



Convention on the Rights of Persons with Disabilities

Distr.: General
31 October 2014

Original: English

Committee on the Rights of Persons with Disabilities

Concluding observations on the initial report of New Zealand*

I. Introduction

1. The Committee considered the initial report of New Zealand (CRPD/C/NZL/1) at its 143rd and 144th meetings, held on 15 and 16 September 2014 respectively, and adopted the following concluding observations at its 163rd meeting, held on 29 September 2014.
2. The Committee welcomes the initial report of New Zealand, which was prepared in accordance with the Committee's reporting guidelines, and thanks the State party for its written replies (CRPD/C/NZL/Q/1/Add.1) to the list of issues prepared by the Committee.
3. The Committee appreciates the fruitful dialogue with the State party's delegation and commends the State party on the strength of its delegation, which included many representatives of relevant Government ministries. The Committee welcomed the independent participation of New Zealand's Disability Rights Commissioner.

II. Positive aspects

4. The Committee commends New Zealand on a number of achievements, notably its Disability Strategy and its Disability Action Plan 2014–2018. The Committee looks forward to the unfolding of the Action Plan over the coming years. It notes the establishment and funding of the New Zealand Sign Language Board, and the fact that New Zealand Sign Language is designated as one of the country's three official languages. The Committee also notes the increase in captioning in the media and the cinema, as well as the work undertaken to increase the entry of persons with disabilities into universities and other tertiary institutions. The Committee hopes that there will be a concomitant increase in the use of hearing loops. The Committee is pleased to learn that, at the 20 September 2014 election, telephone voting will operate for the first time, and commends New Zealand for enabling persons with disabilities, including persons with intellectual and/or psychosocial disabilities, to vote in New Zealand elections. It also commends the State Party on establishing an independent monitoring mechanism to fulfil the requirements of article 33 of the Convention.

* Adopted by the Committee at its twelfth session (15 September–3 October 2014).



III. Principal areas of concern and recommendations

A. General principles and obligations (arts. 1–4)

5. The Committee notes that the State party has begun the domestic treaty examination process with a view to acceding to the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

6. **The Committee recommends that the State party ratify the Optional Protocol as soon as is practicable.**

General obligations (art. 4)

7. The Committee is concerned that, when using the Google search engine on Google's New Zealand website (www.google.co.nz), and on other English-language Google websites, disturbing phrases occur when some phrases relating to autistic persons are typed into the search box. Since the conclusion of the constructive dialogue with New Zealand, Google has removed some, but not all, of the offending phrases. The Committee is further concerned that persons with autism are subject to this type of "hate speech", which is not generated by humans but rather is the result of an automated search engine process.

8. **The Committee recommends that the State Party bring this matter to the attention of Google, which has a registered office in New Zealand, to discuss what can be done to prevent or eliminate this type of "hate speech".**

B. Specific rights (arts. 5–30)

Equality and non-discrimination (art. 5)

9. The Committee notes that, in 2012, the New Zealand Court of Appeal affirmed that the policy of not paying some family carers to provide disability support services to adult disabled family members constituted unjustifiable discrimination on the basis of family status. The Committee is concerned that the Public Health and Disability Amendment Act 2013 reversed this court decision by denying carers' pay to some family members. The Committee is also concerned that these provisions also prevent some family members who are carers from making complaints of unlawful discrimination with respect to the Government's family care policy. The Committee notes that the independent monitoring mechanism has recommended reconsideration of this matter.

10. **The Committee recommends that the State party reconsider this matter to ensure that all family members who are carers are paid on the same basis as other carers are, and recommends that family members who are carers be entitled to make complaints of unlawful discrimination in respect of the State party's family care policy.**

11. The Committee is concerned that the Human Rights Act 1993 does not contain a separate definition of reasonable accommodation. The Committee appreciates that one can infer the concept from provisions of the Act. However, the Committee is concerned about its opaqueness and lack of clarity.

12. **The Committee recommends that, in order to clarify the meaning of reasonable accommodation, the State Party give consideration to amending the Human Rights Act 1993 to include a definition of reasonable accommodation, in conformity with the definition of reasonable accommodation in article 2 of the Convention.**

13. The Committee notes that a failure to understand the principle of reasonable accommodation is at the centre of many complaints that come to the New Zealand Human Rights Commission. The Committee notes that work has commenced on establishing guidelines on the application of the principle of reasonable accommodation, especially in the area of employment.

14. **The Committee recommends that these guidelines be promptly completed in line with provisions of the Convention, and distributed.**

Women with disabilities (art. 6)

15. The Committee notes the projects funded by the Ministry of Social Affairs to assist women with disabilities.

16. **The Committee recommends that this work be continued and strengthened to assist women with disabilities in obtaining education and employment and in combating domestic violence. The Committee also recommends that organizations representing women and girls with disabilities be involved in these programmes.**

Children with disabilities (art. 7)

17. The Committee is concerned that it is still the case that some children with disabilities, especially Maori children with disabilities, have difficulty in accessing some government services, including health and education services. The Committee notes the recent work undertaken as part of the Disability Action Plan 2014–2018 to make services more accessible.

18. **The Committee recommends that this work be increased to ensure that all children with disabilities are able to access government and related services, including to receive support to express their views.**

Accessibility (art. 9)

19. The Committee notes the review into access to building for people with disabilities which the Government commissioned in late 2013. This review is now being evaluated by a reference group.

20. **The Committee recommends that the State party enact measures to ensure that all public buildings, as well as public web pages providing services for all, are made accessible to persons with disabilities, and recommends that consideration be given to ensuring that new future private houses are made fully accessible. The Committee also recommends that the exemption of factories and industrial premises where fewer than 10 people are employed, from the accessibility requirements of the Building Act 2004 and the Building Code, be discontinued.**

Equal recognition before the law (art. 12)

21. The Committee notes the recent work on examining supported decision-making regimes in New Zealand.

22. **The Committee recommends that the State party take immediate steps to revise the relevant laws and replace substituted decision-making with supported decision-making. This should provide a wide range of measures that respect the person's autonomy, will and preferences, and is in full conformity with article 12 of the Convention, including with respect to the individual's right, in his or her own capacity, to give and withdraw informed consent, in particular for medical treatment, to access justice, to marry, and to work, among other things, consistent with the Committee's general comment No. 1 (2014) on equal recognition before the law.**

Access to justice (art. 13)

23. The Committee notes that, in New Zealand, persons who acquire a disability through injury only have recourse to compensation via the Accident Compensation Corporation. The Committee notes that persons who have suffered injuries are concerned over the lack of access to justice to pursue their claims. There is concern about the limited amount of legal aid funding that is available and about the discretionary basis upon which legal costs are awarded. There is also concern that the Accident Compensation Corporation machinery lacks a human rights focus.

24. The Committee recommends that the State party examine the processes for the assessing of compensation by the Accident Compensation Corporation to ensure that adequate legal aid is available and that its processes are fully accessible to all claimants, and finally to ensure that this mechanism has a human rights focus.

25. The Committee notes that the Government is considering the establishment of an accident compensation tribunal to replace appeals to the District Court. The Committee is concerned that there has been insufficient consultation with persons who have acquired disabilities through injury, and with their representative organizations, about the establishment and operation of this tribunal.

26. The Committee recommends that organizations representing persons with disabilities be consulted about the proposal to establish an accident compensation tribunal. The Committee also recommends that the tribunal adopt a flexible approach to the admission of evidence, and that those who lack the means should be given adequate legal aid to ensure full access to the tribunal.

27. The Committee is concerned that no specific training of judges by the Institute of Judicial Studies has been given either on the Convention or on the requirement that justice be accessible to all persons with disabilities, including those with intellectual and those with psychosocial disabilities.

28. The Committee recommends that the Institute of Judicial Studies, in conjunction with disabled persons' organizations, run training programmes on the Convention and on the rights of persons with disabilities who come before New Zealand courts and tribunals.

Liberty and security of the person (art. 14)

29. The Committee is concerned that the Mental Health (Compulsory Assessment and Treatment) Act 1992 has been criticized for its lack of human rights principles.

30. The Committee recommends that the State party take all the immediate necessary legislative, administrative and judicial measures to ensure that no one is detained against their will in any medical facility on the basis of actual or perceived disability. The Committee also recommends that the State party ensure that all mental health services are provided on the basis of the free and informed consent of the person concerned, in accordance with the Convention. The Committee further recommends that the Mental Health (Compulsory Assessment and Treatment) Act 1992 be amended to comply with the Convention.

31. The Committee notes that the State party continues to allow the use of seclusion and restraints in psychiatric hospitals. Although there has been a decline in this practice, the situation is not satisfactory.

32. The Committee recommends that immediate steps be taken to eliminate the use of seclusion and restraints in medical facilities.

33. The Committee is concerned that the criminal justice system in New Zealand includes conditions in which a person with disabilities can be declared “unfit to stand trial” and on that basis can be deprived of liberty. The system does not recognize that a person with disabilities should only be deprived of liberty when found guilty of a crime, after criminal procedure has been followed, with all the safeguards and guarantees applicable to everyone.

34. **The Committee recommends that the State Party review the criminal justice system to ensure that criminal procedure is followed in accordance with all the safeguards and guarantees that are applicable to non-disabled persons, and that deprivation of liberty should be applied as a matter of last resort and when other diversion programmes, including restorative justice, are insufficient to deter future crime. The Committee also recommends that the State Party ensure that reasonable accommodation in prison settings operates in respect of persons with disabilities.**

Freedom from exploitation, violence and abuse (art. 16)

35. The Committee notes the programmes under the Domestic Violence Act 2013 to assist persons with disabilities who suffer violence — especially women, girls and boys with disabilities. However, the Committee is concerned that it is unclear whether the Act protects persons with disabilities experiencing abuse in home-care/live-in support situations, and whether the definition of a domestic relationship includes relationships between persons with disabilities and other resident service users, their caregivers, and other support staff.

36. **The Committee recommends that the State party strengthen these programmes and initiatives to protect persons with disabilities, especially those living in institutions, from violence and harm, and that it ensure that a system is put in place to detect and respond effectively to cases of abuse. It also recommends that the State Party ensure that legislation, policy and practice relating to domestic violence covers persons with disabilities in the domestic situations that they encounter.**

Protecting the integrity of the person (art. 17)

37. The Committee is concerned that parents may give consent for the sterilization of their disabled children, and that courts may order that adults undergo sterilization without the individual’s consent.

38. **The Committee recommends that the State party enact legislation prohibiting the use of sterilization on boys and girls with disabilities, and on adults with disabilities, in the absence of their prior, fully informed and free consent.**

Living independently and being included in the community (art. 19)

39. The Committee notes the independent living model and the Enabling Good Lives project, which both give greater independence to persons with disabilities. However, the Committee is concerned that there appears to be a lack of choice and of a range of supports to ensure that persons with disabilities can freely and by themselves choose to live included in the community, noting especially that persons with disabilities in some cases have no other option than to live in residential facilities for the elderly.

40. **The Committee recommends that the independent living model and the Enabling Good Lives programme be extended to enable more persons with disabilities to live independently in the community. The Committee also recommends that a range of supports be made available in the community to ensure that persons with disabilities can exercise choice and control regarding where they live.**

Freedom of expression and opinion, and access to information (art. 21)

41. The Committee notes the limited number of sign language interpreters in the State party.

42. **The Committee recommends that the Sign Language Board work to ensure funding for the training and employment of sufficient numbers of sign language interpreters, as well as an increased use of New Zealand Sign Language in all aspects of life, including educational and cultural activities.**

43. The Committee is concerned that it is still the case that Maori people with disabilities find it more difficult to access information in their own language. Maori people who are deaf find accessing information in New Zealand Sign Language even more difficult, owing to the lack of interpreters from Maori into New Zealand Sign Language.

44. **The Committee recommends that greater efforts be made to enable Maori and Pacific people with disabilities, and especially those who are deaf and deaf-blind, to access information.**

Respect for home and the family (art. 23)

45. The Committee is concerned that sections 141, 142, and 144 (2) of the Children, Young Persons and Their Families Act 1989 appear not to give children with disabilities the same protections as other children when they are placed in out-of-home care. The Committee notes the passage of the Vulnerable Children Act 2014.

46. **The Committee recommends that these two statutes be re-examined to ensure that children with disabilities have the same safeguards as other children when they are placed in out-of-home care.**

47. The Committee is concerned that section 8 (1) (b) of the Adoption Act 1955 subjects disabled birth parents to differential treatment based on their disability. This provision enables consent to an adoption order to be dispensed with if the court is satisfied that the parent or guardian is unfit, by reason of any physical or mental incapacity, to be entrusted with the care and control of the child.

48. **The Committee recommends that section 8 of the Adoption Act 1955 be repealed and that the statute be amended to ensure that parents with disabilities are treated on an equal basis with other parents with respect to adoption.**

Education (art. 24)

49. The Committee notes the steps being taken to increase inclusive primary and secondary education, and the ongoing challenges to making the education system fully inclusive, such as the lack of reasonable accommodation. The Committee is concerned at reports indicating that children with disabilities experience bullying in schools, and notes that there is no enforceable right to inclusive education.

50. **The Committee recommends that further work be undertaken to increase the provision of reasonable accommodation in primary and secondary education, and to increase the levels of entry into tertiary education for persons with disabilities. The Committee encourages the State party to implement anti-bullying programmes and to establish an enforceable right to inclusive education.**

Health (art. 25)

51. The Committee is concerned that barriers still exist preventing persons with disabilities, and especially persons with intellectual disabilities, from fully accessing health-care services, including sexual and reproductive health care.

52. **The Committee recommends that further measures be taken to ensure access to full health care for all persons with disabilities.**

53. The Committee is concerned that Maori people have the poorest health outcomes in New Zealand. The Committee is also concerned that the prevalence of disability is higher in the Maori population as a result of poverty and disadvantages.

54. **The Committee recommends that measures be strengthened to enhance the health outcomes of Maori and Pacific persons with disabilities.**

Work and employment (art. 27)

55. The Committee is concerned that the employment levels in New Zealand for persons with disabilities, and especially for Maori and Pacific people with disabilities, are still low.

56. **The Committee recommends that further steps be taken to increase the employment levels of persons with disabilities.**

57. The Committee is concerned that under the Minimum Wage Act 1983, some 1,200 persons with disabilities are paid less than the minimum wage, under minimum wage exemption permits.

58. **The Committee recommends that the State party examine alternatives to minimum wage exemption permits in the employment of persons with disabilities.**

Adequate standard of living and social protection (art. 28)

59. The Committee is concerned that persons with disabilities have a lower socioeconomic status when compared with other New Zealanders. In particular, children with disabilities are overrepresented in statistics on child poverty and are more likely to be living in one-parent households. The support and income/pension provided to persons with disabilities differs according to the cause of their disability, which results in an unjustified and unreasonable difference in their standard of living and social protection.

60. **The Committee recommends that a review be undertaken of disability-related costs to ensure a sufficient allocation of income/pension, in particular for children with disabilities, and their families.**

Participation in political and public life (art. 29)

61. The Committee notes that under the Electoral Act 1992, persons who are blind or vision-impaired may receive the assistance of an official to cast their vote in an election.

62. **The Committee recommends that the State party consider the introduction of accessible electronic voting to enable persons with disabilities to cast their votes in a truly secret manner.**

Participation in cultural life, recreation, leisure and sport (art. 30)

63. The Committee notes that only about 10 per cent of television programmes are captioned and only about one to two hours of television programmes each day are audio-described.

64. **The Committee recommends that the State party take further measures to increase the captioning and audio description of television programmes.**

65. The Committee is concerned that the State party has not yet ratified the World Intellectual Property Organization Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, which

allows access to published material to blind persons, persons with visual impairments or persons who have other difficulties in accessing printed materials.

66. **The Committee recommends that the State party take all appropriate steps to speedily ratify the Marrakesh Treaty.**

C. Specific obligations (arts. 31–33)

Statistics and data collection (art. 31)

67. The Committee notes that Statistics New Zealand conducted a disabilities survey in 2013.

68. **The Committee recommends that Statistics New Zealand produce a report from the Disability Survey 2013 comparing the human rights outcomes of disabled women and men with those of non-disabled women and men, and where possible, make data tables available from the Disability Survey 2013 so that data users are able to compare the human rights outcomes of disabled men and women with those of non-disabled men and women.**

69. The Committee is concerned that government departments, crown entities and local authorities do not always collect and publish disaggregated data on people with disabilities in their annual reports.

70. **The Committee recommends that government departments, crown entities and local authorities should collect and publish disaggregated data on people with disabilities in their annual reports.**

International cooperation (art. 32)

71. The Committee is concerned that the withdrawal of funding to the Pacific Disability Forum is having a negative effect on persons with disabilities in the region.

72. **The Committee recommends that the State party's foreign aid programme should continue a focus on disability-inclusive development. The Committee also recommends that the State party reinstate its provision of financial and other resources to the Pacific region.**

Follow-up and dissemination

73. The Committee requests the State party to implement the recommendations of the Committee as contained in the present concluding observations. It recommends that the State party transmit the concluding observations for consideration and action to members of the Government and Parliament, officials in relevant ministries, local authorities, and members of relevant professional groups such as education, medical and legal professionals, as well as to the media, using modern social communication strategies.

74. The Committee strongly encourages the State party to involve civil society organizations, in particular disabled persons' organizations, in the preparation of its second periodic report.

75. The Committee requests the State party to disseminate these concluding observations widely, including to non-governmental organizations and representative organizations of persons with disabilities, as well as to persons with disabilities themselves and members of their families, in English, Maori and New Zealand Sign Language, and in accessible formats, and to make them available on the government website on human rights.

Next report

76. The Committee requests the State party to submit its combined second and third periodic reports no later than 25 October 2018, and to include therein information on the implementation of the present concluding observations. The Committee offers to the State party the possibility of the above-mentioned reports being submitted under the Committee's simplified reporting procedure, under which the Committee prepares a list of issues at least one year prior to the date when the combined reports are due. The replies of the State party to such a list of issues constitute the State party's next report.
