

International Human Rights Laws Regulating Hate and Discrimination, and the Trends

E ngā mana,

E ngā reo,

E ngā karangatanga maha,

Tēnā koutou.

I have spoken these words in New Zealand's indigenous language, te reo Māori. Te reo Māori is an official language in New Zealand and we are proud of it.

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Regulating hate and discrimination is a major priority for New Zealand.

It is a key part of our commitment to a tolerant, equal and just society.

New Zealand has had a very recent experience of hate spilling over with tragic consequences.

In March 2019, a gunman espousing extreme hated-filled views attacked two mosques in Christchurch, killing 51 people, injuring a further 40, and tearing apart the lives of many more.

This attack tore at the fabric of New Zealand society.

It has forced us to ask questions about how this could happen in our country.

The perpetrator was not a New Zealander. He may well have targeted us precisely because of our deeply held values of acceptance and tolerance.

Nonetheless the incident precipitated a process of self-reflection.

Are we doing enough to protect our vulnerable populations? Can we do more?

Social media is compounding this issue.

It is clear in 2020 that social media has enabled an increase in online hate speech, by providing a platform for like-minded people to find one another and share objectionable material.

This can incite further hostility and violence towards vulnerable groups.

Like most countries, New Zealand is committed to the rights to freedom of expression and assembly.

These rights play a key role in promoting tolerance, diversity and pluralism.

They must, however, be balanced against the rights of groups affected by hate speech and whose own rights to freedom of expression can be limited by hatred directed towards them.

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So how does New Zealand approach this issue?

Unlike many other countries, New Zealand does not have a formal written constitution enshrining such protections. Instead, we rely on domestic legislation and international norms.

A key foundation for us is the International Covenant on Civil and Political Rights, adopted in 1966 and now signed by 179¹ countries worldwide, including the Republic of Korea.

The Covenant sets out the rights of a person's freedom of expression, but also what restrictions are allowed to be placed on that freedom – such as respecting the rights and reputations of others, and protecting national security, public order and public health.

The Covenant obliges states to prohibit hate speech, including any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Since the Covenant was agreed in 1966, the grounds for considering protection have broadened beyond national, racial and religious hatred.

They are now widely considered to also include grounds such as language, political opinion, sexual orientation, gender identity or intersex status, migrant or refugee status, and disability.

New Zealand has ratified all of the major international treaties relating to hate speech, including the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Prevention and Punishment of the Crime of Genocide.

New Zealand's hate speech approach is largely governed by the Human Rights Act 1993.

This Act² makes it unlawful for any person to publish, broadcast or distribute written matter or use words in public which are "threatening, abusive, or insulting" and likely to "excite hostility against or bring into contempt any group of persons...on the grounds of the colour, race, or ethnic or national origins of that group of persons."

The Act provides a civil law remedy for "racial disharmony", allowing people to bring complaints to the Human Rights Commission, which can provide assistance to help the parties resolve the issue.

If this does not resolve the issue, complainants can take the complaint to the Human Rights Review Tribunal, which can award damages, and order individuals or organisations to undergo training.

¹ Six countries, including China, have signed but not ratified

² Section 61

In addition to the civil law remedy, the Act³ also provides a criminal sanction for inciting racial disharmony⁴.

It requires that the accused must have 'intended' that his or her conduct would have the effect of inciting hostility or ill-will towards a specified group or bringing that group into contempt or ridicule.

There has only ever been one prosecution under this section in 1979, when a person was convicted of publishing a pamphlet inciting ill-will against Jewish people.

The Act only covers words used in relation to the colour, race, or ethnic or national origins of that group of persons.

In 2004, the New Zealand Parliament identified a number of shortcomings of this legislation. Some of these relate to the rise of social media I referred to earlier.

In 2015, the New Zealand Parliament passed the Harmful Digital Communications Act (HDCA), aimed at addressing online hate speech directed at individuals.

This law sets out ten communication principles, the last of which states: "A digital communication should not denigrate an individual by reason of his or her colour, race, ethnic or national origins, religion, gender, sexual orientation, or disability".

The scope and the threshold are broader than those included in the earlier Human Rights Act, including gender, sexual orientation, and disability.

Under the Harmful Digital Communications Act complainants are not required to show incitement of third parties, only denigration of an individual on a specified ground that needs to be established.

Under the Act, complaints are made to Netsafe, New Zealand's independent, non-profit online safety organisation, which will work with the parties to find a resolution.

If a resolution cannot be found, Netsafe must notify the complainant of their right to apply to a court for an order if the affected individual believes they have suffered or will suffer as a result of the digital communication.

The Court can make a range of orders including the removal of content and issuing of an apology.

³ Section 131

⁴ It provides for penalties of a term of imprisonment not exceeding three months or a fine not exceeding \$7000.

The Act also provides for criminal liability when a person does not comply with an order, or when a person intentionally causes harm through posting a digital communication.

Legislation related to film, videos and publications⁵ also provide sanctions on activities designed to discriminate against sections of the public or incite violence.

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New Zealand is proud of our history of protecting and promoting human rights both at home and internationally.

But a key part of this commitment is to be clear that the job is never finished.

It requires engagement, vigilance and updating.

It is therefore important that the United Nations regularly monitors implementation of the key treaties and scrutinises how countries, such as New Zealand, are actually living up to their obligations.

Just last year in 2019, New Zealand underwent its third Universal Periodic Review by the UN.

That review identified several shortcomings, including two related specifically to hate speech.

One recommended more effort to combat racial discrimination and hate speech and promote diversity and tolerance.

The other was proposed a national plan of action against racial discrimination, xenophobia and hate crime.

New Zealand accepted both these recommendations.

In response to the review, Minister of Justice Andrew Little acknowledged, for example, that Maori and Pasifika communities, LGBTQI communities, new migrants, women, and people with disabilities continue to face “both direct and structural discrimination.”

“This”, he said, “is unacceptable”.

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Finally, there is a great deal governments can do outside the realm of regulation to assist its citizens to deal with issues such as hate speech, such as raising understanding and education, championing

⁵ The Films, Videos and Publications Classification Act, Broadcasting Act, and Summary Offences Act

tolerance and diversity, and working with individuals and groups to manage tensions and issues before they become a legal problem.

New Zealand has established a number of such bodies, such as the Human Rights Commission, as well as Commissioners in areas like Race Relations, Equal Employment Opportunities, Ethnic Affairs and Disability.

If these bodies are successful in promoting tolerance, openness and diversity, then that should reduce the need to have recourse to laws and regulations.

But as long as hate crimes are committed, our societies will continue to need a clear and agreed legal framework to deal with them.

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The New Zealand Government recognises that hate speech laws are important, but also complex and contentious.

We need to protect the rights of groups affected by hate speech while remaining conscious of the potential to impact on freedom of speech and expression.

As in all countries, it is an unfortunate reality that some parts of our society are marginalised and face discrimination.

We believe we have come a long way in New Zealand, but we still have work to do.

We are keen to share and learn from the experiences of other countries, such as Korea, which are grappling with similar issues.

These issues, and our society's response to them, are constantly evolving. It is critical that we remain open, listen to our people, and ensure that any process for change is inclusive.

This is an ongoing process for all of us.

Thank you.