

31 January 2020

Justice Select Committee
Parliament Buildings
Wellington
Attn: Committee Secretariat

Tēnā koutou Committee members

Submission on the Sexual Violence Legislation Bill

1. The Human Rights Commission (“Commission”) welcomes the opportunity to make this submission to the Justice Committee regarding the Sexual Violence Legislation Bill.

2. The Commission supports and welcomes the proposed changes in the Bill and its goal to reduce the re-traumatisation victims of sexual violence may experience when they attend court and give evidence. The amendments are wide ranging and include:

- The nature of certain types of evidence;
- Questions of evidence;
- Modes of evidence; and
- Court processes.

3. The Commission notes that the proposed amendments align with recommendations made by international human rights bodies to enhance the rights of victims in accessing justice. This brief submission draws the Committee’s attention to relevant recommendations by international human rights bodies and provides some related suggestions for the Committee to consider.

4. Access to justice is of fundamental importance to the realisation of all rights protected under human rights treaties and is an essential component of the rule of law.¹ It is crucial that the justice system empowers victims to access justice and that processes and procedures for victims of sexual violence do not deter victims from seeking justice. The Commission notes the importance of balancing any measures

¹ General Recommendation No. 33 (2015) on Women’s Access to Justice, CEDAW/C.GC/33 at [1].

seeking justice. The Commission notes the importance of balancing any measures taken to protect victims with responsibilities regarding procedural fairness and due process.

5. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (“Declaration”) states that victims should be treated with compassion and respect for their dignity.² The United Nations Office for Drug Control and Crime (UNODC) emphasises that states have a responsibility to respect the fundamental rights of victims and to protect them from further harm.³ The UNODC provides technical assistance to strengthen legislative frameworks for victim support. The UNODC Handbook on Justice for Victims on the use and application of the Declaration states that in order to protect particularly vulnerable victims, such as victims of sexual abuse, consideration be given to:⁴

- the use of videotaped depositions;
- the use of specially designed or equipped courtrooms;
- allowing victims to have an individual of their choice accompany them in closed juvenile proceedings, closed criminal proceedings or in camera proceedings; and
- if a defendant is conducting his or her own defence, preventing the defendant from directly questioning the victim.

6. The Commission recognises the Bill aims to provide greater protection to all victims of sexual violence, regardless of their gender, gender identity, sexual characteristics or sexual orientation. However, the Commission notes that there have been several relevant recommendations by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee.

7. The CEDAW Committee’s General Recommendation 33 highlights the need for justice systems to be adapted and appropriate to the needs of those who face intersecting or compounded forms of discrimination, including women. It emphasises that good quality justice systems need to be contextualized, dynamic, participatory, open to innovative practical measures, gender-sensitive and take account of the increasing demands by victims for justice.⁵

8. General Recommendation 33 makes specific recommendations relating to court processes and evidence, including that states should:

² *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* UNGA Res 40/34 (29 November 1985) <https://www.un.org/ruleoflaw/files/BASICP~4.PDF>.

³ <https://www.unodc.org/unodc/en/Human-rights/access-to-justice.html>.

⁴ https://www.unodc.org/pdf/criminal_justice/UNODC_Handbook_on_Justice_for_victims.pdf at 71.

⁵ General Recommendation No. 33 (2015) on Women’s Access to Justice, CEDAW/C.GC/33 at [14].

- a) Review rules of evidence and their implementation, especially in cases of violence against women, and adopt measures with due regard to the fair trial rights of victims and defendants in criminal proceedings, to ensure that the evidentiary requirements are not overly restrictive, inflexible or influenced by gender stereotypes;⁶
- b) Use a confidential and gender-sensitive approach to avoid stigmatisation, including secondary victimisation in cases of violence, during all legal proceedings, including during questioning, evidence collection and other procedures relating to the investigation;⁷
- c) Enabling legal proceedings to be held privately, in whole or in part, or that testimony be given remotely or using communications equipment such that only the parties concerned are able to gain access to their content in order to protect women's privacy, safety and other human rights;⁸ and
- d) The use of pseudonyms or other measures to protect the identities of victims during all stages of the judicial process should be permitted. States parties should guarantee the possibility of taking measures to protect the privacy and image of victims through the prohibition of image capturing and broadcasting in cases where doing so may violate the dignity, emotional condition and security of girls and women.⁹

9. The Select Committee may wish to consider how the proposed amendments in the Bill meet the recommendations regarding the court processes and procedures made by the United Nations bodies mentioned above.

10. The Commission further notes that in its 2018 periodic review of New Zealand, the CEDAW Committee recommended that New Zealand strengthen gender responsiveness and sensitivity among the judiciary, lawyers, police officers and other law enforcement officials. This recommendation is in line with recommendations in General Recommendation 33 to:

- a) Take measures, including awareness-raising and capacity-building programmes for all justice system personnel and law students, to eliminate gender stereotyping and incorporate a gender perspective into all aspects of the justice system. Include other professionals, in particular health-care providers and social workers, who potentially play an important role in cases of violence against women and in family matters, in the awareness-raising and capacity-building programmes;

⁶ General recommendation 33 at [51].

⁷ General recommendation 33 at [51].

⁸ General recommendation 33 at [16].

⁹ General recommendation 33 at [16]. This arguably applies to all victims of sexual violence, not just girls and women.

- b) Ensure that capacity building programmes address the issue of the credibility and weight give to women's voices, arguments and testimony, as parties and witnesses and the inflexible standards often developed by judges and prosecutors for what they consider to be appropriate behaviour for women.
- c) Raise awareness of the negative impact of stereotyping and gender bias and encourage advocacy to address stereotyping and gender bias in justice systems, especially in gender-based violence cases.¹⁰
- d) Provide capacity-building programmes for judges, prosecutors, lawyers and law enforcement officials on the application of international legal instruments relating to human rights, including the Convention and the jurisprudence of the Committee, and on the application of legislation prohibiting discrimination against women.¹¹

11. In light of the CEDAW Committee recommendation to New Zealand to address gender responsiveness and sensitivity in the justice system, introducing awareness-raising and capacity building programmes as suggested in General Recommendation 33 would be desirable. It is important that these sorts of activities be considered alongside the introduction of the Bill.

Ngā mihi



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¹⁰ General recommendation 33 at [29].

¹¹ General recommendation 33 at [29].