

15 December 2023

Hon Simon Watts | Hon Penny Simmonds
Minister of Climate Change | Minister for the Environment
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Tēnā kōrua Ministers Watts and Simmonds

Climate change policy

Firstly, congratulations on your respective appointments as Minister of Climate Change and Minister for the Environment. Te Kāhui Tika Tangata | Human Rights Commission (Commission) looks forward to working with you both, and our new Government, to ensure that the human right to a healthy environment is promoted, respected and protected for everyone in Aotearoa New Zealand.

We welcome Minister Watts' strong leadership in recent days on the international stage at COP28, including his acknowledgements that stronger action is needed, and commitments to work with our Pacific Island neighbours. We also welcome the Government's domestic commitments to meet with councils and communities to speed up cyclone and flood recovery efforts.

The Commission has a broad mandate under section 5 of the Human Rights Act 1993, to advocate and promote respect for, and an understanding and appreciation of, human rights in Aotearoa society including the human rights dimensions of Te Tiriti o Waitangi. As Rongomau Taketake, I support the Board of Commissioners with particular responsibility for Indigenous peoples' rights in Aotearoa. I am also responsible for human rights in the context of climate change at the Commission.

Aotearoa, together with the international community, recently adopted United Nations resolutions that recognise the right of everyone to a clean, healthy and sustainable environment.¹ These resolutions were passed in response to the "alarming decline of the natural world" and observations that "human beings are wholly dependent on a healthy environment in order to lead dignified, healthy and fulfilling lives".²

¹ United Nations Human Rights Council (UNHRC) '[The human right to a clean, healthy and sustainable environment](#)' (18 October 2021, A/HRC/RES/48/13) at [1]; United Nations General Assembly (UNGA) '[The human right to a clean, healthy and sustainable environment](#)' (1 August 2022, UN Doc A/RES/76/300), at [1].

² United Nations Environment Programme 'In historic move, UN declares healthy environment a human right' (28 July 2022) at <https://www.unep.org/news-and-stories/story/historic-move-un-declares-healthy-environment-human-right>.

Human rights in the context of climate change are an increasing priority for the Commission. Over the last year, we have made submissions to Select Committees on proposed legislation that will have environmental impacts, provided advice to the Ministry of Foreign Affairs and Trade on their submissions to the International Court of Justice regarding our negotiating mandate on climate change, intervened in the *Smith v Fonterra Co-Operative Limited* litigation, worked with iwi, undertook responsive advocacy in the wake of Cyclone Gabrielle, engaged in international advocacy including through the Permanent Forum on Indigenous issues, the Expert Mechanism on the Rights of Indigenous Peoples, and the Universal Periodic Review, and provided media commentary.

The Commission has provided a briefing to the Minister of Justice, who is our oversight Minister. However, I take this opportunity to engage with you on the Government's policy commitments regarding the environment and climate change, and to request a meeting to discuss how human rights principles must be at the forefront of policy making in this area. A human rights-based approach to climate change and the environment is crucial to ensure the standing of Aotearoa as a global climate leader.

Human rights obligations

A safe, clean, healthy and sustainable environment is vital to the enjoyment of the full range of fundamental human rights, including the rights to life, to the enjoyment of the highest attainable standard of physical and mental health, to an adequate standard of living, to adequate food, to safe drinking water and sanitation and to housing, and to cultural and indigenous rights.³

Climate change threatens the effective enjoyment of all human rights, meaning it is essential for human rights to be considered and protected in the response to climate change. States have obligations to use their maximum available resources to prevent the foreseeable adverse effects of climate change and ensure that those affected by it, particularly those in vulnerable situations, have access to effective remedies and means of adaptation to enjoy lives of dignity.⁴

In this respect, I note preambular paragraph 10 of the Paris Agreement, which states:

“...when taking action to address climate change,...[States Parties must]...respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.”

Evidence shows that the effects of climate change will be felt most acutely by Tangata Whenua, many of whom are rurally and coastally positioned due to historic marginalisation, and other segments of the Aotearoa population who are in vulnerable situations. Groups that are already marginalised, as a result of pre-existing inequalities and inequities, will continue to be more affected and have less favourable conditions or reduced capacities to adapt to and to mitigate the consequences of climate change. Factors such as geography, poverty, gender, age, ethnicity or race,

³ John H. Knox ‘[Framework Principles on Human Rights and the Environment - The main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment](#)’ (UN Doc A/HRC/37/59, 24 January 2018).

⁴ OHCHR ‘[OHCHR and climate change](#)’. See also UNHRC [General Comment No 36 - Article 6: Right to life](#) (UN Doc CCPR/C/GC/36, 3 September 2019), at [26]. The UNHRC stated that “Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life” (at [62]).

nationality of birth or social status, Indigenous or minority status and disability may further aggravate those consequences.

When making policy decisions about climate change adaptation, mitigation and response, I urge you to give due consideration to the full range of interdependent and fundamental human rights for everyone in Aotearoa.

Engagement and process

Both substantive environmental outcomes and, equally, decision-making processes must align with human rights obligations, including under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). United Nations bodies recognise, as a fundamental principle of human rights, that members of civil society be able to participate in decisions that affect them.

Article 7(5) of the Paris Agreement affirms the importance of participation, consideration of vulnerable groups, and the role of Indigenous Peoples' knowledge systems in guiding and as a basis for climate action. Te Tiriti o Waitangi and the UNDRIP provide complementary yet distinct participatory principles that must be applied in decision-making processes that affect Māori.

Applying these human rights principles improves the quality of decision-making while also enabling the Government to ensure that it is acting consistently with its obligations to Tangata Whenua and wider civil society.

In the wake of Cyclone Gabrielle and other recent severe weather events, we saw a swift and effective response as Māori communities – without waiting for government support – stood up emergency shelters, cleaned up marae and homes, fed, clothed, and sheltered communities and have continued to support displaced whānau to rebuild homes and work with the government and local councils.

Together with Chief Commissioner Paul Hunt and Commission staff, I visited affected communities in Te Tairāwhiti and Wairoa in July this year.⁵ We heard clearly that communities know the solutions, have the knowledge, insights, relationships and history. It is imperative that they are listened to and empowered to exercise their own self-determined solutions.

The Government must go further to support the meaningful and direct participation of Tangata Whenua and affected communities in decisions that impact them.⁶ The Commission is concerned about the Government's plans to urgently implement a number of measures that would have a significant impact on environmental protection and, consequently, would have significant human rights implications for people in Aotearoa. It is vital that any change be subject to the usual democratic processes of public, Select Committee and regulatory scrutiny.

As the Government moves to action, I urge you to ensure adequate space for community engagement, participation, and free, prior and informed consent *before* decisions are implemented.

⁵ See Te Kāhui Tika Tangata | Human Rights Commission, "Commission's visit to cyclone-affected areas highlights human rights challenges" (3 August 2023) available at <https://tikatangata.org.nz/news/commissions-visit-to-cyclone-affected-areas-highlights-human-rights-challenges>. See also "Māori should be front and centre of climate change and weather disaster responses" (10 April 2023) available at <https://www.stuff.co.nz/opinion/131716871/mori-should-be-front-and-centre-of-climate-change-and-weather-disaster-responses>.

⁶ See, for example, the Commission's "Checklist for integrating human rights during relief and recovery efforts" (March 2023) available at <https://tikatangata.org.nz/news/human-rights-fundamental-in-disaster-response>.

Request to meet

I request the opportunity to meet with both you as soon as possible, to discuss the matters raised in this letter. I have copied in other Ministers who have responsibility for impacted portfolios.

I look forward to receiving your response.

Nāku noa, nā

**Claire Charters**

Rongomau Taketake

Te Kāhui Tika Tangata | New Zealand Human Rights Commission

Cc Hon Nicola Willis, Associate Minister of Climate Change
 Hon Andrew Hoggard, Associate Minister for the Environment
 Hon Chris Bishop, Minister Responsible for RMA Reform
 Hon Tama Potaka, Minister of Conservation