

# The Human Right to a Decent Home:

## KEYNOTE ADDRESS, NZ CHIEF HUMAN RIGHTS COMMISSIONER, THE SHIFT CONFERENCE 2019

> On the 6th June at The Shift Aotearoa Conference 2019 – on invitation from Community Housing Aotearoa – the New Zealand Chief Human Rights Commissioner, Paul Hunt, made a plea for what we all deserve: the human right to a decent home. Following is a transcript of his address, with some minor revisions..

Tuia te rangi e tū nei  
Tuia te papa e takoto nei  
Tuia te miro tangata  
Tēnā koutou Tēnā koutou, Tēnā koutou katoa

Friends, we have to refresh human rights for our times. And we have to refresh human rights for our place: Aotearoa.

How do we refresh human rights for our times and our place?

### 1. All human rights

We have to call for *all* human rights: Civil and political rights, like freedom of speech and freedom of religion; employment rights, like the right to a decent wage; cultural rights, like the right to enjoy our culture; social rights, like the right to a decent home. All those human rights are in the Universal Declaration of Human Rights, which New Zealand helped to draft.

But many of them have been airbrushed out of our national picture. We have to reclaim them. In addition, we need to call for *other* human rights too; those in the UN Declaration on the Rights of Indigenous Peoples, which has been affirmed by New Zealand. And the right to a safe and healthy environment, which is now widely recognised by many countries and by UN independent human rights experts.

In New Zealand, some of these human rights that I have mentioned are guaranteed in our national laws, such as the NZ Bill of Rights Act – and this Act is a colossal achievement. But some of these human rights are virtually invisible in New Zealand. Among these invisible, neglected human rights are social rights, such as the right to a decent home.

Neglected rights for neglected people.

“ The NZ Bill of Rights Act is crucially important but it is misnamed ”

The NZ Bill of Rights Act is crucially important but it is misnamed. It is not a Bill of Rights Act. It is a Civil and Political Rights Act. With its focus on civil and political rights, it reflects a *limited* view of humanity – a *truncated* view of humanity. So, we have to refresh human rights for our times by calling for *all* human rights, including social rights, such as the right to a decent home.

### 2. Individuals and communities

In addition, we have to refresh human rights by thinking of individuals *and* communities.

Usually, human rights focus on individuals. Human rights are usually seen as a way of granting entitlements to individuals. Usually, human rights give little attention to the place of



Paul Hunt, New Zealand Chief Human Rights Commissioner

individuals *within* their communities. But there are exceptions. For example, the Universal Declaration of Human Rights says, “Everyone has duties to the community in which alone the free and full development of [their] personality is possible.” (article 29(1))

So, it is necessary and legitimate to talk about human rights, individuals *and* communities, but usually human rights give scant attention to life-enhancing communities. This is one reason why Te Tiriti o Waitangi, and the UN Declaration on the Rights of Indigenous Peoples, are so extremely important and valuable. They drag human rights beyond a narrow focus on the individual – and demand a wider focus on individuals *and* their communities.

This is another way of refreshing human rights for our times and our place: *by locating individuals within their communities.*

### 3. Not only rights, but duties

Usually, human rights are seen as granting rights to individuals and placing responsibilities on states. Orthodox understandings of human rights are resistant to the idea that human rights place responsibilities on individuals. But remember that quotation from the Universal Declaration of Human Rights? “Everyone has duties to the community.”

There we have it. Individuals owe duties to their communities.

“ Everyone has duties to the community ”

I am definitely not suggesting that an individual's enjoyment of a human right is conditional upon him or her fulfilling a duty. If that were to happen, the right is not a human right. But I am suggesting that it is necessary and legitimate to talk about, not only the rights of individuals, but also their duties.

So, how do we refresh human rights for our times and place by acknowledging the rights and duties of individuals?

#### 4. Top-down and bottom-up

My time is short, so I will more briefly mention another way of refreshing human rights for our times and place.

Lawyers have appropriated human rights. They have made human rights top-down, legalistic, technocratic and judicial. But there's another approach to human rights – a bottom-up, participatory approach. This approach depends upon the participation of individuals and communities with a view to making human rights 'real' in communities, *iwi* [tribes], workplaces, clinics, schools, universities – and housing programmes.

“ This bottom-up, participatory approach wrests human rights away from the lawyers ”

This bottom-up, participatory approach wrests human rights away from the lawyers and places them back where human rights belong – in the hands of individuals and communities. In this way, human rights can dignify, empower, embolden and affirm neglected individuals and communities.

In reality, there is a role for both the legal, technocratic approach, as well as the bottom-up participatory approach. A blend of both approaches is another way of refreshing human rights for our times and place.

#### 5. Implementing the right to a decent home

In the last 10 years or so, global human rights have taken a new direction. For years, international human rights work focussed on *declaring* human rights; that is, on drafting human rights treaties, conventions and declarations. This declaratory work was – and is – extremely important.

But, in recent years, there has been a change of focus from the declaration of human rights to their 'real-life', practical implementation – in communities, clinics, hospitals, care homes, schools, universities, work places, housing programmes and so on.

So, we have moved from the era of human rights *declaration* to the era of human rights implementation.

“ We have moved from the era of human rights declaration to the era of human rights implementation ”

UN Secretary-General Kofi Annan made this point in a seminal speech to the UN Commission on Human Rights in 2005. He said, “The era of declaration is now giving way, as it should, to an era of implementation.”

Implementation requires human rights to be integrated into laws, regulations, institutions, policies, plans, practices and processes. Implementation does not depend upon lawyers going to court; it depends upon policy-makers, researchers and practitioners taking human rights seriously, and thereby never having to go anywhere near a court.

#### 6. Time to join the 20th century (sic)

In my opinion, it is unrealistic to expect the government to adopt the right to a decent home, unless we first make it reasonably clear what this human right means.



We knew there was a right to a decent home over 25 years ago. It's grounded in the Universal Declaration of Human Rights (1948), and expressed in the International Covenant on Economic, Social and Cultural Rights, which NZ became legally bound by in international law some decades ago.

“ It was law-making by bumper-sticker! ”

So, we have known for decades that there is a right to a decent home. But, very frankly, 25 years ago, nobody knew what it meant! The right was boldly declared in a tiny handful of words – and that was it! It was law-making by bumper-sticker!

But that was 25 years ago.

Since then, thanks to the work of multitudes around the world, we have a clearer picture of what the right to a decent home means. Some of this clarity is provided by more recent international human rights instruments that NZ has signed up to, such as the Convention on the Rights of the Child, the Convention on the Rights of People with Disabilities, and the UN Declaration on the Rights of Indigenous Peoples. These instruments help to point the way but even they are not detailed.

Thankfully, in addition to them, UN independent human rights experts have fleshed out, in hundreds of authoritative reports, what the right to a decent home means. Leilani Farha, whom we heard from earlier this morning [at The Shift Conference], is one of these eminent experts – and there are others.

Also, over the last 25 years, across the world, civil society organisations have written countless briefings and reports on the right to a decent home. Civil society groups have demonstrated in the streets for the right to a decent home. They have remonstrated with officials to take seriously the right to a decent home.

In some countries, national human rights institutions, like the NZ Human Rights Commission, have called for their governments to implement the right to a decent home. This is what the Commission called for in its response to the Christchurch earthquakes.

In some countries, governments have brought the right to a decent home into their national law, and governments have used it to shape housing policy. Crucially, there is evidence that human rights-shaped policies improve the lives of individuals and communities.

Most recently, as Leilani Farha mentioned, Canada has passed a National Housing Strategy Act that explicitly affirms, “the right to adequate housing is a fundamental human right.” (s.4(a)) The Act says, “The Minister must develop and maintain a national housing strategy... taking into account key principles of a human rights-based approach to housing.” (s.5(1)) The Act then establishes a National Housing Council, a Federal Housing Advocate and other measures to help the government turn the human rights-shaped Act into reality.

Moving on from Canada, in some countries – where the law permits – lawyers have gone to court and argued for the right to a decent home. And, in some of these cases, judges have recognised the right to a decent home, ordered its implementation, and the lives of individuals and communities have improved. And these days, there are scores of books on the right to a decent home.

My point is, 25 years ago, the right to a decent home attracted just a handful of words. Today, across the world, there are so many reports, briefings, laws, cases and books on the right to a decent home it is difficult to keep up-to-date.

“ 25 years ago, the right to a decent home attracted just a handful of words ”

But what about in Aotearoa? Where are the briefings, books, policies and cases on the right to a decent home in our islands? How many Parliamentary debates or Parliamentary Questions mention the right to a decent home? Where are the peaceful demonstrations calling for the right to a decent home?

All credit to those who are already calling for the right to a decent home in Aotearoa. There are some – many of them in this room – and they deserve our enormous respect. But they are honourable exceptions to the general rule.



Friends, in relation to the right to a decent home, NZ must join the 20th century. That's not a misstatement – I do mean the 20th century. We must join the 20th century, which is when the right to a decent home first emerged. We must start explicitly and consistently naming – and talking about – the right to a decent home.

If individuals, communities, *iwi*, civil society organisations and academics do not consistently call for the right to a decent home, we cannot expect government to take this human right seriously. In short, if *rights-holders* do not take the right to a decent home seriously, how can we expect *duty-bearers* – that is government – to take the right seriously?

## 7. Human rights values

Human rights embody a set of values – values such as fairness, decency, dignity, wellbeing, and equality of all individuals and communities. And, as I have tried to show, human rights embrace rights *and* duties; individuals *and* communities. They also require a fine sense of *balance* between competing rights and interests.

Human rights are relational. They are also intergenerational; afterall, there is an entire Convention on the Rights of the Child.

I will leave others to reflect on the degree to which these human rights values and concepts resonate with *te ao Māori*.

Informed by human rights values and concepts, human rights then take a further step; they indicate what needs to be done. For example, the right to a decent home requires a comprehensive, effective housing strategy that gives priority to those in most need. The strategy must engage all levels of government.

As Leilani Farha writes in one of her most recent reports, “Strategies should address the legacy of decolonisation and the systemic housing inequality and dispossession experienced by indigenous peoples.” (15th January 2018, para 38.) There must be meaningful participation in the design, implementation and accountability of the strategy.

“ The right to a decent home is much more than having an affordable roof over your head ”

The right to a decent home is much more than having an affordable roof over your head. It is about having a home where you can live in safety, peace and dignity. It is about ensuring access for all – for example, modifications may be needed to meet a disabled person's specific needs. The right to a decent home entails security of tenure, and the availability of public services and facilities.

Of course, the right to a decent home does not mean the government has an obligation to give everyone a house! Rather, it places an obligation on government to create an economic, social and cultural environment in which everyone can enjoy a warm, dry, decent and affordable home.

I could go on, but this is a short summary of what the right to a decent home means in practice. Of course, the right to a decent home does not provide magic solutions to complex problems. But it is now more than a one-line bumper sticker. It's longer than a Donald Trump tweet. It has some depth and detail. It can help to chart the way forward. It can help to ensure key elements – such as active and informed participation – are



not overlooked. The right to a decent home can dignify and empower individuals and communities.

Let me give you one short example:

The Scottish Human Rights Commission and the Edinburgh Tenants' Federation have been helping residents use the right to a decent home as a way of challenging deplorable housing conditions. They have focussed on one housing estate.

For years, residents complained to the local council about dampness, mould and vermin. But little or nothing happened. With the help of the Scottish Human Rights Commission, the residents framed their complaints as failures in human rights. They devised their own indicators, identified a baseline, met with the council, developed an action plan and measured progress.

Council officers were provided with human rights training. There were notable improvements to the housing – including new kitchens, bathrooms, heating and windows. The residents reported increased skills and confidence. One of the tenants said, “Human rights pulls you together as a community and gives you the same goal. The fact that I know that I have a right to a wind-tight, water-tight, mould-free house means that I don't have to be scared.”

## 8. A suggestion for the 21st century

I have a suggestion and would appreciate your critical comments on it.

The NZ Human Rights Commission is preparing its forthcoming priorities and programme of action. We cannot do everything. We must be strategic and selective.

One option is that we give attention to poverty. Poverty is a burning human rights issue in Aotearoa. It implicates a wide range of human rights, including the right to a decent home.

So, in its forthcoming work, should the Human Rights Commission give attention to poverty? And, if we give attention to poverty, should we include the right to a decent home? And, if we include the right to a decent home, what work should we aim to do in relation to that human right?

As I explained, NZ has signed up to the right to a decent home. The international declarations and conventions do not tell us a lot about this human right but they tell us something. And,

over the last 25 years, a huge literature on the right to a decent home has emerged. From all this material, the general contours and content of the right to a decent home are crystallising.

When I say the ‘general’ contours and content are crystallising, I mean they are not specific to the unique context of New Zealand.

Here is my suggestion for your critical comment:

Should the NZ Human Rights Commission, through a working group, which is respectful of *Te Tiriti o Waitangi*, identify what the right to a decent home means in the specific, unique context of Aotearoa?

The working group would be inspired by the human rights values and concepts I have already signalled, and the values and concepts Moana Jackson talked about yesterday [at The Shift Conference 2019] in relation to home: mountains, dreams, the earth and *aroha* [love]. And the working group would draw from the values identified by the Independent Working Group on Constitutional Transformation – such as *tikanga* [culture], community and belonging, mentioned by Moana yesterday.

The working group could not *lower* the standards set by NZ's international human rights obligations. It would have to respect the contours and content set by NZ's international human rights obligations. But, within those boundaries, the working group could prepare a short document – perhaps just 10 sides long – which outlines the minimum requirements of the right to a decent home in Aotearoa.

The Commission has the statutory power to publish non-binding guidelines. So, the Commission could publish *Guidelines on the Right to a Decent Home in Aotearoa*. And these Guidelines could be used by national and local government, and others in the housing sector, to shape housing law, policies and programmes. The Guidelines could be used by the Human Rights Commission, *iwi* and civil society to hold government accountable for its obligations arising from the right to a decent home.

So, in summary, would it be helpful if the Human Rights Commission establishes a Treaty-based process to prepare a short document that it publishes as *Guidelines on the Right to a Decent Home in Aotearoa*?

## 8. Conclusion

At the beginning of my remarks, I asked: how do we refresh human rights for our times and our place? Here is one answer to that question:

- Embrace all human rights, including the right to a decent home;
- Look to individuals and communities, and rights and duties;
- Think legalistic top-down *and* participatory bottom-up;
- Not just declaring but also *implementing* human rights in our everyday lives.

And we could make a start by preparing *Guidelines on the Right to a Decent Home in Aotearoa*.

*Mauri ki te rangi  
Ora ki te whenua  
Mauriora kia tātou katoa*

