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National Human Rights Institutions
ATTORNEY-GENERAL

ADDRESS TO

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HUMAN RIGHTS INSTITUTIONS

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Session Theme: National Human Rights Institutions and the Protection and Promotion of Economic, Social and Cultural Rights: international, regional and national strategies.

It is indeed my pleasure to address this conference on the important theme of national human rights institutions and the protection and promotion of economic, social and cultural rights.

While we come from a range of different countries it is important to affirm that we are united by the universality of human rights. Fundamental Human rights are the same the world over. As Rosalyn Higgins perceptively observed

" Individuals everywhere want the same essential things. To have sufficient food and shelter; to be able to speak freely, to practice there own religion or to abstain from religious belief; to feel that their person is not threatened by the state; to know that they will not be tortured, or detained without charge, and that, if charged, they will have a fair trial."

The Preamble of the United Nations Charter requires member States to not only reaffirm their faith in fundamental human rights; but also to pronounce themselves determined "to promote social progress and better standards of life in larger freedom".

While this is no easy task, it is important to recognise from the outset that human rights do not exist in a vacuum. They operate within particular social and economic contexts. This means that the range and level of enjoyment of human rights by people in different countries will be conditioned not only by a state's willingness to adhere to, and implement, human rights obligations, but also by its technical and economic ability to do so. New Zealand faces several significant challenges which include amongst others, the development of a distinctive and indigenous identity, particularly in the area of cultural rights and the perennial problem of adequate resourcing to support human rights initiatives.

In theory human rights and economic should progress advance on a united front. This premise is reflected in the Universal Declaration of Human Rights, which regards all rights - civil, political, economic, social and cultural - as being of equal importance and requiring the same level of protection.

The reality is somewhat different. We must be honest and recognise that internationally, regionally and nationally, there is an imbalance between the promotion of civil and political rights on the one hand, and the development of economic, social and cultural rights on the other. As many of you in this room will be aware, today there is an increasing recognition that this imbalance needs to be addressed, and there is also a growing acknowledgment of the relationship between governance, human development and human rights.

Redressing this imbalance will not be easy, and we should avoid bland platitudes about the indivisibility of rights. The relationship between these two categories of rights is problematic at several levels. At the simplest level, civil and political rights become the focus of judicial systems while economic rights are reduced to sets of declaratory principles rather than something that can be measured. At the other extreme, some countries argue that it is impossible to have the full enjoyment of civil and political rights without the "Western" level of economic development. If a country is to make real progress on the issue of economic, social and cultural rights, there must have an open discussion and debate over the balances that need to be struck whenever there are limited resources.

Without understanding there can be no real progress. "If there is understanding, then it is easier to frame the strategies to enact the laws, frame the policies and implement the programmes to protect and advance cultural rights for individuals and groups." (Culture, Rights and Cultural Rights, ed Margaret Wilson and Paul Hunt, pg22)

Providing an educative function and facilitating this essential debate is a key role of National Human Rights Institutions. As Mary Robinson, UN High Commissioner for Human Rights, has said:

"National human rights institutions are by their very nature well placed to transform the rhetoric of international instruments into practical reality at the local level. Because they are national - they can accommodate the challenges posed by local conditions and cultures, respecting ethnic, cultural, religious and linguistic diversity in implementing internationally agreed human rights principles. And a national institution can provide constructive, well informed criticism from within - a source of advice and warning which is often more easily accepted than criticism from outside sources."

In 1998 the Committee on Economic, Social and Cultural Rights issued guidance on the role of national human rights institutions in the protection of economic, social and cultural rights. They outlined a number of activities that National Human Rights Institutions might take in this area:

- Promoting educational and information programmes on ESC rights directed both at the general public and at the public service, judiciary, private sector and labour movements;
- Scrutinising existing laws and draft bills to ensure that they are consistent with the International Covenant on Economic, Social and Cultural Rights;
- Providing technical advice on ESC rights to public authorities and other

agencies;

- Identifying national level benchmarks for measuring progress on ESC rights;
- Conducting research and inquiries on ESC rights;
- Monitoring compliance with specific rights in the Covenant;
- Examining complaints alleging infringements of ESC rights.

The importance of National Human Rights Institutions addressing Economic, Social and Cultural rights can not be overstated with regard to the public legitimacy of these organisations. Most people do not separate their personal experience into different categories of rights, whether violated or not. Rather they live through situations and problems that they want a national human rights institution to be able to address. Those who are most vulnerable to violations of their civil and political rights are most likely to be the socially deprived. For these people, the two categories of rights may often be violated simultaneously and by the same actions. As the International Council on Human Rights Policy has noted, this is the practical day-to-day meaning of the "indivisibility of rights".

Human rights is a fundamental principle and central objective of New Zealand's Official Development Assistance (ODA) programme. This is consistent with the growing international recognition of the role of ODA in the realisation of economic, social and cultural rights, as well as civil and political rights.

New Zealand's ODA policy framework, which sets out the guiding principles and strategies of our aid programme, defines the principal purpose of development assistance as "the achievement of lasting improvements in the living conditions of present and future generations of people in developing countries, particularly the poor". The guiding principles identify what is fundamental to a people-centred and rights-based approach to development. The key principles relevant here are partner responsibility, capacity building, sustainability, reducing poverty and participation.

Accordingly, in addition to the human rights capacity building work done with individual governments, New Zealand has endeavoured to provide technical assistance to various individual National Human Rights Institutions (e.g. Komnas HAM in Indonesia and the Fiji Human Rights Commission), as well as the valuable regional work of this particular Forum.

With regard to improving the national strategy for the protection and promotion of human rights the New Zealand Government seeks to create and sustain a human rights environment that enables people to reach their individual and collective potential regardless of their characteristics, and in which human rights principles are essential considerations in public and international policy development. This includes:

- Stronger human rights laws that reflect a fair balance of individual rights and social interests;
- More accessible high quality human rights education;
- Co-ordinated and efficient delivery of human rights advocacy and dispute resolution;

- Co-ordinated and dynamic Government and Parliamentary responses to human rights issues;
- Consideration of the implications of a human rights framework for New Zealand in the context of indigenous rights and in particular the rights of Māori under the Treaty of Waitangi; and
- Consideration of a National Plan of Action for the Protection and Promotion of Human Rights in New Zealand.

To begin the journey towards these goals as an early act on taking office, I initiated a re-evaluation of the Human Rights Act 1993 and the current system of independent human rights enforcement agencies in New Zealand. This scoping study was conducted by four independent advisers who consulted with a cross-section of the large number of stakeholders in New Zealand's human rights environment. This intensive process took place during June and July, and I have recently received a report that will soon be available for public distribution, though I should add that Government has yet to consider it collectively.

As many of the New Zealanders in this room would have participated in this re-evaluation, I would like to take this opportunity to thank you. I understand the amount of personal sacrifice and dedication that many of you have given to the work of your organisations. I also understand how difficult it can be to have an open and frank discussion of the successes and regrets that we have regarding our human rights environment. Change is a challenging and often painful process. But I believe that stagnation and slow erosion of public confidence leads to the death of National Human Rights Institutions just as much as abusive state violence does. Let us work together to strengthen New Zealand's human rights environment and ensure that our National Human Rights Institution has the flexibility to adapt to the future demands of that environment.

The re-evaluation report confirms what many of us already knew; that the understanding and effective protection of human rights at both the international and domestic levels is recognised to be a constantly evolving process. In New Zealand the political, economic, social and cultural factors relevant to the enjoyment of human rights have changed significantly in the quarter century or more since the establishment of our principal human rights bodies. I do not doubt that the context of New Zealand's human rights environment will continue to change. In fact I would be gravely concerned if it did not.

The overall aim of the report recommendations is to enable and strengthen New Zealand's National Human Rights Institutions, government's, and the public's, ability to actively debate, participate in, and adapt to the ever-changing human rights environment. Accordingly, I see three important strategic directions in this report

First, we must establish a new National Human Rights Institution that not only deals with the issues contained in the current legislation, but also has the capability to focus on:

- Increasing public understanding of the importance of all human rights in underpinning a free, democratic and cohesive society that respects and values difference;
- Leading constructive discussion within the community of the various dimensions of human rights issues; and
- Encouraging positive interaction between different individuals groups communities and cultures within society.

Secondly, we must improve the government's and Parliament's ability to consider all human rights issues at an early stage of the policy process. Like our Treasury's epiphany last year that good governance, fairness and equality were the underpinnings of social cohesion and long-term economic development, the government sector must realise that the early inclusion and consideration of human rights principles in policy development makes that policy more robust and trustworthy. Early consideration of human rights principles leads to good policy.

Lastly, it is time for the government and the National Human Rights institution to work together to facilitate greater public discussion and education of all human rights. An important tool for this must be the development of a National Plan of Action for the promotion and protection of human rights in New Zealand. The process for the development of this National Plan of Action must be fully consultative and include the active participation of civil society and government. It is not to be rushed, and may take time to develop properly. That process in itself has value.

Conclusion:

Globalisation has many benefits, including the very human rights and National Human Rights Institutions that we are here to discuss this week. However, along with globalisation comes an increasing speed by which societies norms and key issues change. It would be the height of arrogance for us to sit back on our laurels and assume that the domestic human rights protections and mechanisms that we created many years ago should not be reviewed and altered to better suit the New Zealand society of 2000 and beyond.

I have suggested, a key emerging issue both internationally and domestically, is the place of Economic, Social and Cultural rights in this new global world of international corporations and global economies. There is no easy solution to this issue, but we must strive to have a fully informed debate so that countries can come to solutions that best suit their individual circumstances. National Human Rights Institutions can play a key role in facilitating this debate.

We should design our National Human Rights Institutions so that they are capable of keeping up with the fast changing issues of a global world. This may not be an easy task. And often these organisations will have to criticise governments and aspects of the very society they operate in. But at the end of the day, National Human Rights Institutions rely on public confidence and legitimacy. And that legitimacy is not bestowed on the organisation by constitutional and legal arrangements. But earned by performance, for those

whose rights have been trampled, and relevance for the society in which they operate.

It is my hope that the changes and institutional strengthening recommended in the re-evaluation report will enable New Zealand's National Human Rights Institutions to meet these challenges in the next decade and beyond. This will be no easy task. As Mary Robinson reminds us, "Human rights are an ever present and on -going challenge which must be met again and again."