Submission of the Human Rights Foundation of Aotearoa New Zealand on Consultation on setting New Zealand’s post-2020 climate change target

3 June 2015

I. Introduction

1. This submission to the New Zealand Government on its Consultation on setting New Zealand’s post-2020 climate change target is on behalf of the Human Rights Foundation of Aotearoa New Zealand.

2. The Human Rights Foundation (HRF) is a non-governmental organisation established in December 2001 to promote and defend human rights through research-based education and advocacy. The HRF regularly makes submissions on new laws or changes of policy, monitors compliance and implementation of New Zealand’s international obligations in accordance with the requirements of the international conventions New Zealand has signed, and prepares parallel reports for relevant United Nations Treaty Bodies to be considered alongside official reports.

3. The Human Rights Foundation appreciates this opportunity to present its views.

II. A Rights based Approach

4. New Zealand has ratified, and accordingly undertaken, as a matter of international law, to comply with a broad range of international human rights treaties. At the very least, this includes the International Bill of Rights comprising the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Civil and Political Rights.

5. This, it behoves New Zealand to take a human rights based approach to policy development – including to undertaking its consultation on setting New Zealand’s post-2020 climate change target.

6. Five legal principles are at the heart of a human rights based approach:
• Individuals have the right to participate in their development (national affairs that affect them) – that is, not just as best practice, but as a right;
• Governments, their agencies and officials, are accountable to individuals for both process and impact of policy development;
• The situation of vulnerable groups should be prioritised to ensure development process and impact do not disproportionately impact on them;
• Individuals should be empowered in the process
• The duties accepted by States under the international human rights framework should drive the process.

7. It is apparent that the current process fails to meet any of these principles:

• While the current consultation process could be said to enable a measure of participation in the process of developing New Zealand’s contributions to addressing climate change and putting forward a target (intended nationally determined contributions or INDCs) to reduce emissions after 2020, it is too little and far too late. Specifically, it fails to acknowledge that people are entitled, as of right, to participate in the process and has failed to provide a mechanism effectively for them to do so. Few of those most affected by climate change will have the capacity to contribute through the selected process, on such short notice and without addressing the most vulnerable in the communities where they reside. In particular, we submit that it is settled law in New Zealand that consultation involves not just presentation of a series of proposals or concepts, but the involvement of people (and their representatives, civil society and Parliament, in developing those proposals and concepts
• The current process does not expressly acknowledge the duty to be accountable – neither expressly, nor in effect. No accountability processes have been established for the consultation exercise
• There is little or no acknowledgement of the impact of climate change on the most vulnerable groups (in New Zealand, regionally – where New Zealand accepts particular responsibilities towards its Pacific neighbours – or globally)
• The process has failed to empower those most effected – current proposals have been developed in the absence of the most relevant communities or their representatives – either through civil society or Parliament
• There is no reference anywhere in the consultation to the human rights contained in the international human rights instruments.

III Climate Change as a Human Rights Issue

8. Climate Change will affect the enjoyment of (almost) every human right. As Margaret Attwood notes, climate change is everything change. All rights are likely to be impacted as the climate change crisis deepens this century. Most obvious are the rights to life and right to health, but other rights will also be affected. Cyclone Pam's destruction of most of Vanuatu's housing stock demonstrates how climate change can affect the right to housing.

9. A more cogent example is the situation of those displaced (already displaced, and those facing displacement as oceans rise) by climate change, the effects of which can be seen all over the world, including in our region. Weather patterns are changing, sea levels are rising and severe storms are more regular. Last year was the hottest recorded.
10. People are being forced to leave their homes, lands and livelihoods because these have been destroyed by the effects of climate change. These processes stand to displace many tens of millions of people in coming years. Their human rights are directly affected:

11. The rights of climate-displaced persons (CDPs) affected, include:

- The right to adequate housing and shelter – governments are required to ensure that CDPs are provided with adequate basic housing and shelter
- The right to land – CDPs should be provided with access to new land to replace, for example, any agricultural land they are forced to leave when they are displaced. Further, they have the right to relocate – there should be no restrictions on CDPs’ ability to relocate to a safe area when their home is threatened by climate change
- The right to food, water and adequate sanitation – under international human rights instruments, government have to ensure access to food, water and clean sanitation so CDPs conditions after they have been displaced from their homes. The right to medical assistance and health services – governments have to ensure access to medical care before during and after displacement
- The right to education – governments have to ensure that children are able to go to school in the area CDPs move to after displacement
- The right to freedom of movement – human rights instruments make it clear that governments should not limit where CDPs move to
- The right to choose one’s residence – CDPs have the right to determine where they live in their country, subject only to laws on housing and land.

12. This list is not exclusive, but demonstrates the relevance of human rights in the climate change debate. Further, while climate change is likely to directly impact the rights noted above, it will also have an indirect effect - especially on civil and political rights. Climate-change fuels conflict (for example, the increasing international conflicts over access to water). Equally, the responses designed to mitigate and adapt to climate change can impact rights. Large scale biofuel carbon capture and storage (BECCS) projects, for example, are very likely to come at the cost of many indigenous and some rural people's rights, as they are displaced to make way for massive biofuel plantations. Some large-scale hydropower schemes have also come at the cost of driving indigenous peoples off their lands. It is important, therefore, that any international climate regime encourages mitigation and adaptation efforts to be rights-based. This includes the process of negotiations themselves. The international negotiations in the lead up to the Paris meeting stress the human rights based importance of civil society access to the negotiations and public consultation around climate change response legislation.

13. Finally, we mention that in 2008 the UN Human Rights Council in 2008 asked the High Commissioner for Human Rights to investigate the relationship between human rights and climate change. That report came out in 2009 and sets out the possible human rights consequence of climate change in detail. None of this is reflected in the consultation documents issued by the New Zealand Government.
Recommendation

The Human Rights Foundation recommends that urgent attention be given to addressing the need for a human rights based approach to the process for developing New Zealand’s INDC, and to engage effectively with civil society and Parliament to do so.

In any event, the current process from this point forward should expressly adopt a human rights based approach aimed at ensuring:

- adequate reference to human rights into the Paris agreement text, to lay a jurisprudential foundation for the future use of human rights instruments on climate change, and
- especially in order to support Pacific climate adaptation, use human rights language to promote for a stronger INDC.