substantive report.

I am unaware of any other government in the world that has responded to a long and complex independent report by immediately dispatching Ministers to travel the length and breadth of the country to discuss it with communities.

If community engagement stops there, we have a very major problem.

But we are promised this ministerial outreach is one step in a long journey of meaningful community engagement.

There have been missteps and disappointments. For example, some features of the Royal Commission's report have caused enormous distress.

But the true test of the report will not be what is written in its pages, but in our collective response to the recommendations contained in it.

For its part, since 15th March 2019, the Human Rights Commission has tried to demonstrate solidarity with our Muslim brothers and sisters, engaged with the Royal Commission on multiple occasions, and repeatedly called for systemic change and greater social inclusion.

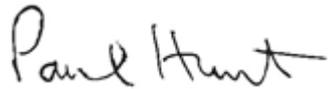
In line with our statutory responsibilities, we aim to do all we can to build on the Royal Commission's report and advance real change in Aotearoa, consistent with the country's national and international human rights promises and Te Tiriti o Waitangi.

Closely listening to communities, especially, but not only, our Muslim communities, remains crucial.

By their nature, human rights are challenging.

Sometimes they call for unwelcome questions and unsettling contributions, but always in the spirit of open, constructive, inclusive, respectful discussion.

This is the spirit in which the Human Rights Commission shares the following reflections.

A handwritten signature in black ink that reads "Paul Hunt". The signature is written in a cursive, flowing style.

Paul Hunt

Chief Human Rights Commissioner | Te Amokapua

New Zealand Human Rights Commission | Te Kahui Tika Tangata

Purpose of paper

In the weeks following release of the Report of the Royal Commission of Inquiry into the terrorist attacks on Christchurch Masjidain on 15 March 2019 (the Report), the Human Rights Commission (referred to hereafter as HRC) heard from members of the affected whānau and the wider Muslim community.¹

Among the things we have heard from the community is that the Report also leaves some important questions unanswered. Chief among these are questions of the Government's accountability to the affected whānau, survivors and witnesses.

This brief paper introduces a new frame for discussion of this fundamental issue, by providing a human rights perspective on the question of Government accountability, as well as the rights of the affected whānau, survivors and witnesses to remedies that appropriately and effectively address the human rights violations they have suffered.

We note that in June 2019, not long after the March 15 attacks, the United Nations General Assembly passed a resolution that recognised, among other things that:

terrorism has a detrimental effect on the full enjoyment of all human rights and fundamental freedoms, and impedes the full enjoyment of political, civil, economic, social and cultural rights victims of terrorism should be treated with compassion and respect for their dignity, and have their right to access justice and reparation fully respected.²

Many aspects of the Government's response to date are consistent with a human rights approach. The establishment of the Royal Commission itself, the Government's acceptance of the systemic reforms recommended in the Report and the Government's subsequent apology can all be seen as reflecting the Government's human rights duties.

On 12th March 2021, the Government also announced measures designed to implement the Royal Commission's recommendations³ regarding support services for the affected whānau, survivors and witnesses, including the establishment of a collective impact board to guide and advise on services support.⁴

While these steps should be rightly commended, in the HRC's view the Government's commitments do not stop there. The Government, in the aftermath of the Report, has a critical human rights duty to ensure the rights of the affected whānau, survivors and witnesses to reparation and access to justice are met.

¹ This paper has also been prepared in parallel to hui held around the country that have been organised by DPMC to gather community perspectives on the Government's response to the Report. This paper does not draw on the discussions held at the hui and is based on the Human Rights Commission's own engagements and reflections.

² A/RES/73/305, Enhancement of international cooperation to assist victims of terrorism, 2019, p2.

³ Recommendations 25 and 26.

⁴ Media Statement, Hon Andrew Little, Hon Priyanca Radhakrishnan, Next steps in Government's Ongoing Work with March 15 survivors, 12th March 2021.

Te Tiriti/tangata whenua perspectives on the human right to a remedy

In the time immediately following the terrorist attacks, tangata whenua rallied around the community to provide manaakitanga for those most affected.

HRC considers that tikanga Māori has an important place in the provision of ongoing support for the community. Tikanga Māori are the first laws of Aotearoa, providing deeply embedded systems and practices to regulate behaviour.

Grounded in relationships between people, the natural environment and the spiritual world, key concepts and practices – such as utu, muru and ea – deal with maintaining harmonious relationships, reciprocity and restoring balance when these are disrupted.

This emphasis on relationships – whakapapa and whanaungatanga – also requires collective involvement in the rebalancing process, recognising that not only individuals, but whānau, hapū and iwi are affected by transgressions, and must be involved in determining the nature of reparations, and achieving restoration of mana.

A Te Tiriti o Waitangi based, collaborative approach that draws on te Ao Māori laws and practices may give better recognition to the collective needs and involvement of the affected whānau, survivors and witnesses of these attacks.

Such an approach may be better able to acknowledge and address issues of collective accountability and ensure responses uphold and restore the mana of those affected.

A Tiriti based approach will require close and careful discussion with affected whānau, mana whenua and the affected communities.

This could inform, enhance and work in tandem with an approach based on human rights. In essence, it would be a collaborative process, grounded in Te Tiriti, and informed by national and international human rights law.

What we have heard from Muslim communities

Our community engagements continue. In summary, so far⁵, they have informed us:

On monitoring the outcomes from the Report

External monitoring of the implementation of the Report is crucial. The HRC should play an independent role in this regard.

There needs to be clarity on the role of restorative justice in providing accountability from government to the affected whānau, survivors and witnesses.

That consultation and ongoing engagement by government with the affected whānau, survivors and witnesses should take place on a more equal footing.

That the Government's priorities need to be discussed and timeframes for implementation disclosed as soon as practically possible.

On the outcomes themselves

The final suppression orders and the closed nature of the Royal Commission Inquiry process have meant that the rationale for its findings are difficult for the communities to fully understand.

Related to this, the finding of no fault underplays the systemic biases that were identified in the report. It also gives the impression that there is insufficient government accountability.

While the Government's apology is important, on its own it does not adequately address its ongoing responsibilities to the affected whānau, survivors and witness and the wider Muslim community.

On government support

In the period since the Report government support has felt like it has been dwindling or downgraded, rather than increasing. There is a lack of awareness among government agencies of the level of systemic prejudice that continues to exist.

On the issue of social cohesion

The current government model is based largely on a perception of the Muslim communities as wholly immigrant – however over a third of Muslims in New Zealand were born here.

The support and participation of tangata whenua, te Ao Māori perspectives and the Tiriti o Waitangi framework are essential, particularly given shared experiences of discrimination and institutional racism.

Addressing and eliminating discrimination both at grassroots and systemic levels of society is therefore essential.

⁵ As at 10 March 2021.

Accountability and the human right to a remedy

The Government's apology and acknowledgement

In her public statement of 8 December 2020, following release of the Report, the Prime Minister Hon. Jacinda Ardern issued an apology on behalf of the Government.

The apology was carefully worded. She apologised for “the disproportionate scrutiny” of Muslim communities by the intelligence and security agencies before the 15th March terror attacks. Her apology also referred to the “inappropriate concentration of resources” that “was not based on an informed assessment of the threats of terrorism associated with other ideologies.”

The Prime Minister also stated “that while the Royal Commission made no findings that these issues would have stopped the attack, these were failings none the less.”

She went on to state that an apology is hollow without action and committed to implementation of the recommendations of the report.

Of critical importance will be reform of the intelligence and security services to eliminate bias and ensure that white supremacist and extremist activity (including online and on social media) is monitored and preventative action taken as needed. The development of laws and policy that promote and enhance social cohesion and respond to instances of hatred and intolerance will be equally critical.

What does this acknowledgment mean for the affected whānau, survivors and witnesses in human rights terms?

The apology signalled that the Government has acknowledged that it is accountable to the affected families. It also recognised, implicitly, that systemic discrimination existed within the intelligence and security agencies prior to the 15th March attacks.

This, in itself, constitutes a human rights breach against not just the affected whānau, survivors and witnesses but also the wider Muslim community in New Zealand. It also indicates the importance of ensuring that the wider Muslim community has ongoing active involvement in the Government's implementation of the Report's recommendations to ensure their collective views and needs are reflected in outcomes.

The affected whānau, survivors and witnesses suffered an extreme violation of their human rights as a result of the terrorist attack, specifically in that the state failed to protect the basic right to life.

Binding international human rights law provides that States have duties to provide effective remedies when human rights are violated. This is set out in Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR).

The New Zealand Government has ratified the ICCPR and is bound by it. It thereby has a duty to provide the affected whānau, survivors and witnesses with an effective remedy to address the grave human rights violations they have experienced.

The right to a remedy for victims of terrorist attacks

The United Nations (UN) has recognised that States have a duty to ensure that victims of crimes of terrorism are able to enjoy rights to a remedy.⁶

These rights include:

Equal and effective access to justice including:

- information about available remedies
- provision of proper assistance to victims seeking access to justice, including all appropriate legal means
- development of procedures to allow groups of victims to present claims for reparation and to receive reparation, as appropriate.

Adequate, effective and prompt reparation for harm suffered including:

- access to relevant information concerning reparation processes
- establishing a national programme for reparation and assistance to victims
- restitution – which means restoring the victims, so far as possible, to their original situation, and includes restoration of employment
- compensation – this is not just for physical and mental harm suffered, but also compensation for material damage and lost opportunities (such as loss of earnings or business), and the costs of legal or expert assistance.

Rehabilitation, which includes not only medical and psychological care, but also legal and social services as well.

Satisfaction, which includes the processes, judicial and investigative, aimed at stopping violations from occurring in future, as well as official statements of apology, acknowledgement of facts and responsibility.

A guarantee of non-repetition, which includes reviewing and reforming laws, as well as promoting mechanisms for preventing, monitoring and resolving social injustice and conflicts.

Access to relevant information concerning violations and reparation mechanisms, which includes a right to seek and obtain information about the causes and conditions that led to the violation of rights, so that the victims may learn the truth.

How does the Report and the Government's response reflect these human rights duties?

Many aspects of the Report's recommendations and the Government's response reflect these duties and contain aspects of a human rights-based response.

For example, the recommendations aimed at social cohesion and reform of hate speech laws, the many recommendations aimed at reforming the intelligence and security system and the recommendations for reform of firearms licencing can be seen as part of the Government's human rights duty to do everything possible to ensure that such an event never occurs again.⁷

⁶ A/RES/60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2006, Chapter VI, at [11].

⁷ We note further the [Christchurch Call initiative](#) of the New Zealand and French governments to eliminate online terrorist and extremist content that was established in the wake of the attacks; and the [Countering Violent Extremism Online work](#) and subsequent [legislative amendments](#) developed by the Department of Internal Affairs that followed.

Similarly, the Royal Commission of Inquiry itself and the Government's subsequent apology also fit within this framework. We also note the Government's announcement of a Royal Commission of Inquiry Ethnic and Faith Community Engagement Response Fund to "help minority ethnic and faith communities engage with Government to inform the Government's response to the Royal Commission."⁸

These responses are largely high-level and systemic. They are designed to remedy the holes in New Zealand's social, legal and executive fabric that the attacks have exposed. They demonstrate accountability on a broad scale.

What about the Government's human rights duty to the affected families specifically?

It is important to consider how well these responses fulfil the duty on the Government to provide a remedy for those who have suffered the most serious violation of their human rights; namely the affected whānau, survivors and witnesses.

It is notable that only three of the 44 recommendations are specifically directed at supporting the affected families. This is due to the Royal Commission's narrow terms of reference, which did not include a specific item on remedy or redress.

Two of the recommendations, 25 and 26, are rehabilitative in nature. They engage the human rights duty to provide ongoing care and support to enable recovery. As noted earlier, the Government's establishment of a collective impact process for delivering services announced on 12th March 2021 responds directly to these recommendations.

Recommendation 27 regards the potential use of restorative justice. The Royal Commission's report indicates that it intends this process to be between the individual (the terrorist) and the affected families.⁹ However, the recommendation itself does not specify that this is the case, leaving open the possibility of a restorative process between government and the affected families to address the failings that the Government has acknowledged.

⁸ Media Statement, Hon Andrew Little, Hon Priyanca Radhakrishnan, Next steps in Government's Ongoing Work with March 15 survivors, 12th March 2021.

⁹ Chapter 4.1, para 6, p 751.

Where are the gaps?

The Royal Commission's Report does not completely address the Government's human rights duty to affected families and survivors. There are many gaps including:

Enabling effective access to justice

The Royal Commission recognised that there "may be further and other legal processes that affected whānau, survivors and witnesses wish to engage in."¹⁰ However, the issue of legal assistance to engage in these processes was not addressed.

There clearly are complex legal processes that lie ahead for the affected families. These include a potential Coronial Inquest. The preliminary stages have commenced, and the Chief Coroner has written to the affected whānau and survivors seeking input. While HRC understands that legal aid is available for representation in Coronial Court proceedings under the Legal Services Act 2011, support is likely to be needed with the legal aid process, which is complex and bureaucratic and can come with costs. Also, many lawyers do not provide legal aid services.

There is also the broader question of legal assistance in engaging with other types of processes, particularly those with a potential for reparation, such as the restorative justice process recommended by the Royal Commission.

This suggests that bespoke legal advocacy and assistance may be required to meet the legal needs of the affected whānau, survivors and witnesses.

Reparation for harm suffered

In the Report, the Royal Commission noted that it did not consider questions of compensation or other forms of reparation, as it considered that these did not fit easily within its terms of reference, stating "we leave [those issues] for direct discussion between those affected whānau, survivors and witnesses and the government in light of the conclusions reached in this report".¹¹

This does not absolve the Government of their human rights duty to make reparations to the affected whānau survivors and witnesses. On the contrary, it signals that reparations remain an open issue. The duty to make reparations exists irrespective of the Inquiry or Report.

The duty also exists even in the event that the person most responsible for the harm is unwilling or unable to make reparations themselves.¹²

Reparations must also be proportionate to the harm suffered. In this case, the harm is at the most severe end of the spectrum.

In Norway, following a white supremacist terror attack in 2011 which left 77 young people dead, the Norwegian Parliament set aside over 185 million kroner (over 33 million US dollars) in the

¹⁰ Chapter 4.1, para 5, p 751.

¹¹ Chapter 4.2, para 7, p 752.

¹² A/RES/60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2006, Chapter VI, at 16.

2012 state budget to cover compensation for the victims, with its justice committee determining a sum of 4.75 million kroner (around USD 850,000) as the upper limit for each individual.¹³

When making this comparison, it is important to note the differences between the legal schemes for compensation.¹⁴ Norway has more comprehensive compensation laws than New Zealand for victims of crime, whereas New Zealand has ACC which provides default compensation for injury. The Government has noted the role of ACC in providing compensation for those who were injured in the attacks, while acknowledging its current limitations.¹⁵ Further to this, we suggest that the ACC scheme on its own does not necessarily fully satisfy the Government's human rights duty to compensate given all the issues that arise.¹⁶ We also note that the Government has the discretion to make ex gratia payments in circumstances where a moral obligation to do so is recognised.¹⁷

Nevertheless, the establishment of a specific reparations package (which might include both compensatory payments and provision of services) would be a step towards fulfilling the rights of the affected whānau, survivors and witnesses. These matters need further careful thought and discussion.

Access to relevant information

When the Royal Commission concluded its work on 26 November 2020, it issued an order permanently suppressing information it had obtained during its Inquiry.¹⁸ This included certain information regarding the terrorist, including interviews that were had with him.¹⁹

The Royal Commission also ordered that evidence and submissions provided to it by public sector chief executives and Ministers be suppressed for 30 years.²⁰ The primary reason cited was national security, followed by confidentiality concerns.²¹ The order does not, however, apply to independently existing documents held by public sector agencies.²²

The order is a blunt instrument in the sense that it applies regardless of the designation of the public sector chief executive or Minister. All their evidence and submissions are treated in the same way.²³

¹³ Library of Congress; Global Legal Monitor - <https://www.loc.gov/law/foreign-news/article/norway-crime-victims-compensation-to-be-increased-after-july-2011-massacre/>.

¹⁴ Norway is not the only country to provide specific compensation in these circumstances. For example, France has a compensation fund ([Fonds de Garantie des Victims](#)) that enables all injured of victims of terrorism, as well as beneficiaries or deceased victims, regardless of nationality, to apply for compensation.

¹⁵ See <https://www.stuff.co.nz/national/politics/300252628/christchurch-terror-attack-jacinda-ardern-says-government-cant-expand-acc-cover-for-traumatised-victims>; <https://www.newsroom.co.nz/a-misstep-on-acc-for-terror-victims>.

¹⁶ It does not impact, for example, upon the damages scheme under the Human Rights Act 1993 as regards discrimination claims.

¹⁷ See Cabinet Office Circular CO(18)(2), 30 July 2018, <https://dpmc.govt.nz/publications/co-18-2-proposals-financial-implications-and-financial-authorities>.

¹⁸ <https://christchurchattack.royalcommission.nz/about-the-inquiry/minutes/minute-4/>.

¹⁹ See paragraphs 47-52.

²⁰ See paragraphs 61(b), 62 and 63.

²¹ See paragraphs 53-58.

²² Paragraph 61(a).

²³ Paragraph 61(b).

HRC understands there was no consultation with affected whānau, survivors or witnesses prior to the suppression orders being issued. The orders therefore came as a surprise and, in particular, we understand the 30-year order has caused anger, confusion and distress.

As victims of terrorism, the affected community has a right to seek and obtain information about the causes and conditions that led to the attacks, so that they may learn the truth. The Report provides a considerable amount of information in this regard. We also note the Royal Commission has indicated that “not much will be lost” by the suppression orders, given much has already been in the public domain and the elaborate discussion of issues in the Report itself.²⁴

However, the suppression order over government information sends a mixed signal to the affected whānau and survivors. Given the lack of prior notice or consultation, it has had a potentially damaging effect on the community’s trust in the process.

We therefore encourage the Government, as part of a reparations process, to engage with the affected whānau, survivors and witnesses about any further information they require from the government agencies that participated in the Inquiry.

This may include information that is currently captured by the suppression order and may require some legislative steps for that information to be released.

Next steps

We suggest the reflections and options in this paper are on the table for open, respectful discussion.

The next steps for the HRC will be to engage further with the affected whānau, survivors and witnesses, as well as the wider Muslim community, to discuss their perspectives, identify options and provide recommendations.

We will also seek to engage with the Government on an approach which is based on both human rights and Te Tiriti, as it develops and implements ongoing supports for the affected whānau, survivors and witnesses.

²⁴ Paragraph 59.