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A Human Rights Impact Assessment of Auckland Transport's Road Corridor Vegetation Control

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Matter of Concern: Human health impacts associated with Auckland
Transport's chemical vegetation control programme

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Executive Summary

Citizens of Auckland have a long history of concerns about exposure to chemical herbicides applied to roadsides to control vegetation and weeds. Fifteen years ago, as a result of citizen lobbying and submissions, two major legacy cities developed comprehensive non-chemical weed policies. Non-chemical roadside weed control has continued to the present day, with approximately two thirds of the new Auckland Council's 1.5 million population enjoying non-chemical roadside management practices.

Under government reorganization in 2010 management of roadsides devolved to a new Council Controlled Organisation, Auckland Transport (AT), which is required to comply with and implement the new Council's policies. One of these policies is a new unified Weed Management Policy which has reaffirmed a non-chemical priority over the whole region. The Weed Management Advisory (WMA), a network of Aucklanders with expertise in environmentally sustainable and non-chemical weed and vegetation management, is concerned that AT has sought to exclude itself from compliance with Council Policy and is instead continuing to promote chemical management through its own specifications and contracts.

The WMA has sought an opinion on whether human rights are being violated by AT continuing to expose some Auckland citizens to the adverse human health and environmental impacts of chemical sprays.

The purpose of this Report is to provide Auckland Transport and the Weed Management Advisory with a list of international human rights norms of concern in respect to AT's road corridor vegetation control programme, to outline AT's potential liabilities with respect to the programme and to recommend measures AT should take to minimize those liabilities and meet its human rights obligations.

Of particular concern are reports of adverse physical health impacts from exposure to the chemical sprays being used, of citizen's movements being restricted due to their need to avoid chemical applications, of people being unable to work and of children being unable to attend school. In addition, the potential for discrimination where one or more persons are treated less favourably than others in the same or similar circumstances is of note.

The potential consequences of ignoring human rights norms are not insignificant and are outlined in this report, including possible legal actions brought by persons with disabilities (asthma, pesticide intolerances, cardiac arrhythmias, etc.) for failure to accommodate; possible legal actions for unavoidable exposure to agrichemicals on roadsides; and possible multiple small claims court actions for economic redress.

Recommended measures to reduce AT's liabilities range from timely implementation of the new weed management Policy and prioritization of nonchemical vegetation control, to measures which should be taken if agrichemical use cannot be avoided, such as strategies for allowing people to avoid the sprays by providing alternative routes of travel and transportation and temporary living and working accommodations.

Purpose of This Report

The purpose of this Report is to provide Auckland Transport (AT) and the Weed Management Advisory (WMA) with a list of international human rights norms of concern in respect to AT's road corridor vegetation control programme, to outline AT's potential liabilities with respect to the programme and to recommend measures AT should take to minimize those liabilities and meet its human rights obligations.

Background

The vegetation management programme of AT's Road Corridor Maintenance (RCM) Division is responsible for the control of vegetation and weeds in the 7200 kilometres of greater Auckland (excluding state highways).

AT is a Council Controlled Organisation (CCO) that was brought into existence when seven former cities and the Regional Council were amalgamated into one 'supercity' as Auckland Council in 2010. Up until this date each city administered its own vegetation and weed control programme across all parks and open spaces within its boundaries, including roadsides. When AT was handed responsibility for the maintenance of all road corridors the vegetation control programmes were split and the road corridor sectors extracted from the parks and open spaces contracts.

The 29 existing contracts were combined by AT to create nine new 'super' roading contracts that were gradually rolled out, the last contract being awarded in May 2014. Citizens were assured that the legacy city programmes for roadside vegetation management would continue until new contracts were put in place, even though new boundaries had been created which in places crossed different legacy managements. This has resulted in some chemical and some non-chemical managements being combined under one contract.

The vegetation control programmes use a variety of methods for vegetation control, including mechanical mowing, weedeating and sweeping, non-chemical plant-based herbicides, hot water, steam and synthetic chemical herbicides. Applying the chemical products glyphosate and metsulfuron is the method currently used on roadsides in terms of gross area managed, although the vast majority of citizens live in the minor area covered by the two legacy cities (Auckland and North Shore) whose streets and roads have been successfully managed non-chemically for more than fifteen years.

The Weed Management Advisory (WMA) is an informal network of Aucklanders from across the region with interest and expertise in environmentally sustainable and non-chemical weed and vegetation management. It was formed in 2010 in response to concerns about the direction the new Council might take after merging the differing legacy city programmes. Citizens across the region were

concerned that the non-chemical managements they had successfully fought for and established in the 1990s could be overturned.

By early 2012 the WMA had made three submissions to Auckland's Plans and Strategies calling on the new Council to adopt and fully implement across the whole region the sustainable non-chemical weed and vegetation management policy, still in operation, that the legacy Auckland City had developed in the 1990s. WMA's fourth submission, in March 2012, to the Region's twenty year Long Term Plan¹ was a comprehensive policy proposal that would "ensure community health and wellbeing and ecological and environmental sustainability." The policy plan would:

- reflect widespread community concerns about involuntary exposure to pesticides used in public places;
- reflect modern scientific opinion that ongoing use of pesticides is not sustainable, and is to the detriment of both human health and the environment;
- reflect independent scientific studies that show considerable health effects from exposure to the herbicide glyphosate, and to other pesticides;
- reflect concern by the National Institute of Water & Atmospheric Research (NIWA) that Auckland's marine environment is contaminated with glyphosate and its metabolite AMPA mostly likely resulting from its widespread use on hard surface's principally roadsides.²

At the same time Auckland Council had initiated a review of the use of chemicals to manage weeds and pests in public open spaces, including the use of herbicides for weed control. Whilst the intention was to use the review to develop a council policy that considered only agrichemical use, discussions with key stakeholders highlighted the need to consider more broadly the management of weeds and vegetation. The result was that by mid-2012 officers had scoped the development of a full weed and vegetation management policy (ACWMP) that was then submitted to council committees for consultation.

As noted in the first draft paper to the Environment & Sustainability Committee, it was proposed that the policy would "build on legacy council good practice and policies, reflect international good practice and Auckland Council's commitment to be the most liveable city in the world by 2040."³

By August 2013 when the final Policy was adopted by Auckland Council, the WMA and its members had submitted papers, reports and presentations to committees and local boards across the region, culminating in the presentation to the full council of a petition from 4,658 residents which urged Auckland Council and Auckland Transport to "recognise that chemical weed spraying has a significant impact on people's health and wellbeing as well as the environment" and called on them to:

confirm the retention and continuation of the non-chemical roadside weed management in the legacy Auckland and North Shore cities, and adopt non-chemical roadside weed management in the rest of the region.⁴

Issues

As a Council Controlled Organisation, AT is required to comply with Auckland Council's 2013 Weed Management Policy.

WMA is concerned that AT is having difficulty operating under the new CCO model which, although it is an 'arms-length' organisation, is still governed by policies set by Council. While AT was involved in drawing up the ACWMP they made it clear they did not want their road corridor vegetation control operations to be included. The WMA believes that AT's defeat on this point has resulted in AT having ongoing relationship difficulties with Council which has impeded the progress of implementing the ACWMP.

This is a substantial concern for WMA because the roadside is where 99% of vegetation and weed control is carried out, and therefore where every citizen is unavoidably impacted on a regular basis. It should also be noted that it was the human health effects of the spraying of agrichemicals on the roadside that led to the original campaigns of the 1990s and that precipitated the decisions by the, then, city councils to research and develop the comprehensive non-chemical weed and vegetation management plans. WMA is disturbed that AT, in seeking to exclude itself from compliance with the 2013 ACWMP, is also negating the fundamental basis of that policy and the fifteen years of democratic decision making that went into it.

WMA is also concerned that despite AT being required to include all ACWMP Objectives within its vegetation control contracts by reviewing and amending those contracts where appropriate, it has failed to do so. Several of the Objectives detailed in the ACWMP recognise that agrichemicals can be harmful to human health and the environment, and that agrichemical use is to be minimized. Key to minimizing agrichemical use involves, according to the ACWMP, taking an integrated approach to the prevention and management of weeds using internationally recognized best practice methodologies. Indeed, Objective 2 states that this is "critical" to the success of the policy and according to Objective 3 best practice methodologies use agrichemicals "if non-chemical methods are not practical or adequate at achieving the necessary level of control."⁵ Additionally it is noted under Objective 5 that public health and safety can be maximized by "... using non-chemical techniques whenever they are available and effective. Chemical herbicides, in other words, are the method of last resort, not the preferred or typical method, as is stated in AT's vegetation control specifications for the new contracts."⁶

WMA also points out that it has been demonstrated in practice over the past fifteen years that non-chemical methods are "practical and adequate, and available and effective." The legacy Auckland and North Shore City operations have successfully controlled roadside vegetation with various combinations of hot water, steam, line trimmers and plant-based herbicides, and over one million of

Auckland Council's 1.5 million residents continue to enjoy this non-chemical weed control. WMA considers it highly unjust that the remaining population should continue to be exposed to the adverse human health and environmental impacts of chemical sprays based solely on where they live.

Human Rights Norms of Concern

Environmental issues often directly impact human rights, and the purpose of this Report is to help Auckland Transport and the Weed Management Advisory understand the human rights dimensions of AT's roadside spray programme. As Daniel Taillant, Director of the Argentina-based Center for Human Rights and the Environment says, "Everything and anything that influences the environment directly influences our human condition, and a violation of the environment is a violation of our human rights."⁷

Human rights standards apply to individuals, not just to communities or majorities. This means that if even one or two persons' rights are violated, then human rights violations have occurred.⁸ Most of the following rights are grounded in legal authority, both domestic and international, and all of them carry the weight of moral authority.

Human rights standards are normally recognized as trumping other policy considerations; i.e. "right-holders are authorized to make special claims that ordinarily 'trump' utility, social policy, and other moral or political grounds for action."⁹ Additionally, human rights norms represent a moral minimum for behavior of governments, a moral floor beneath which state actions must not fall.¹⁰

Listed below are 23 specific human rights norms that may have direct relevance to AT's road corridor spray programme. These norms can be found articulated in several different human rights declarations, conventions, charters and other international instruments, including:

- *Universal Declaration of Human Rights (UDHR)*¹¹
- *International Covenant on Civil and Political Rights (CCPR)*¹²
- *International Covenant on Economic, Social and Cultural Rights (CESCR)*¹³
- *Convention on the Rights of the Child (1990) (CRC)*¹⁴
- *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*¹⁵
- *Rio Declaration on Environment and Development*
- *The World Health Organization Declaration of Alma Ata*¹⁶
- *The Nuremberg Code*¹⁷

The first three documents above, *UDHR*, *CCPR* and *CESCR*, are usually considered primary and are commonly referred to as the international bill of human rights.¹⁸

1. Right to life, liberty and security of person.

Articulated in

UDHR Article 3

“Everyone has the right to life, liberty and security of person.”

CCPR Article 9

“Everyone has the right to liberty and security of person.”

UDHR Article 13

“(1) Everyone has the right to freedom of movement and residence within the borders of each State.”

What this right entails

This is the right to bodily integrity and to be safe and secure in one’s person.

The right to liberty entails the freedom to move about within the boundaries of one’s state.

Reasons for concern

- Reports of adverse physical health effects related to roadside chemical exposures.
- Adverse health effects attributable to exposures to agrichemical sprays, drift and subsequent volatilization include respiratory, cardiovascular, dermal, metabolic and neurologic effects, cancers, and miscarriages, birth anomalies and developmental effects, particularly for pregnancies conceived or carried during periods of exposure.
- If any citizens consider their freedom of movement to be restricted due to their need to avoid roadside chemical applications, particularly if those restrictions result in documentable economic loss or educational opportunity, that would be a concern.
- If any citizens consider that threat of injury from spray exposures will require them to move from their current place of residence, place of work or educational establishment, particularly if that would result in documentable economic loss, that would be a concern.

2. Right to privacy and home

Articulated in

UDHR Article 12

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence....”

CCPR Article 17

“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.”

What this right entails

This entails the right to be secure in your home, to be able to enjoy the use of your property and to not have one’s property devalued as a result of state actions.

“The European Human Rights Court noted that severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health.”¹⁹

This means that adverse health effects are not the only kind of adverse effects that violate the right to one’s property and home.

Reasons for concern

- Discomfort experienced at home, or compromised ability to enjoy one’s home and property due to exposure to roadside agrichemical sprays, drift, residues or subsequent volatilization, even without adverse health effects.
- Chemical contamination of food gardens and roofs is a not insignificant health or economic concern, especially if homes rely on rainwater collection for potable water.
- Potential adverse physical health effects related to roadside agrichemicals and suffered in the home.

3. The family’s right to protection

Articulated in

CCPR Article 23

“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

CESCR Article 10

“The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.”

What this right entails

This means that the health, strength, well-being and social integrity of families must be protected and supported; if these become compromised as a result of roadside chemical applications, drift or subsequent volatilization then this right has been violated.

Reasons for concern

- Adverse physical or economic effects on families attributable to roadside chemical applications, drift or subsequent volatilization.
- If the health or well being of families, including economic well being, have been adversely affected as a result of roadside sprays, drift or residues that would be a concern.

4. Right to property

Articulated in

UDHR Article 17

“No one shall be arbitrarily deprived of his property.”

What this right entails

See number 2 above regarding the right to privacy and home.

Reasons for concern

- Any adverse physical or economic impacts on property or property values attributable to roadside agrichemical applications, drift or subsequent volatilization.
- If individuals, families or businesses have been forced to leave or sell their property due to roadside sprays, drift or volatilization that would be a concern.
- If individuals' or families' ability to enjoy the use of their property has been compromised due to roadside applications, drift or volatilization that would be a concern.

5. Right to work

Articulated in

CESCR Article 6

"The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right."

What this right entails

This right refers to the right to work and, by extension, the right to be able to transport oneself to work without being disabled along the way.

Reasons for concern

- Citizens who may become unable to work due to the effects of exposure to roadside applications, drift or volatilization.
- Citizens who may be unable to transport themselves to work due to their need to avoid exposure to roadside agrichemical applications, drift or residues
- If some citizens are unable to work or keep their jobs due to their need to avoid exposure to roadside applications, drift or volatilization that would be a concern.
- Workplaces that may become contaminated by roadside applications, drift or volatilization enough that some workers are unable to work or keep their jobs would be a concern.

6. Right to safe and healthy working conditions

Articulated in

CESCR Article 7

"States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure...[s]afe and healthy working conditions"

What this right entails

This entails the right to a safe and healthy work environment.

Reasons for concern

- Adverse physical effects experienced in the workplace that are attributable to roadside chemical applications, drift or volatilization.

- Any reports of workplace safety having been compromised as a result of roadside applications, drift or volatilization.
- Workplaces that may become contaminated by roadside agrichemical applications, drift or volatilization enough that some workers are unable to work or keep their jobs would be a concern.

7. Motherhood and childhood's right to special care

Articulated in

UDHR Article 25

"Motherhood and childhood are entitled to special care and assistance. All children...shall enjoy the same social protection."

CESCR Article 12 (section 2a)

establishes the obligation of states party to this Covenant to take steps to make "provision for the reduction of the stillbirth-rate and...infant mortality and for the healthy development of the child."

CRC Article 27

"1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development."

What this right entails

This is the right of children and their mothers to be provided special care, protection and assistance. This means that states have an affirmative duty to protect children and mothers from anything, including environmental toxics that may compromise the child's physical, mental, spiritual or social development.

Reasons for concern

- Research indicates that pregnant women, the unborn foetus, infants and children are at much greater risk of adverse health effects from exposure to agrichemicals because of their increased biological susceptibility.
- Research indicates that mother's breast milk may become contaminated with chemicals, which they then pass on to their suckling child at a time of developmental vulnerability.
- If mothers, and mothers' ability to be good caregivers for their children, are adversely affected by agrichemical applications, drift or volatilization, that would be a concern.

8. Duty to protect the child (i.e., persons under age 18):

Articulated in

CRC Article 19

"States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, [or] maltreatment...."

CESCR Article ten (section three)

"Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions."²⁰

What this right entails

This is the child's right to special protections, and the state's duty to provide special protections, from infliction of harm, including harm that could result from unavoidable exposures to environmental toxics.

Reasons for concern

- See above.

9. Right of the child to the highest standard of health

Articulated in

CRC Article 24

"States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health."

What this right entails

This is the right of children to live in safe and healthy conditions, including safe and healthy environmental conditions, and not to be forcibly exposed to conditions that adversely affect health.

Reasons for concern

- Research indicates that children are at much greater risk than adults for adverse health effects from exposure to agrichemicals because of their increased biological susceptibility.
- Adverse health effects attributable to exposures to these chemicals can include respiratory, cardiovascular, dermal, metabolic and neurologic effects and cancers, as well as miscarriages and birth anomalies, particularly for pregnancies conceived or carried during periods of exposure.
- If a government (or council, or council controlled organisation) undertakes any activity that puts children at increased risk of adverse health effects, that is a concern.

10. Right of everyone to the highest standard of health

Articulated in

CESCR Article 12

"States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

What this right entails

This is the right to live in conditions conducive to the highest standard of health.

Reasons for concern

- If a government (or council, or council controlled organisation), undertakes any activity that puts citizens at increased risk of adverse health effects, that is a concern.
- Adverse health effects attributable to exposures to agrichemicals can include respiratory, cardiovascular, dermal, metabolic and neurologic effects and cancers, as well as miscarriages, birth anomalies and developmental effects, particularly for pregnancies conceived or carried during periods of exposure.

- Adverse psychological health effects attributable to roadside agrichemical exposures are also of concern.

11. State's duty to provide for the health of citizens

Articulated in

The *Declaration of Alma-Ata*, Article V

"Governments have a responsibility for the health of their people which can be fulfilled only by the provision of health and social measures."

What this right entails

This more clearly reframes the right to health as a duty of a government to its citizens to provide for the health of its citizens.

Reasons for concern

- See above

12. State's duty to provide for the health of citizens demands coordinated efforts of all sectors

Articulated in

Declaration of Alma-Ata Article VII

[Provision of health measures includes,] "in addition to the health sector, all related sectors and aspects of national and community development, in particular agriculture, animal husbandry, food, industry, education, housing, public works, communications and other sectors; and demands the coordinated efforts of all those sectors."

What this entails

This article elucidates the meaning of "provision of health and social measures," explaining that the state's duty to provide the highest standard of health for its citizens extends beyond just the health sectors of governments; it involves all other sectors as well, including the responsibility to see that transportation, vegetation control and agricultural sectors are regulated in ways that are protective of citizens' health.

Reasons for concern

- This article says that in addition to departments of health, all government departments, including departments of transportation, vegetation management, agriculture and other agencies that deal with agrichemicals and other potential health risks, also have a positive duty to protect the health of citizens.

13. Right to a healthy environment

Articulated in

Aarhus Convention Preamble

"every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations."

What this right entails

This is the right to live in an environment that is conducive to health.

Reasons for concern

- If roadside agrichemical applications, drift, residues or subsequent volatilization compromise the environment or cause conditions not conducive to health, even if those exposures affect the health of some people more than others that would a concern.

14. Duty to encourage school attendance

Articulated in

CRC Article 28, 1(e)

“[States Parties shall] Take measures to encourage regular attendance at schools.”

What this right entails

If states are enjoined to take measures “to encourage regular attendance at schools,” it follows that they are also required, *a fortiori*, to refrain from taking measures that make it difficult or impossible for students to attend school.

Reasons for concern

- If roadside sprays prevent any students from attending school or being transported to school due to their need to avoid agrichemical exposures that would be a concern
- If any student has been exposed to agrichemical drift or volatilization while waiting for school buses that would be a concern.
- If any school located near roadways has been affected enough that some students have been unable to attend or stay in school, that would be a concern

15. Right to education

Articulated in

CESCR Article 13 (section 1)

“States Parties to the present Covenant recognize the right of everyone to education.”

Reasons for concern

- See above.

16. Right to effective remedy

Articulated in

CCPR Article 2(3)a

“Each State Party to the present Covenant undertakes: To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity....”

What this right entails

“The legal obligation to offer restitution for injury is as old as the Code of Hammurabi, the first formal set of laws in history.”²¹ It is recognized both internationally and domestically that “one of the major, primordial functions of the law is to return the victims of an unjust act to their previous condition.”²²

“Effective remedy” means that by judicial action, monetary compensation or some other means any person whose rights have been unjustly violated will be restored as much as possible to their previous condition.

The right to effective remedy would be violated if, despite attempts to convince or compel AT to significantly change its roadside agrichemical programme in a timely manner using normal democratic methods, the roadside spray programme were to continue.²³

Reasons for concern

- The potential for being required to pay monetary compensation should citizens be adversely impacted by roadside agrichemical sprays, drift, residues or volatilization would be a concern.

17. Right to compensation

Articulated in

In 1985 the U.N. General Assembly spelled out the nature of indemnification in the Declaration of Basic Principles of Justice for Victims of Crime and Abuses of Power. This declaration insists that “victims are entitled to prompt redress for the harm that they have suffered” and that offenders should “pay fair restitution to victims, their families and dependents.”²⁴

What this right entails

“The basic moral law of every society asserts that a government which wrongly injures its own citizens must make them whole insofar as this is possible.”²⁵

Reasons for concern

- Personal or business economic losses resulting from exposure to roadside agrichemical sprays, drift or residues would be a concern.
- Any other losses, especially those measureable in economic terms, would be a concern.

18. Right to know

Articulated in

The *Rio Declaration on Environment and Development* establishes citizens’ right to information about environmental toxics to which they may be exposed.

Rio Declaration Principle 10

“Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available.”

Aarhus Convention Article 1

“each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters...”

What this right entails

This is the right of citizens to be provided full information about environmental issues so they can participate knowledgeably in decision-making about that issue. It entails the right to full disclosure of information about ingredients (both active and undisclosed “inert” ingredients), about details of spray plans, planned effectiveness studies, Health Risk Assessments, Environmental Impact Statements, planned (or lack of) health effects monitoring, etc.

Reasons for concern

- Despite manufacturers’ claims that information about undisclosed ingredients is proprietary, precedents are emerging around the world in support of citizens’ right to know the ingredients of chemical products to which they are exposed.
- The fact of spray drift is not insignificant. The problems of immediate drift and subsequent volatilization of residues all exacerbate human rights concerns primarily because of the larger number of persons who are impacted by the chemicals and who, because they may not be immediately adjacent to road shoulders, may be uninformed, unwarned and perhaps unconsenting.
- The fact of agrichemical contamination of rainfall is not insignificant. The return of residues in rainfall exacerbates human rights concern because this can occur well away from areas where the spraying has occurred including in areas managed non-chemically where people believe they are not being exposed.

19. Right to participation in decision-making in environmental issues

Articulated in

Rio Declaration Principle 10
Aarhus Convention Article 1
(see above)

Reasons for concern

- Have citizens had sufficient opportunity to participate effectively in decision-making about roadside herbicide use and policy?
- If citizens having had democratic access to the development of Auckland Council’s Weed Management Policy were then unable to have democratic access to decision-making by AT in respect of its use of herbicides contrary to that policy, that would be a concern.

20. Right to equal protection of the law

Articulated in

CCPR Article 26
“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground...”

What this right entails

This means that discrimination against persons and classes is proscribed.

According to the 1993 Human Rights Act, people in New Zealand are protected against discrimination, and "discrimination takes place when a person is treated less favourably than another person in the same or similar circumstances."²⁶

In addition, the basic principles of environmental justice require that those communities that are disadvantaged in any way – socially, economically, as a result of discriminatory racial policies, etc., or that simply have less ready access to resources – be accorded the same degree of respect, fair treatment and opportunity for meaningful involvement in decision-making as communities that are more socially or economically advantaged and have greater access to resources. As explained on the USA Environmental Protection Agency website "Fair treatment means that no group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of...negative environmental consequences."²⁷

Reasons for concern

- If all communities are not treated equally in the vegetation control programme, regardless of perceived social privilege or socioeconomic status, that would be a concern.
- If the socio-economic makeup of communities appears to be a factor in any decisions made by the vegetation control programme, that would be a concern.
- If disadvantaged communities are affected any differently than more privileged communities, that would be a concern.
- If communities with different racial compositions are affected differently, that would be a concern.

21. Right to freedom from discrimination due to disability

Articulated in

The United Nations Convention on the Rights of Persons with Disabilities (the Disability Convention); NZ Human Rights Act 1993

What this right entails

The New Zealand Human Rights Commission²⁸ maintains a website with detailed information about disability rights; in general the law requires that everyone who has, or is perceived to have, a disability not be discriminated against in any way.

The website notes that it is unlawful to discriminate on the basis of disability in any of the areas of public life covered by the Human Rights Act. "[A] person cannot be discriminated against by the central government on any of the grounds of unlawful discrimination. This includes action by Parliament, government ministries and departments, and the judiciary. It also includes any person or body that performs a public function conferred by law, such as schools providing public education or actions carried out by local bodies. It covers most central and local government activity."

Reasons for concern

- Discrimination occurs when any sub-group is disproportionately impacted by a policy or practice and no sufficient accommodations are made for them. Individuals with asthma or other respiratory conditions, chemically sensitive persons, pesticide

sensitive persons, people with various allergies, people with compromised liver function, immunocompromised people, the elderly, the very young, pregnant women,²⁹ any place-bound persons (in hospitals or elder care facilities near roadways, for example), to name a few vulnerable sub-sets of residents, may be reasonably expected to experience more serious adverse effects from agrichemical exposures.

- If reasonable accommodations have not been developed for persons in those groups to help them avoid being unfairly impacted by the sprays, that would be a concern.

22. Right of experimental subjects to free and informed consent

Articulated in

Nuremberg Code Item 1

“The voluntary consent of the human subject is absolutely essential.”

Nuremberg Code Item 9

“the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible.”

What this right entails

This is the right to be fully informed about an experiment before agreeing to participate, the freedom to choose whether to participate or not, and the freedom to withdraw from the experiment at any time.

The rights of experimental subjects to informed consent and to protection from possible harms, at least as they are expressed in *The Nuremberg Code*, are premised on the acknowledgment that the practice of long term application of these roadside agrichemical formulations contains important unknowns as regards health effects and is at least partially experimental.

Reasons for concern

- The exposure of people to chemicals with uncertain outcomes to their health constitutes an experiment.
- Citizens in this experiment not provided with documented opportunity to give or withhold consent for exposure to roadside chemicals, drift and volatilization would be a concern.
- Failure to provide citizens with ways to withdraw themselves or their families from spray exposures if they wish to not be exposed would be a concern.
- Failure to notify citizens, particularly those with certain disabilities, about details of roadside sprays to which they may be exposed and to provide alternative routes where they will not be exposed would be a concern.

23. Right of experimental subjects to be protected from injury, disability or death

Articulated in

Nuremberg Code Item 7

“Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.”

What this right entails

This is the right to be protected from anticipated, remote or unanticipated harms that may possibly result from participation in the experiment.

Reasons for concern

- Have such protections been provided, particularly for those at increased risk of harm from agrichemical exposure?

Potential Liabilities

Listed below are some liabilities AT may incur with respect to its use of chemical herbicides on the road corridors it maintains.

1. The potential consequences of governments ignoring human rights norms are not insignificant. Loss of public confidence in government agencies and their processes is not a small thing, even from the perspective of the agency, and even when viewed through the lens of basic practicality. When human rights standards are compromised the consequences can be monumental, costly and long lasting.
2. If the vegetation management programme made no improvements there would be risk of public recognition that, despite awareness of links between agrichemical exposure and human health impacts and despite awareness of human rights concerns, AT did not move in a timely manner to significantly modify their practices.
3. Greater involvement of human rights organizations such as Human Rights Watch in pesticide activism.
4. One goal of human rights activism is “the mobilization of shame.” Tools human rights organizations use include, among others, videotaping of actions considered to be human rights violations and of the persons believed responsible for those actions; distributing those videos widely on social media; public, community-led, Citizens’ Tribunals with independent judges who weigh, using human rights norms rather than civil law, the justness of a given situation; and public, community-led, Citizens’ Inquiries which involve oral and written testimony from affected community members before a panel of commissioners.
5. Potentially costly legal actions via the NZ Human Rights Commission brought by persons with disabilities (such as asthma, pesticide intolerances, cardiac arrhythmias, etc.) for failure to accommodate; possible legal actions for knowingly exposing people to widespread, broadcast use of agrichemicals on roadsides; and possible multiple small claims court actions for economic redress.

Recommended Measures to Reduce Liabilities

1. The most important measure to reduce liabilities would be for AT -- as specified in the ACWMP -- to use only non-chemical means of vegetation control where practical and adequate, available and effective.
2. As a first step AT should initiate good faith discussions with the Weed Management Advisory and other relevant community groups and elected representatives concerned about roadside spray policy and practice with a view to timely implementation of the ACWMP.
3. If agrichemical use cannot be avoided, AT should:
 - a. Provide notification by multiple means – signage, email lists, websites, phone calls, etc. – especially to those individuals susceptible to or concerned about adverse health impacts.
 - b. Include in all public notification announcements a full disclosure of all precautions included on the labels of products that will be applied, and links to an official website where the full label can be viewed.
 - c. Provide evidence of the necessity for the spray, i.e. what nonchemical methods have been trialed and where, and in what ways they have proved inadequate.
 - d. Provide evidence of what steps will be taken to ensure spray use is minimized.
 - e. Provide evidence of safety:
 - i. Provide examples of large scale, large sample, well designed population studies undertaken by third parties (i.e., not pesticide manufacturers or agriculture/forestry interests) published in the peer reviewed scientific literature that demonstrate no adverse effects from exposure to the active ingredients and formulations that are being, or will be used.
 - ii. Absent such studies, provide examples of any studies published in the peer reviewed literature that demonstrate no adverse effects from exposing urban populations to the active ingredients and formulations that are being used or will be used.
 - iii. Absent that, provide examples of any studies that show there to be no adverse effects from exposing urban populations to the active ingredients and formulations that are being used or will be used.
 - f. Publicly disclose all ingredients, both active and “inert,” of all agrichemical formulations that would be applied. (Despite objections by manufacturers,

there is growing precedent for this around the world)

- g. Provide alternative routes of travel to those who choose to not expose themselves or their family members to agrichemical spray, drift and subsequent volatilization.
- h. Develop strategies for providing temporary alternative lodging, transportation and services to those who live or work adjacent to spray areas and who, for reasons of health or health concerns, require that they and their family members not be exposed to the agrichemical spray, drift and subsequent volatilization.
- i. Develop strategies for ensuring that placebound persons, such as those in daycare facilities, elder care facilities, hospitals, schools, etc, not be required to endure spray exposures if they wish not to.
- j. Provide alternative routes of travel for school buses and other modes of transporting children to school, as well as for transportation to daycare facilities, elder care facilities, hospitals, etc.
- k. Ensure that school bus stops and surrounds remain free of agrichemicals, drift and residues.
- l. Arrange for health effects monitoring studies to be undertaken by the Ministry of Health or independent third parties. Active (rather than passive) surveillance methodologies should monitor for a range of adverse health effects, both acute and chronic, associated with exposure to agrichemical spray, drift and residues. Representatives from citizen and community groups should be involved in the design of the studies.
- m. Arrange oversight by an external observer, agreed to by both AT and community organisations, to monitor implementation of the spray programme.

Conclusion:

This Report provides Auckland Transport and the Weed Management Advisory with a list of international human rights norms of concern regarding AT's road corridor vegetation management programme, outlines AT's potential liabilities and recommends measures AT should take to reduce those liabilities and meet its human rights obligations.

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Additional Resources

The Center for Human Rights and the Environment headquartered in Córdoba, Argentina. <http://www.cedha.org.ar>

The Global Network for the Study of Human Rights and the Environment based at Cardiff University.

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¹http://www.aucklandcouncil.govt.nz/EN/planspoliciesprojects/plansstrategies/Long_term_plan/Pages/documents.aspx

²*Submission 5143 to the Draft Auckland LTP 2012-2022 by the Weed Management Advisory*

³<http://www.aucklandcouncil.govt.nz/SiteCollectionDocuments/aboutcouncil/committees/enviroamentsustainabilityforum/meetings/enviroamentsustainabilitymag20120725.pdf>

⁴<http://www.aucklandcouncil.govt.nz/SiteCollectionDocuments/aboutcouncil/committees/regionaldevelopmentoperationscommittee/meetings/rdocmin20130815.pdf>

⁵<http://www.aucklandcouncil.govt.nz/en/planspoliciesprojects/councilpolicies/weedmanagementpolicy/Pages/home.aspx>

⁶ Auckland Transport Technical Specification, Volume 5 – 15000 Vegetation Control (sections 15700 & 15750) 19 December 2013

⁷ Picolotti, Romina and Jorge Daniel Taillant, *Linking Human Rights and the Environment*, University of Arizona Press, 2003, p 123 (emphasis in original).

⁸ “With the exception of the right to self-determination, all the rights in the *Universal Declaration* and the Covenants are the rights of individuals. Enumerations of rights thus typically begin ‘Every human being...’, ‘Every one has the right...’, ‘No one shall be...’, ‘Everyone is entitled....’” Jack Donnelly, Andrew Mellon Professor in the Graduate School of International Studies at the University of Denver, *Universal Human Rights in Theory and Practice*, Cornell University Press, 2002, p23.

⁹ Donnelly, *Universal Human Rights in Theory and Practice*, Cornell University Press, 2002, p8.

¹⁰ “Human rights are minimal standards. They are concerned with avoiding the terrible rather than with achieving the best. Their focus is protecting minimally good lives for all people.” James Nickel, “Human Rights” in the *Stanford Encyclopedia of Philosophy*, 2006.

¹¹ The *Universal Declaration of Human Rights* was unanimously adopted by the United Nations in 1948.

¹² Signed by the US in 1977, ratified in 1992 and entered into force in 1992, though with reservations on articles 5-7, 10(2,3), 15(1), 19, 20, 27 and 47, and formal understandings on articles 2(1), 4(1), 7, 9(5), 14(3,6), 26. Ratification means that the provisions of this international instrument, aside from the reservations, do have the force of domestic law in the US.

¹³ Signed by the US in 1977; not ratified.

¹⁴ Signed by the US in 1995; not ratified. Though the US has not ratified this convention, “One hundred and ninety states have agreed to become parties to the Convention on the Rights of the Child, giving it the distinction of being the most widely ratified treaty in the history of the world.” Lauren, Paul Gordon, *The Evolution of International Human Rights*, University of Pennsylvania Press, Philadelphia, 2d ed, 2003, p 249.

¹⁵ Signed by the US in 1980; not ratified.

¹⁶ 1978

¹⁷ Rights enunciated in the 1947 *Nuremberg Code* are for the protection of individuals being studied in research protocols. If the case can be made that a population is being studied as research subjects – e.g., that persons living and working in the spray zone are being studied for health effects resulting from spray exposures – then provisions of the *Nuremberg Code* would apply to individuals in that population.

¹⁸ Many of the rights listed below have been articulated in several different human rights declarations, conventions or charters, but for simplicity’s sake this Report lists only one or two instruments for each right.

¹⁹ This passage continues: “It found that the determination of whether this violation had occurred in *Lopez-Ostra v. Spain* should be tested by striking a fair balance between the interest of the town’s economic well-being and the applicant’s effective enjoyment of her right to respect for her home and her private and family life. In doing this, the Court applied its “margin of appreciation” doctrine, allowing the State a “certain” discretion in determining the appropriate balance, but finding in this case that the margin of appreciation had been exceeded. It awarded Mrs Lopez-Ostra 4,000,000 pesetas [approximately US\$35,600], plus costs and attorneys’ fees.” Shelton, Dinah, “The Environmental Jurisprudence of International Human Rights Tribunals,” in Picolotti, R and Taillant, JD, 2003, p 15.

²⁰ See item 21 below on discrimination.

²¹ Drinan, Robert F, *The Mobilization of Shame, A World View of Human Rights*. Yale University Press, 2001 p 186.

²² Drinan RF. 2001. p 170.

²³ In reference to a specific case: “the human right to effective judicial remedy has been violated because despite the riverside communities’ plea to the judicial system, nothing has been done to stop the contamination.” in Picolotti, R and Taillant, JD, 2003, p 146.

²⁴ Drinan RF. 2001. p 171.

²⁵ Drinan RF. 2001. p 187.

²⁶ Ministry of Justice website. <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/domestic-human-rights-protection>. Accessed 9-26-14.

²⁷ US EPA’s definition of environmental justice. See <http://www.epa.gov/compliance/resources/faqs/ej/index.html> Quoted in Robert D Bullard, *The Quest for Environmental Justice: Human Rights and the Politics of Pollution*, Sierra Club Books, San Francisco, 2005, p. 4.

²⁸ <http://www.hrc.co.nz/>

²⁹ In this regard, see provisions in the *Convention on the Elimination of All Forms of Discrimination against Women*.