**HAUTCOMMISSARIAT AUX DROITS DE L’HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS**

Questionnaire

Convention on the Rights of Persons with Disabilities

Article 5 equality and non discrimination

**Introduction**

Thanks for the opportunity to contribute to the UN study on article 5. The following responses have been submitted by the New Zealand Human Rights for All (HRFA) Trust, which has been established to provide an alternative shadow reporting process for New Zealanders living with disability to the UN Committee on the Rights of Persons with Disabilities.

In New Zealand shadow reporting has been the preserve of seven formally recognised Disabled Persons Organisations (DPOs) which meet a specific set of criteria (available via this link [Download - Disabled People’s Organisation Role and Attributes [Word, 48.5KB]](http://www.odi.govt.nz/documents/community/dpo-attributes-13-may-2014.doc)).

However there are many New Zealanders with disabilities who choose to be members of and are supported by advocacy and/or service organisations who the DPO’s will not collaborate with as they don’t meet all of the above criteria.

Therefore, under Article 33 (3) of the CRPD, we have established HRFA to act as a vehicle to capture and represent the views and concerns of all people with all types of disabilities in New Zealand, within a complementary shadow report.

1. *Has your country adopted legislation establishing disability as a prohibited ground of discrimination, including denial of reasonable accommodation as discrimination? Please provide details on any related legal reforms.*

The New Zealand Bill of Rights Act 1990 (BORA) specifically prohibits discrimination on the grounds of disability and extends all protected rights to all people, including disabled people.

However, denial of reasonable accommodation as discrimination is not specifically provided for in this or any other legislation. It is expected that the extent to which failure to implement reasonable accommodation is regarded as discriminatory will be tested and determined by the New Zealand court system in due course.

Although BORA specifically prohibits discrimination as above, it is viewed by many in the legal fraternity as being ineffective and subservient to most other Acts.

1. *Does your country apply an objective test to determine if an accommodation requested by a person with disability is undue or disproportionate? If so, please describe the tests and their different elements (500 words).*

In November 2015 the New Zealand Human Rights Commission published guidelines to assist organisations in understanding their “reasonable accommodation” obligations (<https://www.hrc.co.nz/files/7814/4848/7923/imm_reasonable_accommodation_guide.pdf>).

However, to the best of our knowledge there are no objective tests as such.

1. *Does your country apply affirmative actions for combating structural discrimination against persons with disabilities? If so, please describe how are these measures applied and enforced (500 words).*

Affirmative actions for combating structural discrimination are set out in the New Zealand Disability Strategy, which is a formally required document under New Zealand health legislation.

The Minister for Disability Issues is required to report annually on the implementation of the Strategy, and all Ministry and Government Department Chiefs are required to be accountable for implementing the strategy within their particular Ministry or Department. The strategy was initially published in 2001, and a revised version is under development to both bring it up to date and to address UNCRPD requirements.

However, the current Disability Strategy does not have any measurements for operational delivery.

1. *Does your country have laws, policies and strategies for combating discrimination against women and children with disabilities? Please describe how these policies are reflected in legislation and policy frameworks (500 words).*

Yes, as reflected in both the Human Rights legislation referred to in question 1, and specifically in the New Zealand Disability Strategy, with objectives to “enable disabled children and youth to lead full and active lives” and “promote participation of disabled women in order to improve their quality of life”

Specific actions in respect of disabled children are as follows:

Ensure all agencies that support children, youth and families work collaboratively to ensure that their services are accessible, appropriate and welcoming to disabled children, youth and their families.

Ensure that the Youth Development Strategy recognises the needs of disabled children and youth.

Conduct anti-discrimination and education campaigns that are age appropriate and effective.

Establish a process for including advice from disabled people on disability issues for children and youth within relevant government agencies and

Commissioners’ offices.

Provide access for disabled children, youth and their families to child, youth and family-focused support, education, health care services, rehabilitation services, recreation opportunities and training.

Improve support for disabled children and youth during transition between early childhood education, primary school, secondary school, tertiary education and employment.

Introduce ways of involving disabled children and youth in decision-making and giving them greater control over their lives.

Develop a range of accommodation options so that disabled young people can live independently.

Provide and evaluate educational initiatives about sexuality, safety and relationships for disabled children and youth.

Ensure the Ministry of Youth Affairs and Ministry of Social Policy undertake a leadership role in promoting the participation of disabled children and youth.

Specific actions in respect of disabled women are as follows

Promote women’s rights and provide opportunities for disabled women to achieve the same level of economic wellbeing and educational attainment as men.

Provide equitable, appropriate and welcoming access to services.

Support disabled women to live independent and secure lives in the environment and with the people of their choosing.

Ensure that criteria and considerations for the health and reproduction related treatment of disabled women are the same as for non-disabled women.

Include the perspectives of disabled women in the development of all strategies.

Ensure the Ministry of Women’s Affairs undertakes a leadership role in promoting the participation of disabled women, to improve their quality of life.

From time to time the New Zealand Ministry for Social Development, through its Office for Disability Issues, produces disability action plans which set out how the disability strategy will be implemented during a particular period. The most recent action plan is for 2014 – 2018, and was updated in late 2015. We note with some concern that with the exceptions of protection against non-therapeutic sterilisation without fully informed consent, protection against violence and bullying, and protection of disabled children in state care, none of the above strategies relating to disabled women and children are addressed in the 2014 – 2018 disability action plan.

Although the UN Committee on the Rights of Persons with Disabilities has been expressing concern at the on-going neglect and marginalisation of women with disabilities we have seen no effort made by the New Zealand Government to support specific initiatives in this area.

1. *Is your country monitoring and collecting disaggregated data on discrimination against persons with disabilities, including gender, age and impairment disaggregation?*

Yes. This function is carried out by the New Zealand Human Rights Commission, based on formal complaints data.