

# The human rights framework and equal pay for low paid female carers in New Zealand

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## Abstract

This article explores the paradox of New Zealand's officially expressed commitment to the fundamental human right of gender equality internationally, despite the lack of progress in the implementation of equal pay and pay equity for low paid female workers domestically. New research funded by the New Zealand Law Foundation is assessing the impact of New Zealand's implementation of international human rights treaty body obligations. The article examines the State party reports on equal pay and pay equity to the United Nations (UN) Committee on the Elimination of Discrimination Against Women and the Committee's responses. It also uses material drawn from the New Zealand Human Rights Commission's (NZHRC) national inquiry into equal employment opportunities in the aged care sector to examine the actions of non-governmental actors. The two sources of information show that women's progress in closing the gender pay gap in New Zealand at a governmental level is marked by the ebbs and flows of political will. It is argued, too, that there is currently a revival of advocacy by non-governmental actors using a human rights framework to apply pressure for change on pay equity breaches.

## Introduction

Successive governments have believed that New Zealand is a good nation state with a strong and principled record in human rights since 1948, when it was involved in developing the Universal Declaration of Human Rights. This self-belief has been bolstered by scholarship identifying New Zealand's early political support for international human rights through Prime Ministers, Peter Fraser and Walter Nash, that Lauren (1988) described as "far out of proportion to the size or strength of their country" (p.167). Consistent and conscientious reporting by successive New Zealand administrations to the international human rights treaty bodies is another expression of global governmental commitment. However, new research shows that there is a difference between national self-regard about New Zealand's obligations and the realisation of human rights in everyday lives. This is demonstrated in close analysis of New Zealand's periodic reporting to UN human rights agencies on women's rights and equal pay in the past 25 years.

The article also suggests that there is a revival of advocacy using the human rights framework to apply on-going international and domestic pressure on the government to fulfil its obligations for equal pay and pay equity. The advocacy acknowledges that in liberal democratic societies, such as New Zealand, the State is central to determining the degree of gender equality in employment. A catalyst for this advocacy was a national human rights inquiry into low paid, predominantly female aged care workers, published in the report, *Caring Counts* (New Zealand Human Rights Commission, 2012).

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## **Equal pay in the International Bill of Human Rights and other treaties**

The importance of the treaty body system in implementing human rights, including gender equality, has been recognised since the 1960s. The UN Secretary-General Ban Ki-Moon stated in a 2011 report on strengthening the treaty body system:

The treaty bodies stand at the heart of the international human rights protection system as engines translating universal norms into social justice and individual well-being. Using a growing set of tools, this system provides authoritative guidance on human rights standards, advises on how treaties apply in specific cases, and informs State parties of what they must do to ensure that all people enjoy their human rights (Pillay, 2011: p.7)

Equal pay is a fundamental tenet of gender equality and was first outlined in the Universal Declaration of Human Rights 23(2) which stated: “Everyone, without any discrimination or distinction of any kind, has the right to equal pay for equal work”. It is referred to in other major treaties, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Articles 3 and 7a). The International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Article 11 reads:

State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (d)...the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.

Various International Labour Organisation (ILO) Conventions such as ILO C100, Equal Remuneration Convention and ILO C111, Discrimination (Employment and Occupation) Convention also specify equal pay and pay equity obligations. Both the treaties on racial discrimination, the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) and on the rights of disabled people, the Convention on the Rights of Persons with Disabilities (CRPD), also refer to equal pay. New Zealand has ratified all of these conventions since the late 1960s. In the case of the most modern convention, the CRPD, it helped lead the international community in the development and acceptance of the treaty, further evidence of its positive self-image as a human rights leader.

What are New Zealand’s obligations under such treaties? The Office of the UN High Commissioner for Human Rights states that the obligations are often expressed under three headings: to respect, which means refraining from interference with the enjoyment of the right; to protect, which means preventing others from interfering with the right, and to fulfil, which requires the State party to adopt appropriate measures towards the full realisation of the right. In several human rights treaties, such as ICESCR (Article 2(1), the concept of progressive realisation is referred to as a core aspect of States’ obligations in relation to economic, social and cultural rights. This means the State taking appropriate measures towards the full realisation of rights, such as equal pay and employment rights, by all appropriate means including legislation to the maximum of its available resources.

While this means that a State’s compliance with the obligation is assessed in the light of financial and other resources, a lack of resources cannot justify inaction or indefinite postponement of

implementation. This is particularly so when discrimination exists. The Committee on Economic, Social and Cultural Rights (2009) has said that the failure to remove differential treatment on the basis of a lack of available funds is not an objective and reasonable justification unless every effort has been made to use all resources that are at a State party's disposal to eliminate the discrimination, as a matter of priority. Despite the incrementalism inherent in the idea of progressive realisation, the High Commissioner for Human Rights indicates that States must also take immediate action, irrespective of the resources they have, in relation to some rights. Article 7(a)(i) *Equal remuneration for work of equal value without distinction of any kind*, is one example.

The Committee is also categorical about non-retrogressive measures and says that States should not allow the existing protection of economic, social and cultural rights to deteriorate unless there are strong justifications. It is argued later that this is relevant to repeal of the Employment Equity Act in 1990, the closure of the Department of Labour's Pay and Employment Equity Unit and the discontinuing of two equal pay investigations, involving support workers working with special needs children in the Ministry of Education, and social workers employed by the Ministry of Social Development, in February 2009.

## **New Zealand's reporting on equal pay to UN treaty bodies**

In light of New Zealand's ratifications of human rights treaties such as CEDAW and its self-regard as a leader in global human rights consciousness, what is its record in reporting on equal pay?

Feminist academic, Prue Hyman (2008; 2010), has usefully chronicled the painful and slow history of equal pay implementation in New Zealand. In her article looking at developments from 2008-2010, she concluded that New Zealand's move from a relatively equal society to one of its most unequal made labour market protections, including equal employment opportunities, of even more importance than in the early days of awareness and policy making. She was concerned that complacency, backlash and slippage too often impeded equal opportunity for all groups in the labour market.

New research funded by the New Zealand Law Foundation allows a preliminary analysis of what New Zealand has told the UN about its progress in implementing equal pay and pay equity since it began reporting on CEDAW in 1987. New Zealand's seven periodic reports (Third and Fourth reports were combined) to the Committee on the Elimination of Discrimination against Women have been examined for reference to Article 11(d) in this research. They show that equal pay and pay equity have been central to the reporting process since 1986. This alone invites analysis both of what was said, how it was framed and the impact.

The next section summarises the relevant equal pay-related comments made by the State party, and the concluding observations and recommendations back from the Committee to New Zealand. Retrogression and progress in relation to equal pay is then discussed.

## **First report, 1986**

New Zealand's first periodic report to the Committee on the Elimination of Discrimination Against Women in 1986 stated that there was no overall differentiation by sex in New Zealand law and that, in

employment and in society, women were increasingly taking opportunities (New Zealand's First Report, 1986). The report highlighted the Government Service Equal Pay Act 1960 and the Equal Pay Act 1972, covering the private sector. It also outlined sections of the Human Rights Commission Act 1977, section 15, which covered the prevention of sex discrimination in employment. New Zealand said, while societal attitudes were not static, it could not be said that women and men themselves practise full equality in the workplace. The report stated that women still tended to choose certain types of employment, the majority in clerical/secretarial work and other traditional occupations, such as nursing and garment manufacturing.

The difference between defacto and de jure sex discrimination was noted by the Committee in its concluding comments back to New Zealand (Committee on the Elimination of Discrimination against Women, 1988). Despite the absence of legal barriers in New Zealand to equality between men and women, and although women had acquired the right to vote in 1893, in practice, the barriers created by tradition, history and structures still existed.

The Committee said that job sexual segregation seemed to cause problems with regard to equal pay. It asked how those problems had been dealt with, whether gender-neutral job evaluation schemes had been of use, whether wage differential studies had been carried out, whether cases on wage discrimination based on sex had been raised and, finally, how wages were set and what was the role of the trade unions in wage negotiations.

## **Second report, 1993**

The government reported that, during the reporting period (1986-1992), women had continued to earn significantly less than men (Committee on the Elimination of Discrimination against Women, 1993a). While the pay gap between male and female earnings closed from 72 percent to 79 percent between the passage of the Equal Pay Act 1972 and its final implementation date in 1977, it had risen by only two percentage points to 81 percent in the past 15 years. The report said that, despite the existence of the Equal Pay Act, the distribution of market income in New Zealand was heavily weighted in favour of males. Provisional 1991 census results showed males were still receiving more income than females in all groups over \$20,000 a year, and that 60 percent of all people earning \$20,000 or less were female.

The report referred to the effectiveness of the Equal Pay Act in light of the breakdown of collective bargaining that began with the Employment Contracts Act 1991. It said the practical application of the Equal Pay Act remained unclear in the case of individual contracts as no cases had been taken.

The introduction and then quick repeal of the Employment Equity Act 1990 was referred to in New Zealand's report. It said that, in the 1980s, some test cases under the Equal Pay Act confirmed that the courts interpreted the provisions of the Act to apply only where men and women were doing the same or substantially the same work. Many groups recognised the need for wider legislation to cover pay equity or equal pay for work of equal value, and to address the differing pay rates of women and men in predominantly single sex occupations, such as nursing and police work, which many considered carried equal levels of responsibility but not equal levels of remuneration. The report noted a strengthening of the equal pay campaign by civil society and government initiatives to respond including the Employment Equity Act 1990, covering both pay equity and equal employment opportunities. The Act was described as legislation constructed within the industrial relations framework prevailing at that time.

In its response the Committee noted, as one of several principal areas of concern, that women's annual income was not equal with that of men for many reasons, particularly because of their need to accommodate family responsibilities (Committee on the Elimination of Discrimination against Women, 1993b). Although the government had taken measures to improve women's income, it had abolished pay equity legislation during the reporting period. More efforts needed to be taken to alleviate the burden on women in that respect.

The Committee urged additional affirmative action by the government in cooperation with the private sector to help women cope with family and work responsibilities. It noted its concern that changes to employment legislation were likely to weaken the trade union movement. Without strong union support, women in paid employment would lack the means to negotiate better work conditions with their employers.

The Committee recommended that, in its next report, the government provide more detailed information about the obstacles, which still existed and prevented women from achieving full equality.

### **Third and Fourth reports, 1998**

The government told the Committee in this report that women's average hourly earnings were 81.2 percent of men's in August 1997 (Committee on the Elimination of Discrimination against Women, 1998). This relativity had remained almost unchanged since the implementation of the Equal Pay Act. Part of the difference was attributed to longer hours of work and more overtime by men. The report noted that the gender pay gap was worse in the public sector at 76.2 percent than the private sector at 80.2 percent (Committee on the Elimination of Discrimination against Women, 1998). Research by the New Zealand Institute of Economic Research indicated that the gender pay gap was unlikely to narrow over the next five years if the recent industry trends continued. This reflected the concentration of women in industries, such as business and financial services, where the gender earnings gap was predicted to grow, and above-average wage growth in industries where women were under-represented. Other significant factors affecting earnings were the level of seniority, levels of skills, experience and job-related training, and the duration and continuity of employment. It was difficult to quantify the effects of these factors due to the paucity of data.

The report noted that the Ministry of Women's Affairs was responsible for a research programme on the gender pay gap and that the New Zealand Council of Trade Unions was developing a three-year campaign to achieve equal pay to mark the 25<sup>th</sup> anniversary of the Equal Pay Act 1972.

### **Fifth report, 2002**

New Zealand told the Committee that legislation providing for equal pay for work of equal value had been repealed in 1990, and the labour market had been deregulated (Ministry of Women's Affairs, 2002). It said that after entering office, the new government had begun to reverse the effects of that deregulation by establishing a Pay and Employment Equity Task Force to promote equality in public sector jobs. The Task Force was due to establish a five-year plan of action by 1 December 2003. It was

hoped that in demonstrating the value of equality policy, the plan of action would also serve as a model for the private sector.

Committee members requested additional information on the measures the government had taken to eliminate horizontal and vertical employment barriers and pay gaps (Committee on the Elimination of Discrimination against Women, 2003a). Clarity was sought also on whether cases of pay gaps had been referred to a court and, if so, whether the employer or employee bore the burden of proof. The Committee chairperson ended the dialogue with New Zealand with the comment that the Committee hoped that effective action would be taken to deal with the country's gender segregated labour market and wage disparities between men and women. In its press release after it examined New Zealand's report, the Committee listed the financial repercussions of wage gaps between men and women, as an area requiring further attention (Committee on Elimination of Discrimination Against Women, 2003b).

### **Sixth report, 2006**

The Committee expressed concern that, while New Zealand law recognises the principle of equal pay for work of equal value, the mechanisms for implementing this principle in the private sector, such as industry wide job evaluations to ensure equal pay for women performing work of equal value, had been abolished (Committee on the Elimination of Discrimination against Women, 2007). It also stated the government lacked the authority to implement and enforce equal employment opportunities policies in the private sector.

It recommended that the State party enact and implement comprehensive laws guaranteeing the substantive equality of women with men in both the public and private sectors, especially in regard to equal pay and equal opportunity in employment.

### **Seventh Report, 2010**

Given that the New Zealand government had dismantled the majority of its equal pay machinery in 2009, it is instructive to note how the State party reported on the gender pay gap to the Committee a year later and the nature of the Committee's latest response.

First, New Zealand acknowledged that the gender pay gap remained stubborn and its causes were complex and there were no simple solutions (Committee on the Elimination of Discrimination against Women, 2010). The gender pay gap of 11.3 percent was the lowest recorded since the New Zealand Income Survey first measured the pay gap in 1998, but it had moved very little in the last decade.

The Department of Labour's Pay and Employment Equity Unit (PEEU) designed and produced pay and employment equity toolkits and other practical assistance for state sector employers in New Zealand to help them assess pay and employment equity issues within their workplaces. Pay and employment equity reviews in the public sector were conducted between 2005 and 2009. All reviews except one found gender pay gaps, which varied in size between three to 35 percent. PEEU's obituary was consigned to a single sentence in the report: The work of PEEU was discontinued in 2009.

In the most explicit urgings made by the Committee on the Elimination of Discrimination Against Women in its reports to New Zealand, four recommendations related to equal pay and pay equity: These were:

- Enact appropriate legislation that guarantees the operationalisation and implementation of the principle of equal pay for work of equal value in line with Article 11(d) of the Convention.
- Effectively enforce the principle of equal pay for work of equal value, through establishing specific measures and indicators, identifying time frames to redress pay inequality in different sectors and reviewing the accountabilities of public service chief executives for pay policies.
- Adopt policies and take all necessary measures, including temporary special measures in accordance with Article 4, paragraph 1, of the Convention and the Committee's general recommendation No 25 with time-bound targets, to eliminate occupational segregation, both horizontal and vertical.
- Ensure that there is a monitoring institution for gender pay inequity within the State party's administration despite the closure of the Pay and Employment Equity Unit in the Department of Labour (Committee on the Elimination of Discrimination against Women, 2012).

### **Analysis of CEDAW reports on equal pay**

Analysis of the reports, then, shows that the Committee has noted retrogression relating to equal pay and pay equity in the second, sixth and seventh reports. In the second report in 1992, it noted the repeal of the Employment Equity Act in 1990, and in the sixth report it was concerned about the abolition of mechanisms, namely the Pay and Employment Equity Unit. The seventh report explicitly urged legislative change relating to equal pay for work of equal value; indicators, timeframes and improved accountabilities in the public service; and the use of affirmative action to eliminate occupational segregation and effective monitoring of the gender pay gap.

Human rights scholars Christof Heyns and Frans Viljoen (2001: 483) state that the "success or failure of any international human rights system should be evaluated in accordance with its impact on human rights practices on the domestic (country) level". As they indicated, the challenge is to ensure that the promises contained in the treaties and affirmed through ratification are realised in the lives of ordinary people, and in the case of equal pay in the lives of thousands of low paid women in New Zealand, including those working in the aged care sector. This study shows that, to varying degrees, successive New Zealand government reports to the Committee on the Elimination of Discrimination Against Women have acknowledged equal pay and pay equity as significant, systemic and continuing barriers to gender equality. The reports also reflect the peaks and troughs of active and passive political commitment to addressing the gender pay gap domestically. In response successive UN committees have increased the tempo on equal pay. What distinguishes the last report in 2010 from the Committee to the State party is the degree of specificity of the recommendations and a move from rhetorical encouragement to active identification of instrumental actions that need to be taken.

### **The ebb and flow of political will**

So what are the prospects then of the political tide turning as a result of increasing international encouragement to address equal pay and pay equity for low paid female workers? The question is

addressed first by considering several existing constraints to the increased exercise of political will to close the gender pay gap. The article then uses the NZHRC's national inquiry into equal employment opportunities in the aged care sector to discuss a confluence of factors pushing up from below through judicial intervention and social activism that may result in increased politicisation of equal pay.

First, the limitations of current human rights treaty body implementation in the New Zealand context. New Zealand's international obligations do not have primacy over New Zealand law nor do they bind the State party to a particular way of doing things, such as implementing the principle of pay equity as a mandatory requirement through legislation, for example. When the National government dismantled the Pay and Employment Equity Unit in 2009 and discontinued two pay investigations, it used the rationale that the unit had a five year life only, and there were other ways of closing the gender pay gap. These included a reliance on market forces, the use of toolkits, employer education, public sector chief executive accountability, plus the usual political fall-back position of more research.

The New Zealand parliament also demonstrates a traditional indifference to its obligations to promote and publicise international treaty body reports such as CEDAW. The NZHRC states that, currently, New Zealand's human rights treaty body reports and recommendations are seldom tabled in Parliament (New Zealand Human Rights Commission, 2011). The recommendations of the Committee on the Elimination of Discrimination Against Women, for example, are relatively invisible, and are rarely formally debated, unless raised during question time in an ad-hoc manner by an opposition member of parliament. In 2012, the Minister of Women's Affairs, Hon. Jo Goodhew, wrote to all Members of Parliament with a link to the seventh periodic review but the report was not subject to parliamentary oversight through tabling or debate.

Even more problematic for women's rights is that CEDAW reports are prepared by the Ministry of Women's Affairs (MoWA) with help from other government departments. The MoWA reports to the Government Administration Committee, the select committee that has a grab-bag of responsibilities ranging from civil defence to the Prime Minister and Cabinet, statistics, fitness and sport, parliamentary affairs, racing, youth and women's affairs. All other employment issues, for example, are considered by the Transport and Industrial Relations Select Committee, whose members build expertise and an oversight of the labour market frameworks and employment issues in New Zealand.

This limits the political opportunities should individual members of parliament be interested in or knowledgeable about the international treaty body responsibilities and what they mean for the human rights of New Zealanders. In turn, this results in negligible media coverage that could potentially stimulate general public debate. The very limited domestic political contest and the absence of media scrutiny by the parliamentary press gallery closes a circle of silence reinforcing political apathy and complacency about human rights such as equal pay.

The NZHRC has advocated for the establishment of a separate Human Rights Select Committee. This could address the significant gap in parliamentary scrutiny of human rights issues, enhance parliamentary oversight and strengthen accountability. The Commission also promoted the tabling of all Treaty body reports, such as those from the Committee on the Elimination of Discrimination Against Women, as an effective way for government to meet its responsibility to publicise treaty body recommendations. Promotion of treaty obligations to the wider community, such as non-governmental organisations, researchers and policy makers allows third parties to set their own human rights agendas as well as hold the State party accountable. This, the Commission believed, would increase the



likelihood of public engagement on human rights issues (New Zealand Human Rights Commission, 2011).

## **Stakeholders and the human rights framework**

There are influential stakeholders other than the government and parliamentarians who have the ability to leverage the human rights framework so that rights are realised. An analysis of the NZHRC's inquiry into equal employment opportunities into the aged care sector allows for some reflection on whether best use is being made of human rights frameworks by organisations and individuals other than politicians to progress equal pay.

The inquiry's major findings were uncontested. Thousands of New Zealand's lowest paid and most vulnerable women workers, carers in residential facilities and community-based home settings, are paid \$3 to \$5 an hour less than their counterparts for much the same work in the 21 District Health Boards (DHBs). All three sets of workers are paid by public monies from Vote Health, although carers in residential facilities and working in the homes of older people are paid by providers contracted to DHBs rather than directly employed by DHBs. The employment model, with its structural and systemic pay inequalities, is driven by the funding model, which is the State's responsibility. As Australian academics Palmer and Eveline (2012) point out, the payment of care is critically dependent on political will. In New Zealand as elsewhere, there is no market mechanism for care workers to price themselves in a manner that reflects the value of their contribution (England & Folbre, 1999).

*Caring Counts* is the latest of a long list of reports exposing pay inequities in the aged care sector. However, the inquiry was primarily based on international treaty body standards and was undertaken by an A-accredited Paris Principles compliant national human rights institution. It is only the third national inquiry conducted by the Commission in the past 10 years. The inquiry received significant media and public interest. It found that it would cost \$140 million, approximately one percent of the health budget, stepped over three years, to fix the pay discrimination, and that fair travel policies were urgently needed. The Prime Minister Hon. John Key told Television 3 News that carers' pay was "unequal" but New Zealand could not at the moment afford to fix it (Television 3, 2012).

There are currently, then, three ways in which the human rights framework is being leveraged to increasingly politicise equal pay. This is bringing pressure on a State party that continues to reframe progressive realisation and that has been arguably complicit in retrogression.

First, the international human rights framework was utilised in the 2013 Employment Court case involving interpretations of the Equal Pay Act 1972. *Caring Counts* was a catalyst for this first significant test of New Zealand's equal pay legislation in 30 years. Many of the interveners in the high profile case involving Lower Hutt carer, Kristine Bartlett, including the NZHRC, unions and equal pay campaigners confirmed New Zealand's obligation to implement Article 11(d) relating to equal pay, and referred the court to the treaty body reports including CEDAW.

The case turned, in part, on an assessment of the scope of s 3 of the Equal Pay Act 1972, which sets out the criteria to determine whether an element of difference in remuneration based on sex existed. Ms Bartlett was claiming, on behalf of female caregivers, that they were being paid a lower rate of pay than would be the case if caregiving of the aged were not so substantially female-dominated. The judgment of the full Employment Court referenced the Inquiry report's conclusion that aged care workers in New

Zealand were amongst the lowest paid in the country for physically, mentally and emotionally demanding work. The Court referred to the frequent statements in *Caring Counts* that the work was undoubtedly gendered and that the low pay was directly related to it traditionally being women's work.

In its judgment, the Court stated that section 3(1)(b) requires that equal pay for women for work predominantly or exclusively performed by women is to be determined by reference to what men would be paid to do the same work abstracting from skills, responsibility, conditions and degrees of effort as well as from any systemic undervaluation of the work derived from current or historical or structural gender discrimination. The Court dismissed the defendant's suggestion that gardeners, who tend to be male, might be an appropriate comparator group to female aged care workers and noted that, ironically, gardeners received NZ\$16.56 per hour as opposed to the carers at NZ\$13.75-\$15 per hour. Dismissing the argument of crippling fiscal impact should carers be paid fairly, the Court said

History is redolent with examples of strongly voiced concerns about the implementation of anti-discrimination initiatives on the basis that they will spell financial and social ruin, but which proved to be misplaced or have been acceptable as the short term price of the longer term social good. The abolition of slavery is an old example, and the prohibition on discrimination in employment based on sex is both a recent and particularly apposite example (*Service and Food Workers Union Nga Ringa Tota Inc v Terranova Homes and Care Limited*, 2013).

Second, there has been a renaissance of civil society interest in monitoring New Zealand's progress in responding to the Committee on the Elimination of Discrimination Against Women's latest recommendations. A coalition of 28 women's groups, the CEDAW Coalition of New Zealand NGOs, was formed in Auckland in 2012, and in 2013 submitted to the forthcoming Universal Periodic Review (UPR). The UPR is the process whereby other countries question New Zealand on its overall human rights progress. The UPR is increasing in international reputation because it provides a detailed account of the human rights situation on the ground.

The CEDAW coalition submission recommended that the New Zealand government work with women's groups to develop an action plan for New Zealand Women with

authentic targets and accountabilities. This should target violence against women, *pay inequality and inequity* (emphasis added), the status of Māori and Pacific women and the importance of welfare and employment related reforms on the lives of women and their families (CEDAW Coalition of New Zealand NGOs, 2013).

The Coalition also supports the establishment of a human rights select committee.

Third, there is a marked increase in the use of "public voice" by low paid female carers telling their own stories as opposed to reliance on elite expert voices to speak for them. These narratives have been framed in terms of the human rights of carers to equal pay as a measure of the value placed on older people in New Zealand society, and not in terms of the traditional discourse of "ethic of care" and "women's work". The use of personal narrative by carers themselves has given "power to the powerless" and is creating a new and revitalised political constituency around the plight of carers with older people and their families, as well as the aged care industry. The personal narratives were a significant feature of the report *Caring Counts*. They were dominant voices in the 2013 launch of the Living Wage campaign in New Zealand, and have a primary focus in the continuing television, radio and print stories on Kristine Bartlett's equal pay case.

## Conclusion

The two data sets used in this article show that, at a governmental level, New Zealand is struggling to convince successive UN committees that it is making significant progress in closing the gender pay gap. On the other hand, a number of elements have come together in the past two years to increase the public policy visibility of equal pay and the plight of low paid but vital female workers, particularly in the aged care sector. They include a high profile national human rights institution inquiry, litigation around equal pay, a civil society coalition around CEDAW implementation, the Living Wage campaign and greater mobilisation and visibility of low paid female carers as a result of strategic trade union intervention.

To these elements can be added a confluence of factors, including the demographics of ageing, the rise of the private sector aged care industry and its relationship to public funding, and a predicted global shortage of health care workers that will impact on New Zealand as elsewhere. The case for redressing political commitment and addressing low pay for low paid women workers, such as those in the aged care sector, then becomes indisputable.

Human Rights academic Samuel Moyn (2010) notes that history shows human rights have stood a better chance when social activism has surged from below and helped refresh legal agendas. As pressure builds, the implementation of equal pay for aged care workers could well become a priority fiscally as well as a matter of social justice. At some point soon, it will become politically unsustainable not to pay decent wages to women for heroic work.

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