

Report to:

Committee on the Elimination of Racial Discrimination (CERD)
Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva (Switzerland)

Subject: Robson Hanan Trust: Comment on the Reports submitted by the New Zealand Government to the Committee on the Elimination of Racial Discrimination (CERD) 2012. CERD/C/NZL/20

Introduction

1. The Robson Hanan Trust is thankful for the opportunity to comment on the Reports submitted by New Zealand to the Committee on the Elimination of Racial Discrimination.
2. The Robson Hanan Trust is a charitable organisation which promotes through public education, criminal justice policies and strategies which reduce crime and related social harm. It works generally towards a more socially just and inclusive nation and to develop and promote systems, policies, programmes and strategies that build social capital and connectedness with disadvantaged families and whanau . For further information about the Trust, go to:
<http://www.rethinking.org.nz/Default.aspx?page=4312>
3. Our comment relates to one of CERD's list of themes to be taken up in connection with the consideration of the eighteenth to twentieth periodic reports of New Zealand (CERD/C/NZL/18-20), namely:

"Progress made to combat persisting inequalities and reduce the overrepresentation of Māori and Pasifika in the prison population and at every level of the criminal justice system (CERD/C/NZL/18-20, paras. 90 and 97"

UN Response to the 2007 CERD Report on New Zealand

4. In the 2007 CERD Report on New Zealand (CERD/C/NZL/CO/17) it commented that:

"The Committee reiterates its concern regarding the overrepresentation of Maori and Pacific people in the prison population and more generally at every stage of the criminal justice system. It welcomes, however, steps adopted by the State party to address this issue, including research on the extent to which the over-

representation of Maori could be due to racial bias in arrests, prosecutions and sentences (arts. 2 and 5).

5. It made the following recommendation:

“The Committee recommends that the State party enhance its efforts to address this problem, which should be considered as a matter of high priority. The Committee also draws the attention of the State party to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.”

5. This report focuses on the above issue, and how it has been addressed over the last five years.

Research on Maori Over-Representation in the Criminal Justice System

6. Two significant pieces of New Zealand research examined the issue of Maori over-representation within the last five years.

Department of Corrections Report 2007

7. In 2007, the Department of Corrections released an exploratory report providing an overview of Māori over-representation within the criminal justice system.¹ It examined the issue by considering the evidence for two different explanatory approaches:

(a) that a range of adverse early-life social and environmental factors result in Māori being at greater risk of ending up in patterns of adult criminal conduct;

(b) that bias operates within the criminal justice system, such that any suspected or actual offending by Māori has harsher consequences for those Māori, resulting in an accumulation of individuals within the system;

8. The report examined the two approaches in the light of criminal justice data and research. A range of developmental and early-age risk factors were discussed, each of which are known to be associated with a developmental pathway that increases the risk of (among other things) criminal involvement.

9. The extent to which Māori young people were disproportionately represented in these subgroups was reviewed. The report found that, as a consequence of being exposed to a range of risk factors in social, economic and family circumstances, the over-representation of Māori in criminal justice

¹ Department of Corrections Over-representation of Māori in the criminal justice system: An exploratory report. Wellington: Department of Corrections: 200

statistics reasonably accurately mirrors the extent of criminal involvement amongst Māori, particularly younger Māori males. Those life circumstances most often associated with offending are, for a range of reasons, more likely to affect Māori families.

10. The report noted that the two perspectives are by no means mutually exclusive, and both approaches offer part of the explanation for the current statistics. The evidence pointed to an interaction between the two processes, where the operation of one set makes the other more likely. For example, early environmental influences may predispose individuals towards certain types of illegal or anti-social behaviour, which in turn raises the risk of Police involvement. Additionally, the risk of apprehension is “amplified” because of formal and informal “profiling” by official agencies, as well as society generally.

11. The report examined the two approaches in the light of criminal justice data and research. It concluded that:

(a) Disproportionality shows up strongly in Police apprehension figures, and a number of studies indicate that ethnicity in and of itself could have an influence in this area;

(b) Similar levels of disproportionality were recorded in prosecutions, convictions, sentencing and reconviction figures, but most of the disproportionality relates to known risk factors rather than ethnicity.

Ministry of Justice Report 2009

12. A 2009 report by the Ministry of Justice showed Māori are disproportionately represented in criminal justice statistics to an alarming degree.² It offered two possible explanations for ethnic disproportionality within the literature:

a) the differential involvement thesis holds that levels of ethnic disparity are largely, if not solely, the product of differential offending by certain ethnic-minority groups;

b) the discrimination thesis argues that levels of ethnic disparity should be understood (at least in part) as the result of direct and indirect discrimination within the criminal justice system and society more broadly.

² Morrison, Bronwyn, Identifying and Responding to Bias in the Criminal Justice System: A Review of International and New Zealand Research, (Ministry of Justice, November 2009)

13. The review concluded that a comprehensive policy approach should take into account each of the different aspects of ethnic disproportionality identified above, and must involve:

a) addressing the direct and underlying causes of ethnic minority and indigenous offending;

b) enhancing cultural understanding and responsiveness within the justice sector (including increasing positive participation for ethnic minority and indigenous groups, and improving public accountability via monitoring and publishing data on rates of ethnic disparity);

c) developing responses that identify and seek to offset the negative impact of laws, structures, processes and decision making criteria on particular ethnic-minority groups.

14. The report identified the need for further research, to determine the extent to which over-representation occurs because of differential offending patterns by Maori, a lack of cultural responsiveness, or the negative impact of laws, structures, processes and decision making criteria.

Government Response to Issues of Maori Over-representation and Structural Discrimination

15. These two excellent reports set the foundation for government to respond positively to CERD's 2007 comment that it would welcome research "on the extent to which the over-representation of Maori could be due to racial bias in arrests, prosecutions and sentences (arts. 2 and 5)."

16. The government's report to CERD addresses the first two issues, but fails to address the third. We deal with each in turn:

Addressing the Underlying Causes of Offending by Maori

17. The government points to the establishment in November 2009 of the "Addressing the Drivers of Crime Strategy" (paras 101 to 104), which included opportunities for Māori to design, develop and deliver innovative initiatives and solutions that are responsive to the needs of Māori. While there was an initial spurt in activity, there has not been any apparent movement on this strategy for some time. It is doubtful that this strategy currently has the prominence implied in this report.

Enhancing Cultural Understanding and Responsiveness

18. The Government's report highlights a range of programmes and achievements which demonstrate a high level of cultural responsiveness to

Māori. Paragraphs 91 – 101 The report lists a range of activity within the Department of Corrections and the Ministry of Justice, including changes to the Court system (para's 91 – 101). The Youth Justice system is engaged in ground breaking responses to Maori youth, (para's 108 – 112). The Robson Hanan Trust is highly supportive of these initiatives.

Structural Discrimination with the Criminal Justice System

19. Apart from reference to jury selection and the use of Maori language in Courts (para 95 – 96), there is no direct response in the report to the findings and recommendations of the reports by the Department of Corrections and the Ministry of Justice, on the issue of personal racism and structural discrimination with the criminal justice system.

20. In our view, despite the overwhelming evidence over the years that both exist, there has been a historical reluctance on the part of successive governments to address this key issue. We do not know for example, whether personal racist and discriminatory attitudes held by individuals or groups of individuals interconnect with institutional practises and processes which result in ethnic bias. At this stage, we cannot tell whether ethnic bias is the result of the nature of the system, or the practises within it.

21. What New Zealand research there is about the existence of personal racism within the criminal justice system, focuses on Police behaviour and attitudes – the rest of the criminal justice system appears exempt from scrutiny.

22. There is no recent research which explores the level of structural discrimination in criminal justice agencies. We do not know for example, why Maori are imprisoned at a rate six times higher than non-Maori, but remanded in custody at a rate eleven times higher than non-Maori. There is no local research into ethnic profiling, even though the possibility that certain subgroups of the population are more susceptible to Police stopping and checking is a reasonably well-researched issue internationally.³ It is well accepted that the over-policing of ethnic groups that are viewed as more criminally prone can have the effect of increasing their arrest rates and entry into the criminal justice statistics as offenders.⁴

23. What little research there is, points in the one direction; that the level of structural discrimination in the criminal justice system is unacceptably high.

³ Coleman, C. & Norris, C. (2002). Policing and the police: Key issues in criminal justice. In Y. Jewkes, & G. Letherby (Eds.), *Criminology: A reader*. London: Sage.

⁴ Lundman Richard J & Kaufman Robert L (2003) Driving while black: effects of race, ethnicity, and gender on citizen self-reports of traffic stops and Police actions. *Criminology* 41 (1) 195-219

The available evidence demonstrates bias elsewhere than in the Police.⁵ A closer examination of various aspects of the system, is required.

Conclusion

24. There is now a mechanism which has the potential to manage change. In 2011, a Justice Sector Leadership Board - comprising of the chief executives of Police, Justice and Corrections – was established. The Board, with the Secretary for Justice as its chair, is responsible for driving performance across the justice system, coordinating the major change programmes underway and collectively planning to modernise the sector, reduce costs, improve services, and further enhance public safety. The Board is supported by a Sector Group within the Ministry of Justice. In addition, the Justice Sector Fund, established in May 2012, is a funding pool that allows savings to be transferred between justice sector agencies and across years.

25. The government's 'Reducing Crime and Reoffending Action Plan' will be a major focus for the Justice Sector Leadership Board, and presents an ideal opportunity to ensure that in all its work, it (in the words of the 2009 Ministry of Justice report, the Sector "develops responses that identify and seek to offset the negative impact of laws, structures, processes and decision making criteria on particular ethnic-minority groups".

Recommendation

26. The Robson Hanan Trust therefore recommends that:

"The CERD Committee recommends that the State party enhance its efforts to reduce the overrepresentation of Maori in the criminal justice system, by directing the Justice Sector Leadership Board, to develop a strategy which"

(a) Researches the extent to which the over-representation of Maori in the criminal justice system is due to racial bias in arrests, prosecutions and sentences (arts. 2 and 5), and structural discrimination, and

(b) Develops a strategy to address the issue. In doing so, the Committee also draws the attention of the State party to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system."

And further:

⁵ Workman, Kim, "Māori Over-representation in the Criminal Justice System – Does Structural Discrimination Have Anything to Do with It?" <http://www.rethinking.org.nz/Default.aspx?page=4342>

“The CERD Committee requests the State party to provide it with a progress report on the “Addressing the Drivers of Crime” strategy, referred to in its report (paras 101 – 104)”

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