

26 October 2012

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders
Office of the High Commissioner for Human Rights

Email: omccann@ohchr.org

Dear Ms Sekaggya

I am responding to the questionnaire sent to NHRIs relating to the situation of human rights defenders. I realise that the deadline was the 22nd October and our response is out of time but we were unable to complete the questionnaire earlier due to pressure of work and hope you will accept our submission in spite of this.

1. a) The New Zealand Human Rights Commission was established by the Human Rights Commission Act 1977. The Act was subsequently repealed and replaced by the Human Rights Act 1993 (HRA) and further amended in 2001.

b) The long title to the HRA states it is designed to provide better protection in New Zealand in general accordance with United Nations Covenants and Conventions on Human Rights. The amendment in 2001 included extending s.5 of the HRA - which relates to the functions of the Commission in the area of human rights - to ensure better compliance with the Paris Principles.

c) The Commission's accreditation status is A+. In relation to the three additional observations:
 - i) The Commission has always followed up on, and monitored implementation of, reports such as the Inquiry to the Accessibility of Public Land Transport - which found that disabled people faced systemic discrimination in the way public transport is regulated - and the inquiry into the discrimination faced by transgender people "To be Who I am". Evidence of this approach can be found on the Commission's website at www.hrc.co.nz under the specific projects.
 - ii) The Commission is an independent Crown Entity under s.7 (and Part 3, Schedule 1) of the Crown Entities Act 2004. Under section 15 the Commission is described as a body corporate and legal entity in its own right. The 2004 Act defines the Commission's relationship with, and accountabilities to, government and the State. Independence is preserved by s.105 which states that the Responsible Minister of an independent crown entity may not direct the entity to have regard to, or to give effect to, a government policy unless specifically provided in another Act.

iii) Under s.150 of the Crown Entities Act 2004 the Commission is required to account for its performance on an annual basis at the end of each financial year. The Minister of Justice is required to put a copy of the report before the House of Representatives. The Commission's most recent Annual Report can be found on the Commission's website at www.hrc.co.nz/hrc_new/hrc/cms/files/documents. The Commission also files an annual report on activities of the National Preventive Mechanisms as part of its role as the Central National Preventive Mechanism. Under the Optional Protocol to the Convention against Torture (OPCAT)

2. a) The details of the New Zealand Commission's mandate in relation to compliance with the requirements of the Paris Principles includes independence and accountability through the mechanism outlined above, a pluralistic Commission (the selection and appointment process is described in 7 below) and a wide ranging statutory role that is premised on, and specifically refers to, the international human rights framework.
 - b) The New Zealand Commission can deal with complaints about discrimination on 13 grounds through a mediation process. If mediation is unsuccessful, complainants have access to a specialist tribunal and the Higher Courts. The Commission also has general inquiry powers that allow it to conduct wide ranging inquiries on human rights violations.
 - c) As noted at (b) the individual complaints jurisdiction relates to complaints about discrimination but the broader human rights mandate (including that under OPCAT) allows the Commission to carry out investigations against the government, military etc. if the subject of the inquiry raises issues in terms of the Commission's primary functions – namely advocating and promoting respect for, and an understanding of, human rights in New Zealand society.
 - d) The Commission's ability to provide remedies to victims of human rights violations is limited to taking complaints about discrimination and promoting them through court action. The remedies jurisdiction rests with the Human Rights Review Tribunal (the specialist tribunal referred to earlier). It does not deal with witness protection programmes but can carry out visits to detention facilities under the OP CAT mechanism.
3. a) There has been no need for the Commission to establish mechanisms to protect human rights defenders. It may be relevant that the Commission does have the role under s.5(2)(k) of making public statements in relation to any group in or coming to, New Zealand who may be subject to hostility or brought into contempt on one of the grounds on which it is unlawful to discriminate.
 - b) See above.
4. a) The Commission has an external relations team that has working with civil society as one of its functions. The team prioritises those sectors that are most vulnerable to human rights abuses. It also has a project (Taku Manuawa) designed to build human rights knowledge and expertise in regional communities and works in partnership with organisations such as disabled peoples groups to promote awareness of disability rights. Other sections of the Commission, such as the policy team, routinely liaise with civil society when preparing submissions in order to ensure the views of different interest groups are reflected in their work.

- b) Working with civil society is seen as central to the Commission's effectiveness and the Commission has not encountered any obstacles in working with NGOs and other groups with similar areas of interest such as the Ombudsman, the Privacy Commissioner, the Health and Disability Commissioner and the Children's Commissioner.
5. To date, staff have never been threatened or harassed because of their work with the Commission and accordingly no protection is necessary for staff members investigating human rights violations. The Commission has also never been subjected to an unannounced visit by the police or state authorities nor has its independence been threatened or jeopardised.
6. a) The Commission's funding is appropriated by Parliament and paid out of Vote: Justice. The Commission manages its own budget and accountability is achieved through a progress report every four months to the Minister of Justice. Information relating to the budget of the Commission, its accounts and financial records can be found in the Annual Report.
- b) The Commission manages on a baseline budget. The Current economic constraints have meant that the budget has not increased since 2007-2008 when it received some additional funding. It has not experienced any threats to its autonomy in this regard.
7. a) The criteria for appointment of Commissioners are found in s.11 HRA. In recommending a person for appointment, the Minister must take into account their knowledge of, or experience in different aspects of matters likely to come before the Commission including New Zealand law, or the law of another country, or international law, on human rights; the Treaty of Waitangi and the rights of indigenous peoples; current economic, employment or social issues; cultural issues and the needs and aspirations (including life experiences) of different communities of interest and population groups in New Zealand society. The criteria also include skills or experience in advocacy or public education; business, commerce, economics industry or financial or personnel management; community affairs and public administration or the law relating to public administration. Groups and individuals are able to nominate candidates for membership.

An independent interview panel is established by the Ministry of Justice For the appointment of Commissioners. It includes representatives from civil society and non-governmental organisations. The panel makes recommendations to the Minister of Justice, who in turn makes recommendations to the Government. The Warrant of Appointment is issued by the Governor-General, signifying political independence.

b) The process for selection and appointment of the governing body is transparent. The Human Rights Act sets out the criteria for appointment. The Ministry of Justice advertises nationally for nominations and expressions of interest. An independent interview panel, including representatives of civil society, make recommendations to the Minister, who in turn advises the government.

In recommending appointments, in addition to the criteria in the Human Rights Act, the Minister is required to take into account the desirability of promoting diversity in the membership of the Commission: s.29(2)(b) Crown Entities Act 2004.

Members serve in their own individual capacity. The Human Rights Act provides for three full time Commissioners (Chief Human Rights Commissioner, Race Relations Commissioner and Equal Employment Opportunities Commissioner) as well as up to five part-time Commissioners. Commissioners are appointed on the advice of the Minister of Justice: s.29 Crown Entities Act 2004. Section 20F of the Human Rights Act provides that Commissioners hold office for a term of five years. The terms can be extended by the Governor-General on the advice of the Minister.

Section 20G Human Rights Act specifies the circumstances in which Commissioners cease to hold office. This includes resignation, insolvency, incapacity (if it affects performance of duties), neglect of duty or misconduct. Section 39 of the Crown Entities Act allows the Governor General to remove a Commissioner on the advice of the Minister after consultation with the Attorney-General for "just cause". "Just cause" is defined in s.40 and covers substantially the same grounds as s.20G. Section 41 provides a process for removal in such cases. The process must be consistent with the principles of natural justice and comply with the requirements of both the Human Rights Act and the Crown Entities Act.

I hope this information is of some help. Should you require any further information please don't hesitate to contact Sylvia Bell on sylviab@hrc.co.nz

Yours sincerely



David Rutherford
CHIEF HUMAN RIGHTS COMMISSIONER