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Совет по правам человека
Сорок пятая сессия
14 сентября – 2 октября 2020 года
Пункт 3 повестки дня
Поощрение и защита всех прав человека, гражданских, политических, экономических, социальных и культурных прав включая право на развитие

Визит в Новую Зеландию

Доклад Независимого эксперта по вопросу об осуществлении всех прав человека пожилых людей*

Резюме

Независимый эксперт по вопросу об осуществлении всех прав человека пожилых людей Роза Корнфельд-Матте посетила Новую Зеландию с 2 по 12 марта 2020 года. Основная цель ее визита состояла в выявлении как передовой практики, так и пробелов в осуществлении действующих законов и политики, касающихся поощрения и защиты прав пожилых людей. В своем докладе по итогам визита Независимый эксперт оценивает, насколько это возможно, осуществление действующих международных договоров, законов и политики, касающихся осуществления всех прав человека пожилых людей в Новой Зеландии.

* Резюме доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен.

Annex

Report of the Independent Expert on the enjoyment of all human rights by older persons on her visit to New Zealand

Contents

I. Introduction

1. Pursuant to Human Rights Council resolution 42/12, the Independent Expert on the enjoyment of all human rights by older persons conducted an official country visit to New Zealand from 2 to 12 March 2020, at the invitation of the Government.

2. During her visit, the Independent Expert was privileged to meet with the Minister for Seniors, the Minister for Social Development and relevant independent Crown entity representatives, Commissioners and several Human Rights Commissioners, including the Chief Commissioner. She also met with representatives from numerous other ministries, regional and local government authorities, including representatives from civil society organizations, non-governmental social welfare organizations, representatives from academia and private companies, and social workers and volunteers working with older persons. She visited several homes for older persons, care centres and related institutions, and met with representatives of the community and local authorities and with older persons and organizations representing them in Auckland, Christchurch, Hamilton, Timaru and Wellington. The Independent Expert wishes to convey her deep appreciation to all who took the time to meet with her and for the consistently warm welcome she experienced throughout her visit.

3. The Independent Expert expresses her sincere gratitude to the Government for the invitation and its collaboration and support in ensuring the realization of the visit. She is grateful to the Ministry of Foreign Affairs and Trade, and particularly grateful to the Minister and Office for Seniors, the New Zealand Human Rights Commission and the Special Procedures Branch of the Office of the United Nations High Commissioner for Human Rights (OHCHR) for their support in the preparation and execution of the visit, as well as for the tremendous support given to ensure the success of the visit. She looks forward to continued engagement with the Government and other stakeholders on the issue of older persons and on the implementation of her recommendations.[1]

II. Background and context

4. New Zealand is undergoing unprecedented, significant age-structural changes. This necessitates a major shift in mindset, requiring increased awareness and acknowledgment of, and commitment to protecting, the rights of all older persons, and measures to address their concerns and prioritize their cause.

5. The number of people aged 65 and over doubled between March 1991 and March 2020. In March 2020, nearly 16 per cent of New Zealanders were aged 65 and above and projections indicate that the older population will reach over one million by 2027. Older persons are potentially at risk from ageist attitudes, employment discrimination, lower incomes, material hardship, poor health, abuse and neglect, isolation and loneliness.[2]

6. The older persons' group itself is ageing. The number of old-old persons (85 years and above) more than doubled between 1996 and 2019 from 39,000 to over 88,000. By 2054, a further fourfold increase is projected, meaning that the number of old-old persons is set to reach 358,000 by that year. This has direct implications for health expenditure.

7. There are also differences between the four broad ethnic groups in the rate of growth and share of the population aged 65 and above. This partly relates to the stage that each ethnic group has reached in terms of the demographic transition. The Māori and Pasifika[3] continue to have higher fertility rates and higher mortality rates than the Asian and European ethnic groups, which is reflected in younger age structures for those population groups.[4]

[1] See A/HRC/33/44 and A/HRC/36/48.
[2] A/HRC/WG.6/5/NZL/1, para. 50.
[3] See www.pasifika.tki.org.nz.
[4] Statistics New Zealand, "Demographic aspects of New Zealand's ageing population", March 2006.

8. The country ranked twelfth on the Global AgeWatch Index 2015. It performed best in the health domain (ninth) and ranked high in the capability domain (fourteenth) with a high employment rate of older persons (74.4 per cent), and in the income security domain (twenty-third), with a pension income coverage of 98 per cent. Nevertheless, it faced significant challenges with regard to the enabling environment, for which it ranked thirtieth, notably with regard to the proportion of older persons who were satisfied with public transportation (49 per cent).[5]

III. Administrative, legal, institutional and policy framework

9. New Zealand is party to seven of the core human rights treaties: the International Covenant on Civil and Political Rights and its Optional Protocols; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; the Convention on the Rights of the Child and its Optional Protocol on the involvement of children in armed conflict; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; and the Convention on the Rights of Persons with Disabilities. In October 2016, New Zealand acceded to the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

10. New Zealand has not yet ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights or the Optional Protocols to the Convention on the Rights of the Child on a communications procedure and on the sale of children, child prostitution and child pornography. It has also not extended the application of the Convention on the Rights of the Child to the territory of Tokelau.[6]

11. New Zealand is party to the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees, the Convention on the Reduction of Statelessness and the Rome Statute of the International Criminal Court. It is not, however, party to the Convention relating to the Status of Stateless Persons.

12. New Zealand is party to six of the eight fundamental International Labour Organization (ILO) conventions: the Forced Labour Convention, 1930 (No. 29); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Equal Remuneration Convention, 1951 (No. 100); the Convention concerning the Abolition of Forced Labour, 1957 (No. 105); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); and the Worst Forms of Child Labour Convention, 1999 (No. 182). It has also ratified a number of other ILO conventions, such as the Labour Inspection Convention, 1947 (No. 81) and the Labour Statistics Convention, 1985 (No. 160). Furthermore, it has submitted to the competent national authorities several recommendations relevant to older persons, including the Social Protection Floors Recommendation, 2012 (No. 202); the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204); the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205); the Nursing Personnel Recommendation, 1977 (No. 157); the Labour Relations (Public Service) Recommendation, 1978 (No. 159); and the Labour Statistics Recommendation, 1985 (No. 170).

13. New Zealand has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); or the Minimum Age Convention, 1973 (No. 138). It has also not ratified a number of other ILO instruments relevant to older persons, including the Domestic Workers Convention, 2011 (No. 189); the Migrant Workers Convention, 1975 (No. 143); the Indigenous and Tribal Peoples Convention, 1989 (No. 169); the Social

[5] See www.helpage.org/global-agewatch/population-ageing-data/country-ageing-data/?country=New+Zealand.

[6] CRC/C/NZL/CO/5, para. 5.

Security (Minimum Standards) Convention, 1952 (No. 102); the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128); the Medical Care and Sickness Benefits Convention, 1969 (No. 130); the Paid Educational Leave Convention, 1974 (No. 140); the Rural Workers' Organisations Convention, 1975 (No. 141); the Nursing Personnel Convention, 1977 (No. 149); the Labour Administration Convention, 1978 (No. 150); the Maintenance of Social Security Rights Convention, 1982 (No. 157); the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159); the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173); the Violence and Harassment Convention, 2019 (No. 190); or the Violence and Harassment Recommendation, 2019 (No. 206).

14. The Constitution of New Zealand includes several legal and extralegal sources, including legislative documents, the common law, the principles of the Treaty of Waitangi, the law and custom of Parliament and customary international law. The Treaty of Waitangi has profound significance for human rights and for harmonious relations between Māori and non-Māori in New Zealand.

15. The Human Rights Act 1993, the New Zealand Bill of Rights Act 1990 and the Privacy Act 1993 are the three main laws that specifically promote and protect human rights. Among the foundations of a domestic human rights system in New Zealand was the introduction in 1898 of the Old-age Pensions Act. The country also adopted its second national plan of action on human rights, for the period 2015 to 2019.

16. There is no dedicated law affording protection to older persons, but the country has a variety of public, local body and privately funded policies which are universal for older persons, or are targeted to those in need according to income, assets and level of disability.

17. These policies have been based on the Positive Ageing Strategy,[7] which was designed to achieve 10 guiding principles, namely to: empower older persons to make choices enabling them to live a satisfying life and lead a healthy lifestyle; provide them with opportunities to participate in and contribute to family, whānau and community; reflect positive attitudes to older persons; recognize the diversity of older persons and ageing as a normal part of the life cycle; affirm the values and strengthen the capabilities of older Māori and their whānau; recognize the diversity and strengthen the capabilities of older Pacific persons; appreciate the diversity of cultural identity of older persons; recognize the different issues facing men and women; ensure older persons, in both rural and urban areas, live with confidence in a secure environment and receive the services they need to do so; and enable older persons to take responsibility for their personal growth and development through changing circumstances.

18. The Government recently adopted a new comprehensive strategy entitled "Better Later Life – He Oranga Kaumātua 2019 to 2034", which is guided by the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). Based on the outcomes of a national participatory consultation, the strategy links to existing dedicated policies on older persons such as the Healthy Ageing Strategy of 2016, the New Zealand Disability Strategy 2016, the New Zealand Carers' Strategy 2008 and the Mahi Aroha – Carers' Strategy Action Plan 2019–2023. The strategy resonates with human rights principles and is conducive to human rights-based implementation.

19. The Office for Seniors (formerly the Office for Senior Citizens) is the main entity responsible for monitoring the implementation of the Better Later Life – He Oranga Kaumātua policy across the Government. Under the New Zealand Superannuation and Retirement Income Act 2001, the role of the Retirement Commissioner was established to, inter alia, monitor the effects of retirement villages legislation and administer the disputes process.[8] New Zealand has a Health and Disability Commissioner, established in October 1994, who looks into complaints about health-related services, including old-age care. The Office of the Privacy Commissioner, established in 1993, investigates complaints about

[7] See www.msd.govt.nz/about-msd-and-our-work/publications-resources/planning-strategy/positive-ageing/index.html.

[8] For additional information on the functions of the Retirement Commissioner, see www.legislation.govt.nz/act/public/2001/0084/132.0/DLM114889.html.

breaches of privacy, runs education programmes and examines proposed legislation and its impact on people's right to privacy.

20. The Office of the Ombudsman is an independent body with the mandate to examine complaints about administrative acts and decisions of central and local government agencies. The Ombudsman also has jurisdiction to inspect health and disability places of detention, including secure aged care facilities, as well as prisons, immigration detention centres and court cells.

21. The New Zealand Human Rights Commission was established in September 1978. It is an independent national human rights institution with A status accreditation, with offices in Wellington, Auckland and Christchurch. Its mandate includes the settlement of disputes relating to unlawful discrimination, and human rights training and education.

IV. Independent Expert's main findings

A. Age discrimination

22. Age discrimination is explicitly prohibited under the 1993 Human Rights Act, which was significantly changed by the Human Rights Amendment Act 2001, including with regard to government activity within the normative scope. Ageist rhetoric, portraying older persons as a burden, nevertheless remains pervasive and contributes to negative attitudes towards ageing and older persons. This demonstrates that normative action, which is an important signal to society that age discrimination is not tolerated, is not sufficient to overcome stereotypes based on age.

23. Whereas discrimination in employment is listed in the Act among the unlawful practices, including prior to employment and in advertising, age discrimination is common in the workplace. Legislation prohibiting age discrimination is not sufficient to change employers' behaviour, but may lead to more subtle and covert ways of discriminating.[9] Older persons, in particular, experience discrimination when seeking employment and in accessing training opportunities, and they lack equal employment opportunities, which affects their length of time in work and their ability to save for retirement.[10] There are also reports of older persons being denied access to mortgage loans on the basis of age, and of discriminatory practices related to insurance for older persons. Moreover, certain communities and ethnic groups, such as Māori and Pasifika peoples and refugees and migrants, continue to face structural inequalities and discrimination, which are exacerbated in old age.

24. Older victims can submit complaints about age discrimination to the Human Rights Commission. While the number of older workers making a complaint about age discrimination remains steady at around 60 a year, it is believed to be widely underreported.[11] Stereotypical expectations surrounding age and retirement may inhibit older workers from challenging ageism.[12] Complaints are mostly resolved through informal methods. If the dispute resolution process fails or is inappropriate, complainants may take their case to the Human Rights Review Tribunal for adjudication. The Tribunal can order relevant remedies for age discrimination.

[9] Judith A. Davey, "Policy responses to workforce ageing – existing, potential and a report card for New Zealand", *Labour, Employment and Work in New Zealand* (2015).

[10] New Zealand Human Rights Commission, *Annual Report 2018/19*, p. 19.

[11] See http://superseniors.msd.govt.nz/finance-planning/paid-work/age-discrimination.html; and New Zealand Human Rights Commission, "Submission on strategy for an ageing population", submission to the Office for Seniors, 2018.

[12] Davey, "Policy responses to workforce ageing – existing, potential and a report card for New Zealand".

B. Violence, neglect, maltreatment and abuse

25. New Zealand recognizes that is has unacceptable rates of domestic and sexual violence.[13] Among developed countries, New Zealand has one of highest reported rates of domestic violence with around 12 per cent of New Zealanders – over half a million people – directly affected by domestic and family violence each year.[14]

26. One in three women is subjected to physical or psychological violence, especially domestic and sexual violence, including rape, by an intimate partner during the course of her lifetime.[15] Violence disproportionally affects certain parts of society in New Zealand, particularly Māori and women.[16]

27. Reports of abuse and neglect of older persons are increasing.[17] Older persons in New Zealand are also susceptible to economic and financial abuse, including by families impatient for their inheritance, and families forcing their relatives to move into rest homes. Financial abuse also concerns older persons' assets and investments. The current pathways for reporting economic abuse may deter older persons because of the perceived complexity.

28. From 2018 to 2019, the support service provider Age Concern Auckland responded to over 600 confirmed cases of abuse in 12 months, a 15 per cent increase on the previous year. According to information received, older persons' abuse services across New Zealand received 2,260 referrals in the previous year. In 2016/17, 76 per cent of the alleged abusers were family members and an estimated three out of four cases went unreported. It is estimated that 1 in 10 older persons aged 65 and above will experience some form of abuse.[18]

29. Older Māori experience greater levels of abuse than older non-Māori.[19] Information from Māori service providers indicates that economic and emotional abuse are more common than physical or sexual abuse. In a high proportion of cases seen by Māori older persons' service providers, the victim has some form of dementia. A sense of shame and stigma can be associated with elder abuse.[20]

30. There are a number of family violence prevention programmes, including 28 community-based service providers.[21] In 2017, an older persons' abuse response service was established, including a free confidential helpline.[22]

31. Older persons experiencing abuse or neglect when receiving care can complain to the relevant district health board, the service provider or the Office of the Health and Disability Commissioner. Fear of retaliation may dissuade them from complaining. The Ombudsman's Office has raised concerns about practices in some secure care facilities.[23]

32. While the Family Violence Act 2018, in force since July 2019, laid the foundations for the transformation of the response system to domestic violence, there are concerns at the very low levels of reporting and the high rate of recidivism, particularly within the Māori

[13] A/HRC/WG.6/32/NZL/1, para. 25.
[14] New Zealand, Ministry of Social Development, "Family violence funding approach: building a sustainable future for family violence services", July 2019, p. 4 ff.
[15] CEDAW/C/NZL/CO/8, para. 25 (a).
[16] A/HRC/WG.6/32/NZL/1, para. 26.
[17] New Zealand Human Rights Commission, Briefing to the Special Rapporteur on the rights on persons with disabilities, regarding the questionnaire on the rights of older persons with disabilities, 2019, para. 2.3. Available from www.ohchr.org/EN/Issues/Disability/SRDisabilities/Pages/SupportingTheAutonomyOlderPersons.aspx.
[18] See www.superseniors.msd.govt.nz/elder-abuse.
[19] Office for Senior Citizens, *Towards gaining a greater understanding of Elder Abuse and Neglect in New Zealand* (Wellington, June 2015).
[20] Kathy Glasgow and Janet Fanslow, *Family Violence Intervention Guidelines: Elder abuse and neglect* (Wellington, Ministry of Health, 2007).
[21] Ibid.
[22] A/HRC/WG.6/32/NZL/1, para. 33.
[23] Glasgow and Fanslow, *Family Violence Intervention Guidelines: Elder abuse and neglect*.

community, with only 29 per cent of domestic and family violence and only 6 per cent of sexual violence reported to the police.[24]

C. Education, training and lifelong learning

33. New Zealand has a long-standing commitment to lifelong learning.[25] Older persons are part of the student population in the tertiary education sector, which includes higher education and vocational training. Older students are more likely to study at sub-degree level, with over four out of five older students enrolled in sub-degree level certificates and diplomas in 2005. They represent nearly three quarters of the total equivalent full-time students enrolled in 2005. There are reports, however, that older persons wanting to enrol in tertiary education are unable to access government-funded living costs or course-related costs.[26]

34. In addition to formal education courses, many universities and community providers offer adult and community education courses, which cover a wide range of topics from languages to computer courses. Few of these have so far been available to older persons.

D. Adequate standard of living

35. Old-age poverty is below the Organization for Economic Cooperation and Development (OECD) average.[27] Nevertheless, as the basic pension remains very close to the poverty threshold and house prices rise, there are still concerns about poverty among older persons. A large group of older persons, around 60 per cent of singles and 40 per cent of couples,[28] have little or no additional income apart from the New Zealand Superannuation, which makes them very vulnerable to any changes in policy or economic circumstances. Moreover, the Superannuation is based on the assumption of mortgage-free homeownership for older persons. As private rental housing is becoming unaffordable under this regime and in view of the ongoing changes of tenure patterns, the number of older persons facing material hardship will increase and many of them will be in rental accommodation. The homeownership rate for older Māori in 2018 was 48 per cent, compared to 58 per cent of older persons of European descent.

36. There is also considerable variation by age group, with a much higher poverty rate for persons aged 75 or more.[29] There are also important disparities for older persons living in rural areas, including higher levels of poverty.[30]

37. The population of New Zealand in smaller towns and rural regions is ageing at a faster rate than in larger urban centres, and the disparities have the potential to increase in the future. In the most disadvantaged rural areas, there is a high concentration of Māori. Many older persons living in remote and rural areas have problems accessing health services, and those who require specialist care are likely to have to travel long distances for appointments and procedures. Older persons encounter difficulties in accessing regular transport, including public transportation and paid services such as taxis and buses. This leaves them isolated from services and social interactions.[31]

[24] New Zealand, Ministry of Justice, *New Zealand Crime and Victims survey – Key findings, cycle 2 (October 2018–September 2019): Descriptive statistics* (Wellington, 2020).

[25] See http://uil.unesco.org/fileadmin/keydocuments/LifelongLearning/en/UIL_Global_Inventory_of_NQFs_New_Zealand.pdf.

[26] See www.studylink.govt.nz/products/a-z-products/student-loan/living-costs.html#null.

[27] See www.oecd.org/els/public-pensions/New%20Zealand_eng_final.pdf.

[28] New Zealand, Ministry of Social Development, "Household incomes in New Zealand: short summary 2019", p. 9. Available at www.msd.govt.nz/about-msd-and-our-work/publications-resources/monitoring/household-incomes/household-incomes-1982-to-2018.html.

[29] See www.oecd.org/els/public-pensions/New%20Zealand_eng_final.pdf.

[30] CEDAW/C/NZL/CO/8, para. 41.

[31] Office for Senior Citizens, *2014 Report on the Positive Ageing Strategy* (Wellington, 2015).

38. Every older person in New Zealand who applies for Superannuation automatically receives a SuperGold Card by mail. This is a discount and concession card which provides older persons with discounts and offers from over 6,500 businesses and the services of many local councils, including free public transport on local bus, train and ferry services, at least during off-peak hours.

39. There are other policies funded by the Government, local bodies and private not-for-profit organizations that provide welfare benefits and support services to vulnerable or at-risk older persons. These benefits relate to health, housing, transport and connectivity, after a needs assessment, which includes an assessment of the older person's income, self-care ability and the social support mechanisms available to the older person.

40. Buses are not fully accessible, and walking home from the bus can be difficult. There are also areas where footpaths are not wide enough for mobility scooters. Inadequate broadband and Internet services in rural areas create major barriers to access to information and services for older persons.[32]

41. The provision of adequate housing remains a challenge, especially in terms of affordability and habitability. Vulnerable groups such as Māori and Pasifika are overrepresented in rental and crowded housing. This overrepresentation correlates closely with low income, poor health and lower education levels. Kāinga Ora – Homes and Communities is responsible for providing public housing for people in need. During the 2020/21 financial year, Kāinga Ora is forecast to invest NZ$ 2.9 billion in rental property additions and upgrades and management of its infrastructure assets, and a further NZ$ 422 million in repairs and maintenance of the existing housing portfolio.[33]

42. In the social housing sector, along with local city councils and community housing providers, Kāinga Ora provides social housing to older persons through modifications of public housing homes that are made to accommodate accessibility and mobility issues. Most older tenants live in private rental housing. Rental housing is older and thermal insulation is ineffective, tenure can be insecure, and older renters often rely on the Accommodation Supplement, which is insufficient, while demand is further increasing. In 2017, the Government enacted legislation that requires higher standards for insulation, heating and ventilation for private and public rental housing.

43. It is projected that older persons will mostly live in rental housing in the future, unless there is a substantial policy change. The proportion of older owner-occupiers fell rapidly between 2001 and 2013, and will fall further given the reduced rate of homeownership now found among people in their early forties.[34]

44. Around 5 per cent of the older population has moved to retirement villages. The number of retirement villages has grown significantly since 2017 across the country to over 31,500 retirement village units.[35] Village sizes vary greatly across the regions, including as a result of the different business models in the sector, with the average size in Auckland, for instance, at 118 units at the higher end and 41 units per village in Southland at the other.

45. In 2003, the Retirement Villages Act was introduced in an effort to protect residents in this rapidly expanding market. Along with regulations, and Code of Practice set the framework for relationships between residents, intending residents and operators. The Code sets national minimum standards that all retirement village operators have to meet. Provisions are broadly formulated allowing for varying interpretation and standards. Some retirement village residents have contracts stating that they can only access in-house personal care,

[32] CEDAW/C/NZL/CO/8, para. 41.

[33] According to the Government, this financial forecast was developed prior to the outbreak of coronavirus disease (COVID-19) in New Zealand, the impact of which on the financial capital forecasts is currently being assessed.

[34] See http://superseniors.msd.govt.nz/about-superseniors/ageing-population/housing/housing.html.

[35] See www.jll.nz/content/dam/jll-com/documents/pdf/research/retirement-village-white-paper-2019-web-final.pdf.

which they then must pay for, even though they may have been eligible for State-funded home support services.[36]

46. Around one third of the retirement villages are run by five big operators. Non-profit providers make up less than a quarter of the industry. Their share of the market is expected to decline as bigger players continue to expand.

47. Residents sign a contract, called an Occupation Right Agreement, which offers the right to live in a unit but without any ownership rights. In addition to the sum paid for the occupation licence, a weekly fee is usually required to cover the village operating costs. The average is around NZ$ 124.

48. The rationale of the profit projections relies on income from selling a licence to occupy for the same unit several times within a relatively short period. The average tenure of villas is seven to eight years, while it is five years for apartments. The shorter the tenure, the lower the cost of refurbishment and the greater the resale profit for the operator.

49. When older persons leave the village, the operator usually retains a sizeable part of the initial payment as a deferred management fee. Bigger operators charge a maximum deferred management fee of 20 to 30 per cent. In most cases, the village also keeps any capital gain from reselling the unit, and some providers hold older persons liable for any capital loss. Depending on the terms of agreement, further fees could be incurred, such as meeting the operators' legal costs when the unit is resold and administration fees to cover its marketing expenses.

50. Other concerns include unexpected fee increases, reductions in village services, inappropriate management of sales, and lack of consultation. While the Act establishes a formal dispute resolution process, it seems to be too adversarial, hence cumbersome, and residents are reluctant to complain, including because they can have costs awarded against them if their case fails.

51. In general, residents must pass medical assessments to be accepted into a retirement village. When an older person's physical or mental health deteriorates to the point where he or she can no longer pass the medical test, the agreement can be terminated and the person has to move to a rest home or hospital care division.

52. More than 70 per cent of retirement villages now have care facilities on site, and more than 50 per cent of the total number of beds in facilities that provide care for older persons are in retirement villages. However, the independent living part of a village and its care facility operate under different regulatory regimes and different cost structures. The process for moving into care support facilities can be complex, and the resident may face extra charges.

53. New Zealand is a nation prone to major earthquakes, with thousands of earthquakes occurring every year. Experience from the series of large earthquakes in 2010 and 2011, in Christchurch and the wider Canterbury region, confirms that older persons are disproportionately affected by natural disasters owing to their reduced mobility, dependence and physical, emotional or mental condition, and lack of transport and local services, including the disruption of care support services. Some retirement villages, for example, were totally destroyed, with older persons facing unforeseen difficulties over occupation rights agreements.[37] More than 300 older persons have been moved from earthquake-damaged residential care centres in Christchurch to other regions or to undamaged facilities within Christchurch.

[36] See www.ageconcern.org.nz/ACNZ_Public/Retirement_Villages.aspx.

[37] Judith A. Davey and Jenny Neale, *Earthquake Preparedness in an Ageing Society: Learning from the experience of the Canterbury Earthquakes*, Report prepared for the Earthquake Commission, (Victoria University of Wellington, 2013), p. 6.

E. Social protection and the rights to social security and work

54. New Zealand has a comprehensive State-funded pension system, the New Zealand Superannuation, which is under the responsibility of the Ministry of Social Development.

55. Every New Zealander is eligible for Superannuation on reaching the age of 65, provided the residency criteria are met, in particular 10 years of residency since the age of 20. Superannuation is not income or asset tested and older persons may continue to be in employment or engage in other types of income earning activities. Since there is no compulsory retirement age and employers are not allowed to specify a mandatory retirement age in employment contracts, a high percentage (around 24 per cent) of older persons is in paid work, representing 6 per cent of the workforce.[38] Old-age employment is estimated to rise to between 8 and 11 per cent of the workforce in 2038 and to between 9 and 29 per cent, depending on the source, in 2068.[39] Noteworthy in this regard is the fact that Superannuation will be taxed at 30 to 35 per cent rather than 17.5 per cent if the total earnings, that is, additional earnings and Superannuation, exceed NZ$ 48,001.[40]

56. Superannuation coverage extends to the vast majority of the population aged 65 years and above, but remains close to the poverty threshold.[41] In 2007, the KiwiSaver scheme was introduced as a voluntary, work-based savings scheme, complementing the Superannuation.[42] It can contribute to improving future pension adequacy and reduce poverty. New employees are automatically enrolled in the scheme and have eight weeks in which they can decide to opt out. Existing employees may opt in if they wish.

57. As the KiwiSaver schemes mature, it is projected that the medium and long-term poverty rates of older persons will decrease through the savings. Lower earners, however, who are more likely to opt out of the automatic enrolment scheme as a way to help them overcome short-term financial constraints, may still be at risk.[43] As the KiwiSawer is a contributory scheme, it is dependent on a person's income.

58. This concerns particularly those groups that are more likely to be affected by a lack of economic activity and employment, including women, Māori and Pasifika. Older women, for instance, are less likely to have retirement savings, as over a lifetime they will have earned considerably less than men. Any change to superannuation and retirement provision is likely to have a gendered impact. Owing to the existing spousal deduction policy, some older women receive a reduced rate of New Zealand Superannuation. The Independent Expert was pleased to learn that it is anticipated that this policy will be amended from 9 November 2020.

59. The Accident Compensation Corporation no-fault scheme provides a subsidy on medical and rehabilitation costs following an accident. Individuals may make a claim to the Corporation if they experience physical injury, a mental injury related to a physical injury, mental injury arising from sexual assault or abuse and work-related gradual process injuries. Persons with injuries covered by the Corporation are eligible for compensation, rehabilitation and financial assistance without having to make a court claim.[44]

F. Care

60. Certifying and monitoring nursing homes for older persons is one of the responsibilities of the Ministry of Health, whereas long-term care coverage and funding is the responsibility of the district health boards. These boards are responsible for ensuring the

[38] Stats NZ, Labour market statistics: March 2020 quarter.

[39] New Zealand Human Rights Commission, "Submission on strategy for an ageing population", para. 8; and Stats NZ, National labour force projections: 2017(base)–2068.

[40] See www.govt.nz/browse/tax-benefits-and-finance/tax/choose-the-right-tax-code-for-your-nz-superannuation/.

[41] Superannuation coverage is close to 98 per cent for persons aged 65 and above. See ILO, *Social protection for older persons: Key policy trends and statistics* (Geneva, ILO, 2014).

[42] See www.ird.govt.nz/kiwisaver.

[43] See www.oecd.org/els/public-pensions/New%20Zealand_eng_final.pdf.

[44] A/HRC/WG.6/5/NZL/1, para. 84.

supply of residential care rooms. In doing so, they consult with providers of rest homes and dementia and geriatric hospital-level facilities.

61. Every person who wishes to receive support services funded by a district health board must be needs assessed by a Needs Assessment Service Coordination agency. Older persons are not only needs-tested, but also means-tested. Once a person's need for residential care is established, a financial means assessment is undertaken to determine eligibility for a government-funded residential care subsidy.

62. Since 2007, needs assessments have been undertaken using the standardized Home Care International Resident Assessment Instrument (interRAI HC). They were introduced across all district health boards for use in community-based populations for admission to old-age residential care or for those requiring long-term care support. The assessments are conducted by trained health professionals (mainly nurses and social workers) to ascertain a person's level of need, develop a care plan and identify appropriate services and support options.

63. There are significant variations across the district health boards as to when persons are admitted to old-age residential care within 12 months of a Home Care Assessment, which puts some of them at high risk of needing care.[45]

64. District health boards are responsible for mandating standards, including for staffing levels. The national Government and district health boards are responsible for the licensing and quality assurance of long-term care services. Impromptu inspections are conducted annually.[46]

65. Residential facilities are mostly private, and all home care services are provided by non-governmental organizations.[47] Residential care falls into four levels: rest home care, long-term hospital care, dementia care and psychogeriatric care. Some homes are equipped to provide all four levels of care.[48] Seventy per cent of care facilities belong to major groups consisting of four or more care facilities, and 30 per cent are individual or in small groups of two to three care facilities.[49] Older persons' care services that are culturally and linguistically sensitive are not readily available.

66. In prisons, there are no specific policies for care of prisoners with age-related conditions such as Alzheimer's disease or dementia, or the health management of prisoners who require palliative care, with the exception of the Health Care Pathway Policy, which includes an end-of-life policy. The Department of Corrections established a High-Dependency Unit at Rimutaka Prison in 2012, which now accommodates 30 mostly older patients. A new wing opened in 2015, where health-care professionals assist with toileting, feeding and bathing. This remains insufficient, however, to meet the needs of an ageing prison population. In June 2016, there were 130 prisoners aged over 70, compared with 51 in 2011.[50] On 28 February 2019, 313 older persons aged 65 years and above were among the prison population. Almost half the persons who live in prisons and penal institutions identify as Māori.[51]

67. Old-age care services, whether home-based or in rest homes and private hospitals, as well as social services, disability services, mental health services and respite care, remain insufficient and underfunded. Carers need to be better remunerated. There are about 33,000 caregivers currently employed in aged care in New Zealand. Between 12,000 and 20,000

[45] New Zealand Aged Care Association, "Caring for our older Kiwis: the right place, at the right time", p. 9.

[46] Suzanne Dyer and others, *Review of International Systems for Long-Term Care of Older People* (Royal Commission into Aged Care Quality and Safety, 2020/Flinders University, Adelaide, Australia, 2019), p. 24 ff.

[47] Ibid.

[48] See www.ageconcern.org.nz/ACNZ_Public/Residential_Care_Common_Questions.aspx.

[49] New Zealand Aged Care Association, "Aged residential care: industry profile 2017–18", p. 9.

[50] See www.corrections.govt.nz/resources/strategic_reports/annual-reports/annual_report_201516/maintaining_the_health_and_wellbeing_of_offenders_in_custody.

[51] See http://archive.stats.govt.nz/Census/2013-census/profile-and-summary-reports/outside-norm/prison.aspx.

more residents will need aged residential care by 2026. The demand for care professionals is therefore expected to increase dramatically by at least 50 per cent by 2026.[52]

68. Particularly for older persons in remote and rural areas, the health system is forecast to come under pressure owing to an increasing shortage of health-care professionals and carers, which could leave older persons isolated and vulnerable. Women living in rural areas bear an unequal burden of family responsibilities, and traditional attitudes compel them to perform unpaid work and provide food for their families.[53]

69. There are no data on the number of persons with dementia in New Zealand. The estimates range from 50,000 to 70,000 persons, and the number is projected to rise to an estimated 78,000 persons by 2026[54] and over 170,000 persons by 2050.[55] There is generally a negative social stigma associated with dementia and many persons are afraid of being diagnosed with it. There is also widespread reluctance to undergo medical testing, owing to the misperception that no treatment is available.[56]

70. In 2013, the Ministry of Health developed a framework for dementia care which aims to improve the information available, dispel the myths about dementia and ensure that the health and social support sectors, persons with dementia and their families and whānau are adequately educated about the realities of dementia and the types of support available to maximize autonomy, independence and well-being. Māori involvement in the development of the framework for dementia care was low and the Government recognizes that dementia care must better consider the needs of Māori, Pasifika and other communities and ethnicities.[57]

71. In 2014, the Ministry of Health published *Improving the Lives of People with Dementia*.[58] This action plan lists a number of actions that needed to be taken over the following three years, in order to improve the quality of life for persons with dementia and their carers, families and whānau, such as the development of dementia-friendly health and social support services and provision of respectful and supportive end-of-life care, including palliative care.

G. Digitalization, artificial intelligence and robotics technology

72. The digital future of New Zealand is underpinned by a myriad of government strategies, programmes and actions encompassing various sectors, geared towards creating the digitalization of government services and content, such as the 2006 E-government Strategy, the Digital Strategy, the Strategy for a Digital Public Service and the Digital Content Strategy. In 2019, the Government adopted the Digital Inclusion Blueprint – Te Mahere mō te Whakaurunga Matihiko, to ensure that everyone was digitally included and could participate in, contribute to, and benefit from the digital world.[59]

73. Digitization of government forms, for instance, started in 2012 to streamline government services. The vast majority of all common forms are now online. A digital identity, RealMe, was introduced to prove a person's online identity for seamless government services, such as applying for passports, enrolling to vote, but also to apply for Superannuation and to request support for claims under the Accident Compensation Corporation scheme, such as home help.

[52] See www.newzealandnow.govt.nz/resources/working-in-aged-care.
[53] CEDAW/C/NZL/CO/8, para. 41.
[54] New Zealand, Ministry of Health, *Improving the Lives of People with Dementia* (August 2014).
[55] Alzheimers New Zealand and Deloitte Access Economics, "Dementia economic impact report 2016" (March 2017).
[56] New Zealand, Ministry of Health, *New Zealand Framework for Dementia Care* (Wellington, 2013), p. 1.
[57] Ibid., p. 2
[58] New Zealand, Ministry of Health, *Improving the Lives of People with Dementia*.
[59] See www.digital.govt.nz/digital-government/digital-transformation/digital-inclusion/governments-vision-the-digital-inclusion-blueprint/ and www.digital.govt.nz/digital-government/strategy/strategy-summary/strategy-for-a-digital-public-service/.

74. Older persons, particularly those living in rural communities, persons with disabilities and Māori are less likely to be digitally included than the wider population,[60] and may face significant barriers to accessing government services. With progressive digitalization, older persons are required to move online, while some may not even have an email address. Also, older persons in residential care facilities are often omitted from surveys and reports, and their use of digital technologies remains largely invisible. Despite the spread of the Internet, age-related gaps in digital engagement still exist.

75. The digital transformative change also concerns the health and care sector, which puts innovative information technology tools at the centre of the response to key challenges facing the ageing population.

76. In its 2016 Health Strategy, the Government promotes delivery of care "closer to home" through a "smart system", which aims to leverage new and emerging technologies. The Ministry of Health is also currently preparing a Digital Health Strategy and has articulated a vision of technology-enabled health care.[61] Artificial intelligence is projected to contribute over NZ$ 700 million of value and savings to the health system by 2026. Artificial intelligence will also help save 20 per cent of nurse time and allow doctors to see more patients, thereby increasing the effective workforce size.

77. Artificial intelligence and assistive technologies may allow older persons to live independently at home for longer, as they will be able to interact with technology that will, inter alia, remind them to take medication, sense when they have fallen, and communicate their progress with care teams.

78. Several private health-care providers in New Zealand are embracing emerging technologies and preparing for the use of artificial intelligence by initiating cloud storage, automating processes with software robots, and using artificial intelligence to enhance clinical safety.[62] There are applications, for instance, which provide caregivers and nurses with a very detailed list of tasks for each resident each day, ranging from a haircut to spending one-on-one time with the resident or tending to multiple wounds. Wearable devices can monitor baseline conversations between staff and aged care residents to target loneliness by prompting social contacts when word count levels throughout the day drop too low.[63] Other applications help older persons to take medicines, track their vital signs and allow them to communicate with other residents of residential homes. Some retirement village houses also have sensors that identify non-movement, which can help detect falls. Some dementia units have also started using therapeutic interactive robots.

79. The road map associated with the Digital Health Strategy highlights the need to develop analytical capability and the quality of data at the national level, as well as keeping up with the development of health technologies such as robotics.

80. This digital transformation requires data sets that are connected, data that is interoperable and thus standardized. A number of Home Care International Resident Assessment Instrument tools are in use, such as the mandatory assessment tool for all aged residential care providers. The tools are standardized assessments that are designed to enable a comprehensive clinical assessment system for a specific population, such as older persons. The rationale is to use common measures that enable clinicians and providers in different care settings to improve continuity of care, and to integrate the care and support needed for each individual.[64]

81. The Home Care International Resident Assessment Instrument database is large and rapidly growing and the vast majority of persons assessed consented to the use of their information in planning and research. Community care assessments are standardized and have national implementation and coverage. Older Māori and Pasifika are less likely to engage with primary health care, and many more are entirely invisible to the system until

[60] Ibid.

[61] See https://aiforum.org.nz/wp-content/uploads/2019/10/AI-For-Health-in-New-Zealand.pdf.

[62] Ibid.

[63] See https://healthcentral.nz/technology-leading-the-way-in-improving-aged-care/.

[64] New Zealand Aged Care Association, "Caring for our older Kiwis: the right place, at the right time", p. 17 ff.

they suffer an acute episode that requires hospital care. It also needs to be taken into account that data can be viewed as highly sensitive and valued by Māori, Pasifika and other communities, and that views may differ with regard to data governance.[65]

82. Available data concerns the health and well-being of older persons, beyond clinical data, including on function, fragility, mobility, communication ability, behaviour and physical restraint.[66] It provides a comprehensive picture of an older person's behaviour, functional aspects of daily living and needs, moving towards the "glass human being"[67] become a reality. The assessment software allows for information to be automatically aggregated to provide data at facility, regional and national levels, and enables families, advocates and payers to track a person's progress.[68] In many regions, however, the Home Care International Resident Assessment Instrument is not being used as intended. Some district health boards are adopting their own policies and interpretation of data, which leads to unequal access to care for older persons.

83. The comprehensive information collected about an older person's physiological data, routine and behaviour, moving towards digital health, also allows for the detection of early signs of health problems and early intervention aimed at individualized prognostics. As a general principle, it is essential for older persons to understand fully what data is being collected and for what purposes to ensure they can make a meaningful and informed decision when giving their consent.

V. Conclusions and recommendations

A. Overall strategy and findings

84. **New Zealand is undergoing an essential age-structural change, which requires urgent adequate action now to meet the ensuing challenges. The Independent Expert commends the commitment of New Zealand to ensuring the enjoyment of all human rights by older persons. She welcomes the adoption of the new comprehensive strategy entitled "Better Later Life – He Oranga Kaumātua 2019 to 2034", which is guided by the principles of the Treaty of Waitangi (Te Tiriti o Waitangi), the founding document of New Zealand. It includes links to existing dedicated policies on older persons such as the Healthy Ageing Strategy of 2016, the New Zealand Disability Strategy 2016, the New Zealand Carers' Strategy 2008 and the Mahi Aroha – Carers' Strategy Action Plan 2019–2023.**

85. **The new strategy resonates with human rights principles and is conducive to human rights-based implementation. The Independent Expert underscores that a holistic approach encompassing civil and political, as well as economic, social and cultural, rights is essential to ensure that older persons can fully enjoy their rights. She also notes that the implementation of the strategy requires a clear commitment. She calls upon the Government to allocate a specific budget for the implementation of this strategy and encourages it to formulate and determine the objectives and aims to be attained within a set period of time, as stated in the strategy.**

86. **The Independent Expert welcomes the existing dedicated institutional structures, such as the Minister of Seniors and the Office for Seniors. She stresses the importance of an independent, interdepartmental coordination mechanism to facilitate the implementation of a coherent policy plan, ensuring a multidisciplinary approach to ageing. This is important to ensure that an older persons-centred approach is**

[65] See https://aiforum.org.nz/wp-content/uploads/2019/10/AI-For-Health-in-New-Zealand.pdf, p. 56; and www.digital.govt.nz/assets/Documents/113Digital-Inclusion-BlueprintTe-Mahere-mo-te-Whakaurunga-Matihiko.pdf.

[66] Suzanne Dyer and others, *Review of International Systems for Long-Term Care of Older People*, p. 33.

[67] A/HRC/36/48, para. 50.

[68] New Zealand Aged Care Association, "Caring for our older Kiwis: the right place, at the right time", p. 17 ff.

mainstreamed into all activities. She notes, however, that the allocation of adequate resources to the Minister of Seniors and her office is required to allow for implementation of the contemplated measures.

87. **Welcoming the major reform of the public service which is under way and which emphasizes that the fundamental character of the public service is acting with a spirit of service to the community, the Independent Expert recommends that the Public Service Legislation Bill be amended to require the public service to take into account the national and international human rights commitments of New Zealand, including those that affect older persons.**

88. **She further encourages New Zealand to ratify all the human rights treaties to which it is not yet party, particularly the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Moreover, she recommends that the Government consider the establishment of an independent national commissioner on the enjoyment of all human rights by older persons at the New Zealand Human Rights Commission. Rather than creating a completely new institutional body, this position could be settled at the existing New Zealand National Human Rights Commission to serve as an independent body for older persons.**

89. **Moreover, the Independent Expert invites the Government to actively support the efforts to elaborate a dedicated instrument on the human rights of older persons at the international level, in line with the implementation of the Sustainable Development Goals in the 2030 Agenda, that should consider the realization of the rights of older persons in a cross-cutting and systemic manner, so as to truly ensure that no one is left behind.**

90. **On the basis of these overall conclusions and the observations contained in the present report, the Independent Expert makes the following recommendations with regard to specific areas and actors.**

B. Recommendations to the Government

Data and statistics

91. **Notwithstanding various efforts, particularly in the context of digitalization, the Independent Expert encourages the Government to ensure the nationwide, systematic and regular collection of disaggregated data on the impediments to the enjoyment of all human rights by older persons, such as all forms of discrimination on the basis of age, individually and cumulatively, as well as exclusion, poverty and all forms of violence, abuse, neglect and maltreatment.**

92. **Data used in assessments should not only be disaggregated by age, but also ensure that age cohorts reflect the heterogeneous nature of the older population – in particular the Māori, Pasifika and other communities, as well as migrants and refugees – to enable differentiation between older and very old persons, who have different needs and capacities. Age cohorts should also be granular enough to take into account the relativity of the notions of age, considering the respective life-course context.**

Age discrimination

93. **The Independent Expert notes that ageist rhetoric portraying older persons as a burden is pervasive and contributes to negative attitudes to ageing and older persons. She cautions against framing the discussion of social inequality as a generational divide.**

94. **She recommends that the Government conduct a targeted awareness-raising campaign to ensure that older persons are not perceived as passive consumers of services offered by society, politically and socially inert and unfit to take part in decision-making. There is also a need to encourage and support older persons to take part in decision-making processes related to ageing and older age at all levels.**

Violence, maltreatment, neglect and abuse

95. **The Independent Expert commends the Government for recognizing existing challenges and for the measures it has taken to address violence, abuse, maltreatment and neglect of older persons, such as the adoption of the Family Violence Act. Noting that low levels of reporting are of concern, she encourages the Government to continue its efforts to raise awareness and sensitize all segments of the population. This can take the form of training judges, lawyers and prosecutors, which is essential to ensure that investigation of cases of domestic violence proceeds, in order to signal to the community that violence and abuse against older persons are serious crimes and will be treated as such.**

96. **She also notes that the continued prevalence of abuse of older persons indicates that normative action is not enough and that further measures and mechanisms are required to detect, report and prevent all forms of abuse of older persons in all care settings, including institutional and domestic settings. Protocols and processes are needed to assist individuals, families, carers in institutional settings and community groups to understand the issues surrounding abuse of older persons, to recognize individuals who are at risk and to respond when appropriate. Caregivers in domestic and institutional settings need to be further sensitized and trained on how to prevent and detect violence against and abuse, maltreatment and neglect of older persons.**

97. **The Independent Expert encourages the Government to adopt criteria and guidelines for the provision of victim-oriented and culturally appropriate legal, biopsychosocial cultural and economic assistance that recognize the special needs of older women belonging to Māori and Pasifika and other communities, while ensuring that culturally sensitive efforts uphold the universality of rights.**

Education, training and lifelong learning

98. **The Independent Expert notes that there is a need for a holistic approach that encompasses continuous learning, education and vocational training for older persons. She recommends that the Government further its analysis of labour market needs in order to align the education and vocational training of older persons with those requirements. Training and retraining, educational and professional development offers should also be available to older persons.**

99. **Ensuring access to education and training in old age requires that the living environment of older persons be taken into account in the planning and design of educational offers. While targeted educational programmes are important, older persons should not be excluded from broader educational programmes, as this would be limiting and could also lead to creating spaces of social exclusion.**

100. **The Independent Expert stresses the need to ensure that educational offers are inclusive of all older persons, taking into account digital and language barriers, and that they reach both rural and urban municipalities, and ensure equality of access for all communities.**

Adequate standard of living

101. **The Independent Expert notes that private rental housing is unaffordable for older persons who rely on the Superannuation, which is based on the assumption of mortgage-free home ownership for older persons. With the ongoing changes of tenure patterns, the number of older persons facing material and economic hardship and poverty will increase and many of them will live in rented housing. She encourages the Government to start to reinvest in affordable housing to address the growing housing needs of older persons, ensuring that affordable and adequate housing options are available. She also points to the need to ensure that legislation regulating retirement villages adopts an age-sensitive approach, enabling older persons to make informed decisions as to whether or not to enter into contractual agreements.**

102. **She notes the need to provide housing choices and options to ensure that older persons can age in the community. She encourages the Government to take this into**

account in the development of the Kāinga Ora Accessibility Policy, which has committed to ensuring that at least 15 per cent of new houses meet universal design standards.

103. **The Independent Expert stresses the need to adopt a human rights-based approach to disaster recovery frameworks to ensure that the response, service, support and information is adapted to the specific needs and conditions of older persons. Adaptation measures require national legal frameworks to protect the rights of older persons who are affected, drawing upon existing standards, guidelines and best practices, such as the Operational Guidelines on the Protection of Persons in Situations of Natural Disasters, the Peninsula Principles on Climate Displacement within States and the Guiding Principles on Internal Displacement. It is also essential to foster the resilience of older persons and ensure that they participate actively in the formulation and implementation of policies and decisions that affect them directly. Their experience, knowledge and skills should be part of all phases of the disaster risk reduction strategy, from mapping exercises to implementing solutions at the local level.**

104. **She encourages the Government to ensure an increased focus on the needs of older persons living in rural and remote areas, as well as small villages, including older Māori and Pasifika. It is essential to plan and implement viable transport and infrastructure options for the ageing population in order to ensure their access to essential services.**

Social protection and the right to social security

105. **The Independent Expert applauds the Government for its unqualified universal non-contributory pension, the New Zealand Superannuation, as a critical instrument in poverty alleviation efforts. At the same time, she stresses that levels need to be adequate to effectively lift older persons out of poverty, particularly for those who cannot opt in to the KiwiSaver, the voluntary work-based savings scheme. The Independent Expert encourages the Government to further consolidate the progress achieved so far and to address issues of adequacy, equality, portability and sustainability in a more systematic manner.**

106. **As there is no mandatory retirement age, the Independent Expert notes the need for decent work policies, including for older persons, based on the concept of the International Labour Organization.**

Care

107. **As ageing gathers pace, there will be an ever-growing proportion of older persons in need of long-term care. In light of the projected doubling of overall long-term care costs by 2050, the Independent Expert notes the significant lack of long-term care professionals that will arise, unless the Government adopts substantial measures. She stresses that this becomes more pressing as, for instance, the number of older Māori needing care could increase by more than 200 per cent by 2026.**

108. **The Independent Expert is concerned to learn that especially Māori, but also Pasifika, have shorter life expectancy and higher disability rates in general, which is simply not acceptable. She urges the Government to intensify its efforts to address what seem to be structural biases in and beyond the health-care system and to ensure that the needs of Māori and Pasifika, as well as other groups, including migrants and refugees, are adequately integrated in health and care policies.**

109. **She notes the need to review current respite arrangements and develop plans to recommission respite services that better meet the needs of caregivers, particularly those caring for persons with dementia, and that are more nationally consistent. As the care burden falls disproportionately on women, she encourages the Government to ensure better support for caregiving work so that women can extend their employment periods to improve their income and savings.**

110. **Noting the existing framework for dementia care, the Independent Expert recommends establishing a strategic policy on Alzheimer's disease, but also other**

cognitive, mental and chronic health conditions, such as depression and Parkinson's disease. While there has been a growing recognition of the shift from a medical model of care for older persons with dementia, which does not maximize the person's well-being, independence and autonomy, there is still a long way to go to ensure a more integrated approach that includes both health and social aspects of care. The collection, assessment and analysis of disaggregated data on the prevalence of these conditions is essential to contribute to improved strategic planning and preparation of the health and care system, notably in respect of the challenges of long-term care. Furthermore, dementia care must better consider the needs of Māori, Pasifika and other communities. The Independent Expert welcomes the fact that the jurisdiction of the Ombudsman under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been extended to cover secure older persons' care facilities, including dementia residences.

111. **Noting that older prisoners have a greater incidence of illness, disease, disability and mental health diagnoses than their younger counterparts, the Independent Expert stresses the need to ensure access to age-sensitive health and care services in prisons.**

112. **The Independent Expert encourages the Government to step up its investment in geriatric medicine, as older persons have different patterns of disease presentation than younger adults and therefore respond differently to treatments and therapies. In addition, older persons frequently have complex social needs, related to their cognitive and chronic medical conditions. Given the growing number of older patients, the basics of geriatrics and gerontology, and how to interact with older patients, should become part of all medical professional training and pursue a biopsychosocial cultural approach. It is essential to ensure that the different categories of health professionals, caregivers and community members are sensitized to the specific needs of older persons and receive adequate training in geriatrics and gerontology, and that policies and guidelines are developed on the care of older persons.**

113. **The Independent Expert notes the need to meet the increasing demand for palliative care as a matter of priority and stresses the importance of improving patient awareness, accessibility of services, and adequate training for health-care professionals. Moreover, she stresses the need to focus its efforts particularly on ensuring that all patients are actually receiving adequate levels of quality palliative care.**

Digitalization, artificial intelligence and robotics technology

114. **The Independent Expert notes the potential of progressively available digitalization to meet the needs of older persons in a variety of sectors, including health and care services. Acknowledging the Government's efforts, the Independent Expert stresses the need to ensure the digital inclusion of older persons, including older persons from communities that lack connectivity and tend to face higher barriers to accessing technology.**

115. **With reference to the findings and recommendations in her thematic report (A/HRC/36/48), which examines the impact of assistive technologies, robotics, artificial intelligence and automation on the fundamental rights of older persons, the Independent Expert notes that the use of assistive and robotics technology raises a number of issues, ranging from ethics to accountability, lack of technological accuracy, data protection, data sovereignty, informational self-determination and informed consent, particularly for older persons. These implications have to be studied in detail. Normative frameworks and appropriate mechanisms may need to be designed to ensure that their utilization conforms to human rights principles. She stresses the need to ensure that the collection, retention and use of data is regulated in law and in practice.**[69] **Moreover, she encourages the Government to ensure that therapeutic devices and**

[69] See the guidelines for the regulation of computerized personal data files; and OHCHR, "A human rights-based approach to data: leaving no one behind in the 2030 Agenda for Sustainable Development", 2018.

applications are appropriately regulated for safety and to develop the capacity to assess and approve the safety and effectiveness of technologies to avoid a regulatory backlog.

116. **The use of autonomous health-care robots ("carebots") requires a more general discussion on what care actually implies in practice, whether it is service delivery or whether it embeds certain values, and on how to ensure that older persons are not objectified. The Independent Expert recommends that a human rights impact assessment of social and care robots be conducted with the involvement of older persons, including the older old, and taking into account the range of old-age diversity. Technically, the sample of older persons participating in such a human rights impact assessment is required to be representative of the heterogeneity of this segment of the population, including in terms of age cohorts and their various conditions.**[70]

117. **The Independent Expert emphasizes the importance of ensuring the actual exercise of meaningful, free and informed consent of older persons in the collection and use of data. This needs to be accompanied by realistic ways for older persons to opt out. It requires joint efforts from all stakeholders involved to safeguard an individual's right to determine whether, and if so, how, personal and private information is being shared, used, processed and stored, and thus, to prevent privacy and data protection rights from being undermined. It is therefore important to provide older persons, in their heterogeneity, with targeted digital education, training and inclusion measures.**

C. Recommendations to businesses

118. **In light of the digital future of New Zealand and the important role conferred on private operators in providing care services for older persons, the Independent Expert takes the opportunity to refer to the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. She also wishes to draw the attention of the Government to its obligation to ensure respect for, protection of and compliance with human rights in the sphere of business activities by public or private enterprises. The Guiding Principles provide an opportunity to close the governance gaps in business and human rights if supported by appropriate legislation and regulations, together with compliance mechanisms.**

[70] See OHCHR, "Human rights indicators: a guide to measurement and implementation" (HR/PUB/12/5).