



**United Nations Committee on the Elimination of Discrimination against Women:  
update to General Recommendation no. 19**

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Submission of

*New Zealand Human Rights Commission | Te Kāhui Tika Tangata*

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The New Zealand Human Rights Commission | Te Kāhui Tika Tangata is an independent national human rights institution with 'A' status accreditation under the Paris Principles. It derives its statutory mandate from the Human Rights Act 1993.

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## Introduction

1. The New Zealand Human Rights Commission (the Commission) welcomes the opportunity to make a submission to the Committee on the Elimination of Discrimination against Women.
2. The Commission is New Zealand's National Human Rights Institution (NHRI). It is accredited as an "A" status NHRI. It is an independent Crown Entity pursuant to the Crown Entities Act 2004 and derives its statutory mandate from the Human Rights Act 1993 (HRA). The long title to the HRA states it is intended to provide better protection of human rights in New Zealand in general accordance with United Nations human rights Covenants and Conventions.
3. The Commission welcomes the acknowledgment that gender-based violence affects women throughout their life cycle and supports the General Recommendation references to all women at all stages of their life, including girls.
4. The Commission also welcomes the acknowledgment that gender-based violence against women occurs in all spheres of human interaction, including technological mediated environments such as cyberspace.
5. The Commission supports the development of a Global Treaty on Violence Against Women and Girls and makes specific recommendations below in relation to:
  - a. Intersectional Discrimination
  - b. Victims of Human Traffic and Labour exploitation
  - c. Specialist Sexual Violence Judges
  - d. Alternative Dispute Resolution Procedures, and
  - e. Sustainable Development Goals.
6. The realisation of Article 1 is fundamental to women's ability to enjoy their rights and freedoms. New Zealand has a serious problem with gender-based violence. In 2015, there were 110,114 family violence investigations by Police. One in three New Zealand women report having experienced physical and/or sexual intimate partner violence in their lifetime.<sup>1</sup> New Zealand is striving to realise the rights in Article 1 and implement General Recommendation 19.
7. The New Zealand Government recently announced changes to the law resulting from the review of family violence laws. These changes include making it easier to apply for protection orders, intervening early and supporting perpetrators to stop using violence and providing additional information to Judges and police. Specific new offences of strangulation, coercion to marry, and assault on a family member have also been introduced. The update of General Recommendation 19 is particularly timely as the changes include updating our definition of family violence.

### **The need for a separate legally binding treaty on violence against women**

8. There is no specific international legally binding document that addresses violence against women and girls. It is up to individual governments to incorporate international recommendations, such as General Recommendation 19, into domestic policy. Governments must have the political will and drive to do this. Individual countries can implement domestic policies in a piecemeal fashion dependent on current funding trends and political will. Without a strong international legal framework addressing violence against women, a country's domestic policies may be strongly influenced by religion, tradition, and socio-cultural practices that may prevent effective protection of women. There is no single, comprehensive legal definition of violence against women within the articles of any United

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<sup>1</sup> New Zealand Family Violence Clearinghouse (2016), *Data Summaries Snapshot*, [www.nzfvc.co.nz](http://www.nzfvc.co.nz), July 2016, Available: <https://nzfvc.org.nz/sites/nzfvc.org.nz/files/Data-summaries-snapshot-2016.pdf>

Nations human rights treaties. The lack of global standards represents a significant gap in the protection of women and prevention of violence.

9. The Commission supports the development of a Global Treaty on Violence against Women and Girls, with its own monitoring body working in conjunction with CEDAW and other established international and regional mechanisms. This would provide global recognition that violence against women and girls is a gross, endemic, and systematic violation of the rights of women and girls to bodily integrity and life. A separate monitoring body could ensure all countries are undertaking due diligence and complying with a global high standard to protect women and girls and prevent violence. Regional mechanisms such as the Belem do Para in the Americas, The Maputo Protocol in Africa, and the Istanbul convention in Europe may have legally binding provisions for those countries who have signed on, but there are no regional mechanisms in Oceania, Asia, or the Middle East. The New Zealand Commission therefore supports a separate legally binding treaty on violence against women with its own monitoring body.

### **Intersectional discrimination - disability**

10. The draft update mentions intersectional or intersecting forms of discrimination at paragraphs 11, 14, and 15. It acknowledges at paragraph 15(d) that an example of intersecting discrimination applies to those women with a disability. The Commission recommends mental health is specifically included alongside references to disability so that it is explicitly clear that this is included.
11. New Zealand evidence shows disabled women are up to three times more likely to be victims of physical and sexual abuse and rape, and have less access to physical, psychological and judicial interventions.<sup>2</sup> International evidence also shows disabled women worldwide are more likely to be victims of violence.<sup>3</sup> This risk is compounded by a lack of accessibility and visibility of the barriers people with disabilities face. Paragraph 11 could further highlight this form of inter-sectional discrimination.
12. Many people with disabilities live in residential care and supported environments. They rely heavily on support workers/carers. Violence can become normalised in such environments. Ensuring those with disabilities have choice and control over their living situation could minimise this risk. This involves the adequate provision of accessible transport and housing. Recommendation **a iv** under the heading “protection and redress” mentions residential care homes and the need provide protective and support measures. This recommendation could be expanded to include ensuring those in residential facilities and supported environments retain choice and control over their lives.
13. Relationships between a person and their paid support workers/carers or between residents in facilities are not traditionally considered domestic relationships. New Zealand’s domestic violence law, the Domestic Violence Act 1995, contains a definition of domestic relationship that precludes employer-employee relationships and relationships between persons who occupy a common dwellinghouse.<sup>4</sup> The relationships between people with disabilities and their paid support workers/carers and between residents in facilities are of a close nature, and can include situations in a domestic setting where violence is perpetuated by support workers and carers. Recommendation **g** under the heading “prevention” concerns strengthening legal sanctions for all forms of gender-based violence against women, commensurate with their seriousness. It is important that legal sanctions take into account the full range of circumstances within which violence can occur, including those that can be experienced by women with disabilities receiving support or care in a domestic setting.

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<sup>2</sup> Promoting Sexual and Reproductive Health for Persons with Disabilities (2009) WHO/UNFPA

<sup>3</sup> Brownridge, D (2006). Partner violence against women with disabilities: Prevalence, risk and explanations. *Violence Against Women*, 12 (9), 805-822.

<sup>4</sup> s 4 Domestic violence Act 1995

14. It is imperative everyone, including those with disabilities have access to timely legal processes. The law needs to be explained in a way that is understood. Information needs to be available in accessible formats. This is mentioned in recommendation **d** under the heading “protection and redress”.
15. People need confidence that if they make a complaint it will be followed up and action will be taken to ensure their safety. Currently prosecution guidelines require evidence that is sufficient to provide a reasonable prospect of conviction before initiating a prosecution. Police and prosecutors may think someone with a disability, particularly a neurodisability or learning disability, is unable to provide evidence in court and therefore there isn’t enough evidence to initiate a prosecution. A lack of prosecution, therefore consequences for perpetrators’ actions, may cause perpetrators to think they can get away with violence against those with disabilities. Prosecutors need to understand the barriers faced by those with disabilities and work with them to minimise these barriers, aiming to lay charges if appropriate. Recommendation **h** under the heading “prevention” could include reference to ensuring prosecutions are initiated in cases of crimes of gender-based violence against women, including cases involving those with disabilities. Furthermore, recommendation **d ii** under the heading “prevention” could specifically refer to women with disabilities.
16. Those with disabilities may also need additional support during the legal process, particularly if there is a trial. Recommendation **a i** under the heading “protection and redress” could include a reference to ensuring the support needs of persons with disabilities are met during legal processes.
17. Disabled people face barriers in receiving support following domestic violence. Domestic violence support services often do not have resources to provide for those with disabilities. Buildings and information may be inaccessible. Furthermore, some support services may not have the knowledge to provide quality services to those with disabilities. Recommendation **a iii** under the heading “protection and redress” should specifically reference disabled women in regards to accessibility of services, education, training and employment opportunities, health-care services, help-lines, and support services.
18. While there is some evidence women with disabilities are more likely to be victims of violence data on this is not always collected. Recommendations **b** and **c** under the heading “data collection and monitoring” should specifically reference disabled women in regards to the collection of data.
19. The Commission suggests this form of intersectional discrimination needs to be further highlighted in the scope of the draft update and recommendations need to take account of the barriers faced by, and the needs of, people with disabilities.

### **Other types of intersectional discrimination**

20. The draft update does not mention race as a form of intersectional discrimination. Radhika Coomaraswamy has said “As UN Special Rapporteur on violence against women, I have clearly seen the intersection of race and gender in my work.”<sup>5</sup> In New Zealand, those who identify as Maori report higher rates of both intimate partner violence victimisation and perpetration than non-Māori, as well as higher rates of injury related to intimate partner violence.<sup>6</sup> The Commission suggests this form of intersectional discrimination needs to be addressed in the draft update.

### **Victims of human trafficking and labour exploitation**

21. Under the heading “protection and redress”, the Commission supports specialist sexual violence judges for gender-related claims. The Commission further supports recommendation **a v**, providing

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<sup>5</sup> Coomaraswamy, R. (2001), *Speech to the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance*, 31 August - 7 September 2001

<sup>6</sup> Marie, Dannelle; Fergusson, David M.; Boden, Joseph M. (2008) Ethnic Identity And Intimate Partner Violence In A New Zealand Birth Cohort in *Social Policy Journal of New Zealand*; May2008, Issue 33, p126

protective and support measures to women irrespective of their residence status, and suggests victims of human trafficking and labour exploitation are explicitly referenced.

### **Specialist sexual violence judges**

22. New Zealand is grappling with under-reporting of sexual violence, how the criminal justice system should operate when dealing with sexual violence, and how to ensure victims and their families see that justice is done. In December 2015 the Law Commission completed a report *The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes*.<sup>7</sup>
23. The Law Commission proposed a specialist sexual violence court, which would first be trialed as a pilot. Its core aims would be to bring specialist judges and counsel together in a way that enables fact-finding without re-traumatising the complainant. These specialist judges would have a designation to sit on these cases and receive training about misconceptions and preconceptions relating to sexual violence and how to address these. The Ministerial Group on Family Violence and Sexual Violence, co-chaired by the Ministers of Justice and Social Development, is assessing these recommendations.
24. Under the heading “protection and redress” we suggest referencing specialist sexual violence judges.

### **Alternative dispute resolution procedures**

25. In regards to prevention the draft states at paragraph 15(i) “Ensure that gender-based violence against women is not referred to alternative dispute resolution procedures”.
26. The report *The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes* found that many victims do not report because the way the criminal justice system currently responds to sexual violence does not suit their circumstances. A criminal trial can lead to further harm for the victim. The report acknowledged that “a criminal trial, with the potential for conviction and imprisonment of the perpetrator if the act is established beyond reasonable doubt, is not always the response that will most effectively target the harm caused and that will bring the outcomes that victims want, that meet their needs, and that consequently benefit their families, whānau, and communities.” The report examined an alternative process to a trial, if the victim wants it. The process proposed was for victims to access an accredited programme provider to discuss the range of options available to meet a victim’s justice needs. The process would be flexible depending on the victim’s wishes. The overall goal would be to achieve a sense of justice for the victim. At this stage these are only proposals, however alternative resolution procedures may in some circumstances be a valid and chosen options for victims. These alternative procedures should remain a legitimate option in some circumstances.

### **Sustainable Development Goals (SDGs)**

27. Many of the SDGs have a direct correlation with the government’s CEDAW Obligations. Sustainable Development Goal five is to achieve gender equality and empower all women and girls. This involves eliminating all forms of violence against women and girls. The Commission suggests including reference to the SDGs and the importance of policy cohesion.

### **Conclusion**

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<sup>7</sup> New Zealand Law Commission (2015), *The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes*, [www.lawcom.govt.nz](http://www.lawcom.govt.nz), December 2015, Available: <http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-R136-The-Justice-Response-to-Victims-of-Sexual-Violence.pdf>

28. New Zealand welcomes the update to General Recommendation No. 19 and thanks the Committee for its invitation to provide comments on the draft update. We recommend further amendments about intersecting discrimination, trafficking, special sexual violence judges, alternative dispute resolutions, and the SDGs. We also support the development of a legally binding treaty on violence against women and girls and the establishment of a related monitoring body. We hope our comments are of assistance.