

**STUDY ON HUMAN RIGHTS, CLIMATE CHANGE AND THE RIGHT TO HEALTH:
HUMAN RIGHTS COUNCIL RESOLUTION A/HRC/29/15 – 30 JUNE 2015 –
REPLY OF THE NEW ZEALAND HUMAN RIGHTS COMMISSION**

The New Zealand Human Rights Commission (NZHRC) writes in response to your email of 27 August 2015 requesting contributions to the study on human rights, climate change and the right to health being conducted by the UN High Commissioner for Human Rights.

The NZHRC's response is limited in scope and addresses some aspects of the matters you sought contributions about. The aspects being addressed are:

- “climate change refugees”
- the effect on Māori health of climate change
- sustainable development goals.

Climate change refugees

Recently New Zealand deported to Kiribati a man who had sought to stay in New Zealand on the basis that he was covered by the 1951 UN Convention on the Status of Refugees or alternatively he was a protected person under the International Covenant on Civil and Political Rights (ICCPR) as there were substantial grounds for believing that he would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand as Kiribati was suffering the effects of climate change.

In 2013 the Immigration and Protection Tribunal decided that Ioane Teitiota was not within the purview of the Refugee Convention or New Zealand's protected person jurisdiction. Ioane Teitiota and his wife arrived in New Zealand in 2007. Their immigration permits expired in October 2010.

Following apprehension Ioane Teitiota made application to be allowed to stay. The basis for the application was that his homeland, Kiribati, is facing steadily rising sea water levels as a result of climate change. The fear is that, over time, the rising sea water levels and the associated environmental degradation will force the inhabitants of Kiribati to leave their islands.

The Tribunal accepted that Ioane Teitiota's concerns about Kiribati and its future were justified but it dismissed his appeal, holding that he was neither a refugee within the meaning of the Refugee Convention nor a protected person within the meaning of the ICCPR.

Ioane Teitiota then sought leave to appeal the Tribunal's decision. The High Court declined that application and subsequently so too did the Court of Appeal. Ioane Teitiota then brought the matter before New Zealand's highest court, the Supreme Court. On 20 July 2015 that court also declined the application.

The key issue was identified by Ioane Teitiota's lawyer as being: “[W]hether New Zealand's refugee law extends protection to a person who faces environmental displacement and the operation of a number of International Conventions, most

importantly relating to the care of his three children under the age of six born in NZ.”

In declining the application the Supreme Court said:

“[12] In relation to the Refugee Convention, while Kiribati undoubtedly faces challenges, Mr Teitiota does not, if returned, face “serious harm” and there is no evidence that the Government of Kiribati is failing to take steps to protect its citizens from the effects of environmental degradation to the extent that it can. Nor do we consider that the provisions of the ICCPR relied on have any application on these facts.

[13] That said, we note that both the Tribunal and the High Court emphasised their decisions did not mean that environmental degradation resulting from climate change or other natural disasters could never create a pathway into the Refugee Convention or protected person jurisdiction. Our decision in this case should not be taken as ruling out that possibility in an appropriate case.”

In September 2015 Ioane Teitiota was deported from New Zealand to Kiribati. The Human Rights Commission issued a statement

<https://www.hrc.co.nz/news/commission-calls-increase-kiribati-residency-quota/> about the situation in which it said:

- the Government should increase the quota of Kiribati people granted residence in New Zealand every year; 75 Kiribati citizens are granted New Zealand residency every year under the Pacific Access Category or PAC
- Increasing the PAC Kiribati quota is an immediate and real way New Zealand can show leadership, empathy and humanity as a developed Pacific nation
- While Ioane Teitiota and his New Zealand born children do not meet the legal requirements for refugee or protected person’s status the Commission remained concerned for his human rights and the humanitarian consequences of requiring his family to return to Kiribati given their circumstances
- New Zealand may not have a legal responsibility but it has a moral and regional responsibility to support its Pacific cousins
- No nation prepares to leave its ancestral homeland by choice but that is exactly what Ioane Teitiota’s Government is planning; migration with dignity is something New Zealand can and should help with.

The effect on Māori health of climate change

In July 2014 *Climate Change and the Right to Health for Māori in Aotearoa/New Zealand* <http://www.hhrjournal.org/2014/07/01/climate-change-and-the-right-to-health-for-maori-in-aotearoanew-zealand/> was published. The authors of the report use a right to health analytical framework to examine the implications of climate change for Māori as the indigenous population of Aotearoa/New Zealand.

A key conclusion of the report was:

New Zealand, having ratified human rights treaties that include the right to health, must be accountable to its obligations within a right to health

framework. It is clear that climate change and both mitigation and adaptation to climate change pose serious threats to the right to health for Māori in Aotearoa/New Zealand. The New Zealand government has obligations arising from this right to address a broad range of issues at many different levels. The analysis we have conducted identifies a number of important areas where the government is currently failing to meet these obligations, as well as future measures that are required in order to avoid further encroaching on the right to health:

- Systems for monitoring and accountability are conspicuously lacking: no specific indicators for Māori exist and the ability to conduct an equity-focused health impact assessment is limited.
- Another area in which the government response has been particularly inadequate is in relation to active participation and self-determination. To date, there has been extremely limited engagement with Māori in the development of climate change policy, either for mitigation or adaptation.
- Overall, the Aotearoa/New Zealand government is not currently meeting its obligations in relation to progressive realization. Even without considering the likely impacts of climate change, Māori health and social outcomes in some areas are static or deteriorating. Unless explicit attention is paid to mitigation policies with health co-benefits that reduce inequities, New Zealand climate change policies risk worsening the state of Māori health.
- Our right to health analysis highlights implications for adoption of climate policies and interventions. Some approaches to climate change mitigation have clear health co-benefits and align with equity goals, and should be adopted immediately with appropriate monitoring and evaluation. Other strategies designed to reduce greenhouse gas emissions do not have automatic co-benefits for health or are potentially regressive. Such interventions need to be designed, implemented, and evaluated carefully in partnership with indigenous communities in order to promote equity and achieve progressive realization of the right to health.

The report noted:

- In Aotearoa/New Zealand, there will also be new health and social pressures relating to the arrival of climate migrant and refugee populations and flow-on health impacts from changes in global and local economies and policies in response to climate change.
- [As at 2013] Aotearoa/New Zealand is a country of just over 4 million people, with Māori, the indigenous people, comprising 14.9% of the total population. As with many other indigenous peoples worldwide, colonization has led to dispossession of land and destabilization of cultural foundations as well as social, economic, and political marginalization. These processes are perpetuated through colonial systems and structures that maintain an inequitable distribution of the determinants of health. As a result, Māori are disproportionately exposed to adverse social and economic conditions, with consequent higher morbidity and mortality. Life expectancy for Māori is over seven years lower than for non-Māori, and Māori have significantly higher rates of most major diseases, such as cardiovascular disease, cancers,

chronic respiratory disease, and diabetes, as well as experiencing poorer access to and quality of health care. These factors all increase vulnerability to the health effects of climate change for Māori in Aotearoa/New Zealand.

- The Māori economy is disproportionately invested in climate-sensitive primary industries, and is likely to experience significant adverse effects from global environmental and socioeconomic trends as a result of climate change. Losses in the Māori economy will increase unemployment and reduce average income, thereby affecting the capacity of households to secure the resources necessary for good health.

Speaking at NZ Population Health Congress, held three months after the publication of *Climate Change and the Right to Health for Māori in Aotearoa/New Zealand*, one of the co-authors of the paper, Dr Rhys Jones, had this to say about Māori health and climate change:

“Adverse impacts will be disproportionately borne by the most disadvantaged populations, including indigenous peoples. For indigenous peoples climate change threatens their well-being and presents a major issue of human rights and equity.

Some of the ways in which Māori health is likely to be compromised because of climate change include:

- poorer access to food sources and good nutrition
- injury and illness from extreme weather events
- more heat-related deaths and illness
- more cardiovascular and respiratory disease from air pollution
- more food and water-borne disease.

These issues will impact other groups in the population, but Māori are especially vulnerable for a number of reasons. Māori tend to have higher levels of social deprivation, poorer existing health status and face greater barriers to accessing quality health care. The location of many Māori communities in coastal areas also increases their vulnerability to extreme weather conditions and the attendant compromises to health and wellness. Indigenous relationships with the natural environment are significant, and Māori explicitly consider a healthy environment to be a prerequisite for good health. As with other indigenous peoples, the loss of identity due to displacement and dispossession of lands, resources, and waters – which are likely to occur with climate change – is intimately linked to adverse physical and mental health outcomes.”

Dr Jones highlighted a number of ways in which the New Zealand Government can work towards meeting its obligations arising from the right to health.:

“First and foremost, New Zealand needs to be an active participant in global efforts to urgently reduce greenhouse gas emissions. Climate change mitigation strategies that also improve health and reduce disparities between Māori and non-Māori should be adopted immediately. Other interventions need to be designed, implemented and evaluated carefully in partnership with Māori communities.

It is clear that both climate change and societal responses to climate change pose serious threats to the right to health for Māori in Aotearoa/New Zealand.

The New Zealand Government has obligations arising from this right to address a broad range of issues at many different levels.”

In July 2015, the New Zealand Government announced its post-2020 climate target. The revised target is to reduce greenhouse gas emissions to 30 per cent below 2005 levels by 2030 (equivalent to 11 per cent below 1990 emission levels by 2030) <http://www.beehive.govt.nz/release/climate-change-target-announced> ; <https://www.mfe.govt.nz/climate-change/reducing-greenhouse-gas-emissions/new-zealand%E2%80%99s-post-2020-climate-change-target>

The medical sector in New Zealand has been actively advocating for climate change responses that recognise the links between climate change and health, and which better protect and provide for the human right to health.

A range of medical organisations participated in the government submission process for the development of the revised target <https://www.mfe.govt.nz/climate-change/reducing-greenhouse-gas-emissions/new-zealand%E2%80%99s-post-2020-climate-change-target>

In October 2015, 16 health professional groups issued a joint statement, calling for stronger action across government http://www.orataiao.org.nz/joint_nz_health_professionals_call_for_action_on_climate_change_and_health

The “Joint Call for Action” noted (among other points) that:

- Those at highest health risk from climate change in New Zealand include Māori, Pacific peoples, children, elderly and low income people
- Measures to address climate change have the potential to widen or reduce existing health inequities, depending on design and implementation.

The actions called for by the coalition of health professionals included:

- Improved health sector planning to prepare for health impacts of climate change
- Measures that prioritise and protect groups likely to be worst affected – Māori, Pacific peoples, children, elderly and low income people
- Health (including equity) Impact Assessment (HIA) to be routinely undertaken to inform key climate-relevant policies
- New Zealand to demonstrate leadership in protecting health from climate change in the climate-vulnerable Pacific region.

A not-for-profit organisation, OraTaiao, the New Zealand Health and Climate Council [OraTaiao, the New Zealand Health and Climate Council](#) has been established, comprising New Zealand health professionals who are concerned with:

- The negative impacts of climate change on health
- The health gains that are possible through strong, health-centred climate action
- Highlighting the impacts of climate change on those that already experience disadvantage or ill-health (equity impacts).
- Reducing the health sector's contribution to climate change.

Ora Taiao has a membership of over 300 senior doctors, other health professionals

and associates.

Sustainable Development Goals

The NZHRC will need to consider the implications for its future work of SDG Goals 3 (health), 13 (climate change), 14 (oceans) and 15 (forests and terrestrial life) and the Merida Declaration which encourages individual NHRIs, in line with their mandates under the Paris Principles, to collaborate in mutual capacity building and sharing of experiences, and to consider the practical functions they can assume to contribute to a human rights-based approach to implementation of the Agenda. Such functions and activities include but are not limited to the following:

(1) Undertake workshops on human rights and sustainable development in each ICC region, in collaboration with the ICC Working Group on the 2030 Agenda for Sustainable Development, and develop regional action plans that will also identify and address NHRI capacity needs. Regional Chairs are encouraged to report thereon to the ICC General Meeting in March 2016 and to subsequent regional and international meetings of NHRIs.

(2) Provide advice to national and local governments, rights-holders and other actors, to promote a human rights-based approach to implementation and measurement of the Agenda, including by assessing the impact of laws, policies, programmes, national development plans, administrative practices and budgets on the realization of all human rights for all.

(3) Develop and strengthen partnerships for implementation by promoting transparent and inclusive processes for participation and consultation with rights-holders and civil society at all stages of the implementation of the Agenda, such as the development of national and sub-national strategies to achieve the SDGs, including reaching out to those who are furthest behind.

(4) Engage with duty-bearers, rights-holders and other key actors, including government agencies, parliaments, the judiciary, local authorities, national statistical offices, civil society, major groups, marginalised groups, mainstream and social media, the UN and other international and regional institutions, to raise awareness and build trust and promote dialogue and concerted efforts for a human rights-based approach to implementation and monitoring of the Agenda, and safeguarding space for engagement of rights-holders and civil society.

(5) Assist in the shaping of global and national indicators and sound data collection systems to ensure the protection and promotion of human rights in the measurement of the Agenda, including through seeking collaboration with national statistical offices, where appropriate, and other relevant national institutions, and by building on existing international and regional human rights mechanisms.

(6) Monitor progress in the implementation of the Agenda at the local, national, regional and international levels, to disclose inequality and discrimination in this regard, including through innovative approaches to data-

collection and partnerships with rights-holders, vulnerable and marginalized groups for participatory and inclusive monitoring, and by identifying obstacles as well as actions for accelerated progress.

(7) Engage with, and hold governments to account for poor or uneven progress in the implementation of the Agenda, including by taking implementation progress and obstacles into consideration when reporting to parliaments, the general public and national, regional and international mechanisms, such as the Human Rights Council and its mechanisms, including the Universal Periodic Review, the Special Procedures, treaty bodies, as well as the International Labour Organization's supervisory bodies, UN regional commissions and the High-level Political Forum.

(8) Respond to, conduct inquiries into, and investigate allegations of rights violations in the context of development and SDG implementation, including in relation to discrimination and inequality that can erode the trust between the State and the people.

(9) Facilitate access to justice, redress and remedy for those who experience abuse and violation of their rights in the process of development, including by receiving and processing complaints, where NHRIs have such functions.

Yours sincerely,

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