

# **New Zealand's progress under the UN Convention on the Elimination of All Forms of Discrimination Against Women**

**15 February 2021**



**NZ  
Human  
Rights.**

Human Rights Commission  
Te Kāhui Tika Tangata

## **Follow-up Submission of the New Zealand Human Rights Commission**

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### **Follow-up Submission of the New Zealand Human Rights Commission**

1. The Human Rights Commission welcomes the opportunity to make this submission to the Committee for the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee) to provide an update on New Zealand's progress in implementing the recommendations identified for follow-up in the 2018 Concluding Observations.
2. The recommendations relate to:
  - Increasing funding for the Human Rights Commission (Commission)
  - Repealing of s 392 of the Immigration Act 2009 to allow the Commission to receive complaints
  - Adopting a national strategy and action plan for combatting gender-based violence
  - Removing abortion from the Crimes Act 1961
  - Establishing a Royal Commission of Inquiry into the obstruction of justice and hindrances to safety for women inherent in the family court system
3. In summary, the Commission reports the implementation status of those recommendations as follows:
  - The Human Rights Commission has seen an increase in funding.
  - Section 392 of the Immigration Act 2009 has not been repealed.
  - New Zealand has made significant progress by removing abortion from the Crimes Act 1961 and making it a health issue. However, problems still exist in relation to the disparity of access and availability of abortions across the country.
  - Incidents of gender-based violence have not improved in New Zealand and the statistics continue to paint a grim picture, particularly for Māori. While there have been some positive developments in the law and the announcement in November 2020 of a new Minister for the Prevention of Family and Sexual Violence, no cross-party strategy and national plan on combatting gender-based violence against women has been developed. The Minister for the Prevention of Family and Sexual Violence has indicated that the strategy will be put before Cabinet by February or March 2021 and will then go out for public consultation in April 2021.
  - A Royal Commission of Inquiry into the obstruction of justice and hindrances to safety for women inherent in the family court system has not been set up.

**Provide the Commission with sufficient human, technical and financial resources to carry out its mandate to promote and protect women's rights**

4. In its 2019/2020 Budget, the Ministry of Justice increased operational baseline funding to the Human Rights Commission by \$6.9m over four years. The funding is allocated through various programmes that align with the Commission's five-year strategic plan.
5. The Equal Employment Opportunities (EEO) Commissioner holds the Commission's women's rights portfolio and focuses on key issues that disproportionately affect the rights of women. This includes combatting gender-based violence, the effect of poverty in working households, pay transparency, ethnic and gender pay gaps, migrant exploitation, modern slavery, and bullying and harassment in the workplace.

**Repeal s 392 of the Immigration Act 2009 with a view to ensuring the Commission is mandated to receive and process complaints from migrants**

6. Section 392(2) of the Immigration Act 2009 specifically excludes the Commission from receiving complaints about the content or application of the Act or any regulations made under it, or about the content or application of any immigration instructions. In addition, the Commission cannot bring proceedings of any kind in relation to the above matters. Accordingly, the Commission cannot receive immigration-related complaints from migrant women who are particularly vulnerable to discrimination and exploitation.
7. In November 2020, the Commission raised the s 392(2) exclusion with the Minister of Immigration, Hon Kris Faafoi.<sup>1</sup> In the Minister's response, he did not signal any intent to amend s 392(2) and emphasised that the reason for such a restriction is that s 392(3) of the Immigration Act sets out the reason for this limitation – that immigration matters inherently involve different treatment on the basis of personal characteristics. He did however note that immigration policy development process emphasises that any potentially discriminatory settings must be justifiable, for example, establishing a maximum age for the recognition of children as dependent.
8. The Commission continues to be concerned that its ability to aid migrants with immigration matters is still limited by s 392(2) of the Immigration Act.

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<sup>1</sup> Letter dated 11 November 2020 from EEO Commissioner to Minister of Immigration, Hon Kris Faafoi.

**Adopt a comprehensive and cross-party strategy on combating gender-based violence against women in accordance with general recommendation No. 35 and ensure its consistent implementation, including by strictly applying the provisions of the bill on family and Whānau violence legislation, once adopted, and by, inter alia, including measures that specifically protect women with disabilities who are victims of abusive caregivers.**

### **Joint venture and strategy**

10. In 2018, a joint venture of 10 government agencies was established to lead a whole-of-government approach to family and sexual violence. One of the key tasks of the joint venture was the creation of a national strategy and action plan which was expected to be finalised by June 2020. As of February 2021, no national strategy and action plan has been finalised.
11. In August 2020, the former Undersecretary to the Minister of Justice with a focus on domestic and sexual violence reported that consultations from stakeholders for the plan had been significantly disrupted by COVID-19.<sup>2</sup>
12. After the Labour government was re-elected in November 2020 it announced the creation of a new Ministry for the Prevention of Family and Sexual Violence. The Ministry is led by Minister, Marama Davison who will lead a whole of government response on family and sexual violence with the mandate to coordinate budget bids in this area. The Minister has announced that a strategy and plan will go before Cabinet by February or March 2021 and out for public consultation in April 2021.<sup>3</sup>

### **Te Tiriti o Waitangi (Treaty of Waitangi)**

13. It is crucial that all responses to family and sexual violence in New Zealand are Te Tiriti based. The formation of the national strategy and action plan must ensure that:
  - Māori as Tiriti-partners are part of decision-making;
  - Māori are able and supported to exercise self-determination and lead solutions; and
  - Equity for Māori is central to responses.
14. To ensure this, Te Tiriti and the United National Declaration on the Rights of Indigenous Peoples should be central to all planning and decision-making relating to the Strategy.
15. Te Tiriti provides the foundational source of legitimacy for co-existing systems of governance and law in Aotearoa New Zealand.<sup>4</sup> As the Waitangi Tribunal<sup>5</sup> has stated on numerous occasions, striking a practical balance requires a process of negotiation and agreement between the Tiriti partners as follows:<sup>6</sup>

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<sup>2</sup> Briefing on the performance of the Family Violence and Sexual Violence joint venture, p. 4 (August 2020)

[https://www.parliament.nz/resource/en-NZ/SCR\\_99876/68803d2bb3c2f80fcb2d9f6f4cc0c69dd3d9fe16](https://www.parliament.nz/resource/en-NZ/SCR_99876/68803d2bb3c2f80fcb2d9f6f4cc0c69dd3d9fe16)

<sup>3</sup> See <https://www.newsroom.co.nz/pro/family-and-sexual-violence-strategy-on-the-way>

<sup>4</sup> This position is discussed at length in the Commission's 2013 submission to the Constitutional Advisory Panel, available at <https://www.hrc.co.nz/our-work/indigenous-rights/our-work/review-new-zealands-constitutional-arrangements/>

<sup>5</sup> The Waitangi Tribunal is a standing commission of inquiry. It makes recommendations on claims brought by Māori relating to legislation, policies, actions or omissions of the Crown that are alleged to breach the promises made in the Treaty of Waitangi.

<sup>6</sup> Waitangi Tribunal (2015), *Whāia te Mana Motuhake: Report on the Māori Community Development Act Claim*, Wai 2417, at p 26.

*The Treaty exchange of kāwanatanga for rangatiratanga establishes the rights of the Crown and Māori to exercise authority in their respective spheres. Where they overlap, striking a practical balance between the Crown's authority and the authority of Māori should be a matter for negotiation, conducted in the spirit of cooperation and tailored to the circumstances. It is from this need to strike a balance that the principle of partnership is derived.*

16. The importance of Māori participation in decision making regarding the strategy, both at an early stage and throughout the process is particularly critical because Māori are disproportionately represented as victims of family and sexual violence. The 2019 Crimes and Victims' survey reported that Māori experience almost three times more Intimate Partner Violence (IPV) incidents per 100 adults than the national average. In addition, New Zealand Europeans experience less physical or psychological family violence compared to Māori (70% less likely) and Pacific people (44% less likely).<sup>7</sup>
17. In December 2018, an interim Māori advisory group – Te Rōpū – was appointed to work in partnership with Ministers to help transform the whole-of-government response to family violence, sexual violence and violence against whānau. Te Rōpū was to be underpinned by Te Tiriti o Waitangi to give effect to the partnership between Māori and the Crown. The interim Te Rōpū was tasked with developing the draft strategy. However, Te Rōpū has since been disbanded.

## **Legal developments**

### *Family Violence Act 2018*

18. In July 2019, the Family Violence Act 2018 came into effect, replacing the Domestic Violence Act 1995. The definition of family violence in the Act was expanded to include coercive and controlling behaviour, as well as dowry abuse. Other significant changes include:
  - Removal of legal barriers to information sharing between agencies to increase victims' safety.
  - A new charge of attempted strangulation, which has seen Police lay an average of five charges per day, significantly higher than anticipated.
  - Amended definition of family relationship to recognise that a carer can also be in a close personal relationship with the person they care for.

### *Domestic Violence-victims' Protection Act 2018*

19. The Domestic Violence Victims' Protection Act 2018 creates a legislative requirement for workplaces to provide flexible working conditions and up to ten days paid leave for people affected by, and those caring for children affected by, family violence.

### *Crimes (Definition of Female Genital Mutilation) Amendment Act 2020*

20. In August 2020, the Crimes (Definition of Female Genital Mutilation) Amendment Act came into force. The Act amends the Crimes Act 1961 to update the definition of female genital mutilation (FGM) to ensure all types of FGM are illegal in New Zealand and all women and girls are adequately protected from FGM.

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<sup>7</sup> NZ Crime and Victims Survey- filling the knowledge gap (Oranga Tamariki Evidence Centre, 2 July 2019) <https://www.orangatamariki.govt.nz/assets/Uploads/Research/Research-seminars/August-2019-seminar/NZ-Crime-and-Victims-Survey-Dr-Michael-Slyuzberg.pdf>

21. The Act removes reference to “external” female genitalia under section 204A(1) of the Crimes Act 1961, thus bringing it into line with the World Health Organisation definition. The law now reads “the excision, infibulation, or mutilation of the whole or part of the external female genitalia”.
22. The term “other harmful procedures intended to alter the structure or function of the female genitalia” under s 204A (1) was replaced with “other harmful procedures carried out on any part of the female genitalia”. This fits more closely with the Act’s intention of protecting women and girls from all forms of female genital mutilation.

#### *Residential Tenancies Amendment Act 2020*

23. The Residential Tenancies Amendment Act 2020 amended the Residential Tenancies Act 1986 to protect victims of family violence. Section 56B of the Act enables a tenant to leave a tenancy with a minimum notice period of two days, through giving their landlord a family violence withdrawal notice. The notice must be accompanied by qualifying evidence that the tenant has been a victim of family violence while on the premises.

#### *Sexual Violence Legislation Bill*

24. This Bill would amend the Evidence Act 2006, Victims’ Rights Act 2002, and Criminal Procedure Act 2011 to reduce the risk of potentially re-traumatising victims of sexual violence when they attend court and give evidence. However, the Bill is only at its second reading. Proposed law changes include six core changes “to ensure that the justice system, in prosecuting sexual violence cases, does no more harm to victims and survivors”.

#### **Sexual violence data**

25. On 1 November 2019, the Ministry of Justice published a report *Attrition and progression: Reported sexual violence victimisations in the criminal justice system*.<sup>8</sup> The research quantifies the proportion of reported sexual violence victimisations that currently progress through the justice system to conviction. It also looks at whether differences exist over time, for children and young people, adults reporting historic childhood offences, difference offence types, Māori, and different perpetrator relationship types.
26. This is the first time that the Ministry of Justice has carried out a large-scale analysis of this type. The report covers all sexual assault complaints made to police between 2014 and 2018. The broad results showed that out of the 23,739 cases of sexual assaults reported to police over the four-year period:
  - 61 percent occurred when the victim was a child or young person (aged 17 years or younger).
  - 53 percent were reported when the victim was an adult.
  - 55 percent were indecent assault, which was more frequently reported by children and young people.
  - 43 percent were sexual violation (including rape and unlawful sexual connection), which was more frequently experienced and reported by adults.
  - 31 percent made it to court. Of those, 11 percent resulted in a conviction, and in 6 percent of cases a prison sentence was imposed.

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<sup>8</sup> See <https://www.justice.govt.nz/assets/Documents/Publications/sf79dq-Sexual-violence-victimisations-attrition-and-progression-report-v1.0.pdf>

27. The statistics showed there was a 21 percent increase in the number of cases reported to police between 2015 and 2018.

28. Furthermore, the report found that:

*Overall, the investigation and court process took a long time for many victimisations. Only one-fifth (21%) of victimisations with a charge outcome received the outcome within six months of reporting. For half (51%) it took up to a year in total to receive a charge outcome and most (87%) had an outcome after a total of two years. For the remaining 13% of victimisations it took two years or more.*

### **Impact of COVID on domestic violence**

29. In June 2020, the Commission made a submission to the Special Rapporteur on violence against women, its causes and consequences on the impact of COVID-19 and the increase of domestic violence against women.<sup>9</sup>

30. The Commission found that while Police data did not indicate an increase in domestic violence during the COVID-19 lockdowns in New Zealand, civil society organisations provided information to the Commission which highlighted barriers to reporting and support by victims/survivors. This suggests that there may have been an increase of family violence in New Zealand during COVID-19.<sup>10</sup>

### **Disabled women**

31. The Committee specifically recommended that the strategy on combating gender-based violence against women include measures that protect women with disabilities who are victims of abusive caregivers.

32. As noted above, the definition of family relationship under the Family Violence Act 2018 was amended to recognise that a carer can also be in a close personal relationship with the person they care for, for the purposes of invoking the protective elements of the Act—for example, protection orders.

33. The Act also recognises family violence as including the withholding of care, aid, medicine or a device or support, or restricting access to employment or education. However, the Act does not make provision for accommodating the needs of disabled people when making protection orders, nor does it contain specific safeguarding measures to reduce family violence experienced by disabled people.

34. New Zealanders continue to experience high rates of family violence, and there is little data available on how many disabled people are affected. If Police were required to collect disaggregated data on disabled people's experience of violence and abuse, this would allow the situation to be monitored more effectively.

35. The Commission also notes that the New Zealand Police do not collect disaggregated statistics on sexual and other violent crime towards disabled women. There is currently only one generic code<sup>11</sup> to record attendance to incidents of concern, harm or crime towards disabled people.

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<sup>9</sup> See full submission here:

[https://www.hrc.co.nz/files/5515/9468/2462/FINAL\\_HRC\\_Submission\\_to\\_the\\_Special\\_Rapporteur\\_on\\_womens\\_rights.pdf](https://www.hrc.co.nz/files/5515/9468/2462/FINAL_HRC_Submission_to_the_Special_Rapporteur_on_womens_rights.pdf)

<sup>10</sup> Para 150.

<sup>11</sup> 1M, broadly referring to 'mental' disability.

This makes it difficult to accurately assess, record and monitor disparate access or disproportionately poorer outcomes for disabled women.

36. Recently, the Joint Venture Business Unit has agreed to work with the Commission's Disability Rights Commissioner, Paula Tesoriero on the issue of disabled people and violence. This includes improving data collection so that any data relating to family and sexual violence is able to be disaggregated by disability, collecting more data on disclosures of violent assaults towards disabled people, looking at accessibility of mainstream family and sexual violence services for disabled people and exploring the development of a specialist service for them, and working with disabled people so they are supported and empowered to shape and lead their own responses.



**Remove abortion from the Crimes Act 1961 and amend the Contraception, Sterilisation and Abortion Act 1977 in order to fully decriminalize abortion and incorporate the treatment of abortion into health services legislation.**

### **Abortion Legislation Act 2020**

37. In March 2020, the Abortion Legislation Act was passed. The Act removes abortion as a crime from the Crimes Act 1961 (except for the offence of a person other than a health practitioner procuring an abortion for a woman under s 183). Abortion is now considered a health care issue as set out in the Contraception, Sterilisation, and Abortion Act (CSA Act).
38. Section 10 of the CSA Act provides that a qualified health practitioner may provide abortion services to a woman who is not more than 20 weeks pregnant. No statutory criteria must be met for the health practitioner to agree to the abortion.
39. Section 11 of the CSA Act provides that a qualified health practitioner may provide abortion services to a woman who is more than 20 weeks pregnant if they reasonably believe that the abortion is clinically appropriate in the circumstances. In considering whether the abortion is clinically appropriate in the circumstances, the qualified health practitioner must consult at least one other qualified health practitioner and have regard to all relevant legal, professional and ethical standards to which the qualified health practitioner is subject, including the woman's physical health, mental health, and overall wellbeing, and the gestational age of the fetus.
40. The law change also means that a wider range of health practitioners can provide abortion services. Prior to the law change, two specially licensed doctors were required to approve the procedure first.

### **Safe Zones**

41. The Commission notes that the original Abortion Legislation Bill provided for 150 metre Safe Zones that could be established around abortion clinics on a case-by-case basis to prohibit intimidating and interfering behaviour. However, parliament voted to remove such provisions.
42. In July 2020, the Contraception, Sterilisation, and Abortion (Safe Areas) Amendment Bill was introduced to parliament, but it remains in its early stages. The Bill provides a regulation-making power to set up safe areas around specific abortion facilities, on a case-by-case basis. The purpose of this regulation-making power is to protect the safety and well-being, and respect the privacy and dignity, of both women accessing abortion facilities and practitioners providing and assisting with abortion services.<sup>12</sup>

### **Access to Abortion Services**

43. In August 2020, the Ministry of Health received results from a survey that for the first time asked district health boards (DHBs) to provide information on abortion services as part of their quarterly reporting process. The summary of the survey responses recorded key findings that highlighted issues, such as:<sup>13</sup>

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<sup>12</sup> See the Bill here: [https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL\\_99649/contraception-sterilisation-and-abortion-safe-areas](https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_99649/contraception-sterilisation-and-abortion-safe-areas)

<sup>13</sup> See summary of findings here: <https://www.health.govt.nz/system/files/documents/pages/abortion-services-summary-dhb-quarterly-survey-responses-dec20.pdf>

- Significant variation between DHBs in terms of what services are provided within their region.
- Limited availability of services from 22 weeks if there is no fetal abnormality or severe health risk to the women.
- Several DHBs noted that since the Abortion Legislation Act 2020 there has been greater access to abortions and an improvement to equitable access for young people, Māori and Pacific people who previously had low uptake of early medical abortion compared to surgical abortion.
- Most issues raised by DHBs related to the availability of appropriate staff and other workforce issues, particularly a need for training.
- Conscientious objection is proving to be a major barrier in ensuring the availability and continuity of the workforce and services they provide.
- Some medical practitioners are unwilling to be involved outside of care for severe fetal abnormality.
- High number of practitioners providing services are nearing retirement.
- Some DHBs wanted support from the Ministry of Health regarding training and employment, including the need for a nationwide plan to ensure education, training and maintaining the continuity of workforce support from the Ministry to implement training and employment planning. It was suggested that the Ministry develop a national guideline for availability of medical abortion and induction of labour from 22 weeks.

**Establish a royal commission of inquiry to engage wide-ranging evaluation on the drawbacks, obstruction of justice and hindrances to safety for women inherent in the family court system and recommend changes necessary to make the family courts safe and just for women and children, particularly in situations of domestic violence.**

44. The Government has not established a royal commission of inquiry on the issues highlighted by the Committee, and there is no indication that it intends to do so in the future.
45. While the Commission notes the government's 2019 review of the 2014 reforms to the family court "Te Korowai Ture-ā Whānau",<sup>14</sup> the terms of reference focused on delay, cost, forced mediation and lack of legal representation, but lacked any gender analysis, through narrowly focusing on child safety only. While the review acknowledges the potential presence of unconscious bias in the family justice system, and a lack of understanding amongst the family justice workforce on the effects of trauma in the aftermath of violence, it does not address the root causes of entrenched systemic discrimination against women in the family court and justice system which aggravate their safety concerns<sup>15</sup> including a persistent lack of training and understanding of the dynamics of domestic violence amongst professionals working in the area, including lawyers, police officers and family court judges.<sup>16</sup>
46. Accordingly, the government's 2019 review falls far short of the Committee's recommendation to establish a royal commission of inquiry, to find ways to make the Family Court system safer for both women and children as it does not address key issues arising from institutional bias.
47. In our submission to the Special Rapporteur on violence against women, its causes and consequences on the impact of COVID-19 and the increase of domestic violence against women,<sup>17</sup> we refer to reports from the Backbone Collective which highlight ongoing abuse during the pandemic despite Family Court orders, due to the lack of a plan to ensure the safety of women and children during such a crisis.<sup>18</sup> The report again highlights the need for training of relevant professionals and agencies, during lockdown situations and more broadly.<sup>19</sup> It also highlights the need for a royal commission of inquiry to focus on developing kaupapa Māori responses<sup>20</sup> to effectively respond to the large number of Māori victims/survivors and offenders, and for the Government to honour its obligations under Te Tiriti o Waitangi.<sup>21</sup>

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<sup>14</sup> <https://www.justice.govt.nz/assets/Documents/Publications/family-justice-reforms-final-report-independent-panel.pdf>

<sup>15</sup> As described in more detail in the Backbone Collective's shadow mid-term report, July 2020 and at pages 6-7 of the Coalition for the Safety of Women and Children CEDAW shadow mid-term report, August 2019. The Commission highlights the reports conducted by the Backbone Collective into the persistent issues of discrimination and gender-based abuse by the New Zealand Family Court, as set out in its submission to the Committee in June 2018.

<sup>16</sup> See Auckland Coalition for the Safety of Women and Children, Shadow Report to CEDAW, May 2018, page 8.

<sup>17</sup> Above n 9.

<sup>18</sup> Para 80.

<sup>19</sup> Para 142-144.

<sup>20</sup> Kaupapa Māori: Refers to a Māori approach, Māori customary practices and principles <https://maoridictionary.co.nz/>

<sup>21</sup> Para 105-107.