

**David Rutherford, Chief Commissioner, New Zealand Human Rights
Commission speech to Local Government New Zealand Community Board
Conference**

Methven May 2017

I te whānautanga mai o te tangata,
kahore ōna here.

E ōrite ana tōna tapu,
tōna mana,
me ōna tika ki te katoa.

(Above is UDHR Article 1 – We are all born free and equal in dignity and rights.)

E ngā mana,
e ngā reo,

raurangatira mā

Tena koutou katoa

Ko David Rutherford tōku ingoa, ko au Te Amokapua mō te Kāhui Tika Tangata ki
Aotearoa.

Nō reira, tēnā koutou, tēnā koutou, tēnā koutou katoa.

Mauri tangata,

Mauri ora

Thank you for inviting me here today. I know this district well from my days at Wrightson. The farmers of this district were suppliers and customers of the grass seed business that was one of the businesses that I managed. I loved the integrity, attitude and work of the farmers who were our clients and I drove past some of their farm gates on the way here today.

There are several people here today that the Commission has worked with and my own Community Board is represented here today. I am glad to be here today and I acknowledge your service. As one of you just said, you are “the grassroots of our democracy”. That is where your work and the Commission’s work intersect.

I would also acknowledge the businesses that are represented here today. The Commission is working with many businesses, including Fonterra, who I see are here today, on business and human rights issues. Around the world business is starting to lead the way in respect for human rights both in their businesses and up and down the supply chain.

Some of you worked with us in the aftermath of the Canterbury earthquakes. The aftermath of those quakes presented significant human rights challenges. Political and civil human rights were challenged. Cantabrians became much more aware of the importance of protecting property rights, the right to adequate housing and the right to health, particularly mental health. “Nothing about us without us” which is a slogan developed by the international disability rights movement, became a

constant challenge—from school closures to decisions that affected properties and communities. We had Pakeha landowners asking whether could they make a Treaty of Waitangi claim.

We often saw the tendency of some person or agency who was not in the community thinking they knew best. Even in the recent quakes, in a text exchange with me, a Mayor of an affected area reminded me that this “we know what is best for you attitude” was not just a problem after earthquakes. It was always a problem. Part of the human rights approach is that if you are affected by a problem you need to be involved in developing solutions, meaningfully involved.

Another thing that surprised people dealing with their own recovery was the extent to which one’s home was not one’s castle anymore in New Zealand. As one wise older New Zealander told me in Canterbury: “I wondered what all this had to do with human rights. Then I realised that most New Zealanders want to own a home so that nobody can tell them what to do in it. Now everybody is telling me what to do in my own home”.

Buying a home is also a way many New Zealanders have got “security of tenure” meaning that they can stay in their home without interference. Security of tenure means they people can remain part of a community where they can access schools and health facilities. We spoke to Sir Tipene O’Regan and Professor John Burrows, both red zoners, about what it was like for them to see the community around them dismantled. They were leading a review of our constitution. They told us the same story many red zoners told us about the small kindnesses that disappeared as their neighbours left. The young people who would take the rubbish out, the loss of schools, local stores, doctors and pharmacies. All of this is protected by the right to adequate housing.

In the world- leading design of the Canterbury health system by the over 3000 businesses, government agencies and NGOs in it puts the home, the people in the home and the community around the home sit at the centre of the health system. The home is literally the centre of the primary health system. Yet hundreds of thousands of houses in New Zealand are not adequate. They are not adequate as homes and they are not adequate for their role as the centre of the health system.

The homes we are most concerned about here are not the rent capped social houses or the owner- occupied homes. There are issues there, but there are over 200,000 homes owned by New Zealanders and many of these are not adequate. There has been an explosion of the number of landlords in recent decades. From less than 100,000 we are now closing in on 300,000 landlords. Many of these landlords have ignored Government funded incentives to insulate these homes.

Many of these landlords do not understand their responsibilities—their human rights responsibilities, to ensure the house they rent is a home for their tenants. They see the investment property but ignore the rights of the people in the home. The Government has now started to address this failure with regulations setting higher minimum standards. Many think the Government has not gone far enough. Many of these landlord’s businesses are effectively subsidised by the Accommodation Supplement. Who picks up the costs if these landlords fail to meet their

responsibilities? The tenants do, but so does the taxpayer in education failure, in increased costs in the health system and even in the flow on into our criminal justice system.

We believe that the protection of property rights and of security of tenure , particularly relating to the home you live in, are too weak in New Zealand. They need to be strengthened to better protect the rights and dignity of people. We know there are serious security of tenure issues for renters and that landlords need to meet their human rights responsibilities.

New Zealand's Human Rights Commission is New Zealand's national human rights institution or NHRI. NHRIs are the domestic manifestation of the United Nations Human Rights system. Our job is to ensure that New Zealand meets the human rights promises it made by ratifying international human rights treaties. NHRIs as the word "national" suggests are not a watch dog of other countries human rights compliance. That is a job for others. NHRIs are a national watchdog.

The first words I spoke today in te reo were Article 1 of the Universal Declaration of Human Rights – "We are all born free and equal in dignity and rights". "All". An NHRI's job is to ensure that all of us remain free and equal in dignity and rights for all of our lives. A key phrase there is "all of us". Totalitarians and fascists always other some group of people as the enemy of "the people". "The people" in their world are not all the people. They have to create the "other" people to whip up fear and hate about "the people".

The UN Charter and the UN Declaration of Human Rights were born out of a victory in a war against totalitarians and fascists by a small group of nations who called themselves the United Nations from the middle of 1941. We all live in communities in which there are memorials to those who died in war. In Wellington there is also a Holocaust centre. I am not responsible for the display outside the hall, but it is another example of where we remember.

On the first of January 1942, 26 nations including New Zealand, pledged to fight together to "defend life, liberty, independence and religious freedom, and to preserve human rights and justice in their own lands and in other lands". When you see any memorial to those who served in World War Two remember what the Government said they were fighting for. Remember the price some of them and their families paid.

In Eastbourne, where I live, every year the junior rugby players wear their rugby jerseys to the local ANZAC Day ceremony. They do it to remember the 27. At the start of the World War Two, the Eastbourne Rugby Club had around 100 senior players. Twenty-seven of them died fighting for the rights and freedoms we hold so dear. It is same in the marae at Whangara where the Whale Rider was filmed. In that small place a similar number did not return. They paid the highest price of citizenship that Sir Apirana Ngata called on Māori to pay—And so it was in every community in New Zealand where there is a cenotaph or another form of memorial, including Methven. A generation of New Zealanders was literally decimated.

Defending our democracy and the freedoms and rights of all of us is one way to honour everyday, everywhere, the sacrifices made for us. It is also a way to ensure peace not war. That is the purpose of the United Nation Declaration of Human Rights – peace for all in the small places that we live, learn, work and play and everywhere else.

I hold a warrant signed by the Governor General as Her Majesty's representative in New Zealand. So do each of the Commissioners I work with. We are supported by expert managers and staff to do our work. The Chief Mediator of the Commission runs the unlawful discrimination part of our work. The Commission itself is an independent Crown Entity and the Commissioners are its Board. Together they determine the strategic direction and general activities of the Commission. The foundations of the Commission's work are peace and justice. The flash words in the Human Rights Act are human rights and harmonious relations but it is all about peace and justice.

During my life, the one constant in the leadership of New Zealand has been our Queen, Her Majesty Queen Elizabeth, Queen of New Zealand. As a child, she saw the rise of fascism in Europe. As a young person she lived through the war in which the allies who called themselves the United Nations, fought for freedom, human rights and democracy. Since Waitangi Day 1952, she has been our Queen.

In March this year, on Commonwealth Day, Her Majesty reminded us of how peace and justice are built. She said:

“The cornerstones on which peace is founded are, quite simply, respect and understanding for one another. Working together, we build peace by defending the dignity of every individual and community.

By upholding justice and the rule of law, and by striving for societies that are fair and offer opportunities for all, we overcome division and find reconciliation, so that the benefits of progress and prosperity may be multiplied and shared”.

Her Majesty's words are directly relevant to the work of community boards in New Zealand. Community boards have a critical role in building respect and understanding and in defending the dignity of every individual and community.

We have two overarching human rights issues in New Zealand: violence, abuse and bullying and leaving people behind in realising rights to health, education, housing and standard of living. In both cases there are areas of serious discrimination and bias. Failures in both areas and further discrimination and bias drives up our prison population so it is three times higher than it used to be in New Zealand and currently is in Norway.

New Zealand's prison population used to be less than 100 prisoners for every 100,000 people. Norway today has less than 100:100,000. New Zealand has 200:100,000 and there are 600 Māori prisoners for every Māori New Zealander. Contrary to what you hear some say, the vast number of Māori never touch the criminal justice system. What the Police have done is to establish for themselves that bias leads to different and negative outcomes for Māori at every stage where

Police do have contact with Māori. This leads to the over incarceration of Māori. As the Prime Minister has noted, this is a moral and economic failure.

Keeping the peace and delivering justice is daily work out in the communities of New Zealand. All of us need to be careful not to fall into the trap of labelling people by their race, gender, disability or other identifying characteristics. That is not right or fair. We also need to know that our brains are hardwired to be biased. All of us are biased. We need to consciously work to overcome our bias.

Many businesses and agencies are training staff to overcome bias. For example, in the Police bias is being addressed by the Turning of the Tide - Whanau Ora Crime and Crash Prevention Strategy and other programs. A fundamental value of the Police is to respect Māori and the Treaty. Police in New Zealand have started to front these tough issues where other agencies have yet to. They have led the way in fronting up to iwi about the issues and working together on solutions.

It is not only the New Zealand Human Rights Commission that has praised this difficult work. The highest UN Treaty Body with responsibility for political and civil rights, the UN Human Rights Committee has praised this work—so have other UN bodies. Like the Commission, the UN Human Rights Committee said other justice sector agencies in New Zealand needed to follow the Police example and this appears to be starting to happen. Not everything is working yet but the formula being followed is Her Majesty's formula of: "Working together, we build peace by defending the dignity of every individual and community".

I am a member of the Steering Group of the New Zealand Defence Forces project Operation Respect which is focused on gender equality and eliminating sexual harassment and violence in New Zealand's armed forces. Police are involved in the this work in many ways as well. Police have their own history of confronting issues of gender equality in New Zealand. Again, there is still work to do in this area but there is even more work to do in New Zealand if we are going to confront what is rightly called rape culture.

I think confronting the killing, violence and abuse of women is New Zealand's biggest blind spot. We seem to be able to see the wrongs in child abuse and many of the issues around racism, ableism and other "isms" but violence and abuse toward women, because they are women, we do not see so well. Even the way I have just stated the issue is part of the problem. "Jack beats Jill" so quickly becomes "Jill was beaten Jack". The Jill is a battered woman. Jack is no longer part of the conversation. Again, Her Majesty's words about the need for respect and understanding for each other and defending the dignity of every individual, ring true.

Violence, abuse and bullying of women by men is a women's issue in that women reap the consequences of men's attitudes and actions that are used to justify violence and abuse. But this is even more fundamentally a men's issue. Only a fraction of the family and sexual violence that occurs in New Zealand gets prosecuted. Even then, over 60% of people in our prisons today have been convicted of serious violence or sexual violence. That is the reason men are so over represented in our prisons.

Do you hear people talking about the over incarceration of men in the same way people talk about the over incarceration of Māori? No—that is the blind spot. Yes, some women are violent toward men and other women. Yes, men are also violent toward men, but New Zealand has amongst the worst levels of violence, abuse and bullying in the OECD and a lot of the worst of it is gender based.

Respect for women and girls in New Zealand by men and boys means that we men and boys need to change our attitudes toward women and girls. Even when, and most particularly when, there are only men in the room or on the field. Male sport, for example, needs to own the issue of ensuring respect for all in sport. Being a bystander is to be complicit. We strongly support the work that Ministers Tolley and Adams have been leading in family and sexual violence. However, it is going to be up to us men to ensure our attitudes change if we are to win the justice and peace we seek for all.

We would like to see more done in our schools to prevent violence, abuse and bullying of all kinds. Attitudes form early in life so the school years are critical. And, the prevention of violence, abuse and bullying in our schools and the prevention of sexual violence are linked because if we do not change boys' attitudes toward girls everything else is remedial. Again, Her Majesty's words ring true: "Defend the dignity of every individual and uphold justice and the rule of law".

The other significant area where we are leaving some New Zealanders behind is in respecting certain economic and social human rights. Again, the lessons of the past must be kept in mind. After World War Two it was acknowledged that the unjust peace of World War One sowed the seeds of fascism and totalitarianism. Racism against Japan also played into the hands of the Japanese leaders who wanted to take land and people.

In New Zealand, we are sowing the seeds of social unrest by leaving too many people behind. In 2015, New Zealand signed up to the SDGs – the Sustainable Development Goals. They are non-binding promises but they are underpinned in almost every case by human rights commitments that are binding in international law. In New Zealand, the Goals for Poverty, Health and Education and the equality Goals relating to gender and other inequality are key to leaving no one behind by 2030. The United Nations New Urban Agenda also references the SDGs.

Community Boards know their communities and they need to advocate for the people being left behind in their communities. We need to solve the issues for people that are poorer in New Zealand. Most of them are much poorer than the rest of us. There is racial injustice, but also injustice based on family status, or disability, or being a woman. Count people. According to the Child Poverty Report half the children living in poverty in New Zealand are Pakeha. The remaining half is largely Māori and Pasifika. If you look at population groups you can see different impacts on different groups of New Zealanders. One in three Māori or Pasifika children live in poverty while one in six Pakeha children live in poverty.

Understanding human rights indicators can help identify and fix problems. For example, there is a right to adequate housing. As a partner in Bell Gully or a Senior

Manager in what is now Fletcher Building, I had never heard of a human right to adequate housing—so do not feel bad if you have not heard about it.

The indicia of the right make a lot of sense because they focus on *adequacy*—not whether the home is owned or rented, and they are broader than affordability. Under human rights law for a house to be “adequate”, not flash, just adequate, it must be affordable, be habitable, be accessible, have availability of services facilities and infrastructure, be in a location that allows access to work, healthcare, schools and other social facilities and be culturally adequate.

No government is likely to deliver adequate housing in New Zealand in its life as a government. It takes long term commitment. It took Singapore from 1960 to 1990 to move from 8% of Singaporeans owning their own home to over 90% owning their own home. They had a single Government for all that time. Their Prime Minister, Lee Kuan Yew, said in 1959 Singapore will be a property- owning democracy and as a result healthier, wealthier and better educated. And they are. And, they are healthier, wealthier and better educated than us!

The Sustainable Development Goal for housing requires every person in New Zealand to be adequately housed by 2030. That is not going to happen because of the upcoming election. It will only happen if parties stop fighting at the margins and join together in an effort over the decades to adequately house people in New Zealand.

The Commission also agrees with the Productivity Commission’s point that there is a democratic deficit when it comes to housing in New Zealand. Those who own housing are protected at a cost to those who are not adequately housed and who rent. With the exception of social housing where rent caps apply, renting no longer is, if it ever was for many, a temporary stop along the way to owning your own home. There has been progress in New Zealanders’ and political parties’ understanding of the challenge ahead of us but it will take decades to make up for the gaps created in previous decades. That is why cross- party agreement on housing is needed.

There are similar challenges in child poverty, education and health. In many areas, Canterbury—as a result of the innovations in areas like health, is showing how to meet these challenges. A natural disaster reminds you what is important—your family, your friends, your children’s education, your community, your family’s health, an adequate house that keeps you warm, dry and safe, and a say in the decisions that affect your life. We should never take that for granted.

This is a great country. Today around the world human dignity and rights are challenged again. Survivors of the Holocaust will tell you, even in New Zealand, the words and actions they see and hear today are what they saw and heard in the early 1930s in Germany. They want us to stand up now and not wait until nobody can stand up. It is not the time to be a bystander.

Terrorists win if their terror results in us retreating from the freedoms and rights so hard won. Totalitarians, populists and strong men win if we let them divide and conquer us. They want to “other” people. That does not lead to peace, but to war

and chaos. It is New Zealand's job to swim hard against the tide of those who say that only some of "us" are entitled to have our rights and dignity respected.

New Zealanders have fought and died for freedom and human rights when in the past men who were too certain they were right nearly conquered the world. On ANZAC Day every year we remember who fought. We also must remember what they fought for in World War Two.

However, what you do every day is more important to the peace of this world than what you remember. Each day we would do well to remember our Queen's words.

"The cornerstones on which peace is founded are, quite simply, respect and understanding for one another. Working together, we build peace by defending the dignity of every individual and community.

By upholding justice and the rule of law, and by striving for societies that are fair and offer opportunities for all, we overcome division and find reconciliation, so that the benefits of progress and prosperity may be multiplied and shared."