

**ADVANCE UNEDITED VERSION**

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**Committee on the Elimination of Racial Discrimination****Concluding observations on the combined twenty-first and twenty-second periodic reports of New Zealand<sup>\*</sup>**

1. The Committee considered the twenty-first to twenty-second periodic reports of New Zealand (CERD/C/NZL/21-22), submitted in one document, at its 2568<sup>th</sup> and 2569<sup>th</sup> meetings (CERD/C/SR.2568 and 2569), held on 15 and 16 August 2017. At its 2578<sup>th</sup>, 2579<sup>th</sup> and 2580<sup>th</sup> meetings (CERD/C/SR.2578, CERD/C/SR.2579, and CERD/C/SR.2580), held on 22 and 23 August 2017, it adopted the following concluding observations.

**A. Introduction**

2. The Committee welcomes the submission of the combined twenty-first to twenty-second periodic reports of the State party. The Committee welcomes the open and constructive dialogue with the multi-sectoral delegation and expresses its appreciation for the statistical information submitted prior to the dialogue, as well as for the oral presentation and the detailed replies provided by the delegation during the consideration of the report.

**B. Positive aspects**

3. The Committee commends the State party for:

(a) Acknowledging that social inequities exist today between racial groups and the acceptance by the State party of responsibility to correct them; and

(b) Adopting the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.

4. The Committee also welcomes the State party's recent efforts to establish policies, programmes and administrative measures to ensure further the protection of human rights and implementation of the Convention, including:

(a) Second Human Rights National Plan of Action 2015-2019;

(b) Various educational and linguistic strategies and measures targeting Māori and Pasifika, including the Māori Language (Te Reo Māori) Act;

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<sup>\*</sup> Adopted by the Committee at its ninety-third session (31 July to 25 August 2017).

- (c) He Kai Kei Aku Ringa — the Māori Economic Development Strategy and Action Plan;
- (d) English as a Second Language (ESOL) support for migrant and refugee background students in schools;
- (e) ‘Ala Mo’ui: Pathways to Pacific Health and Well-being 2014-2018;
- (f) Whenua Māori Fund to improve the productivity of Māori land;
- (g) The development strategy Whānau Ora;
- (h) Youth Crime Action Plan 2013-2023;
- (i) He Korowai Oranga, the Māori Health Strategy, and the Healthy Families NZ initiative;
- (j) Pacific Economic Strategy 2015-2021; and
- (k) \$10 million fund to address Māori overrepresentation in the criminal justice system.

5. The Committee notes with appreciation the active role of a vibrant civil society and of the national human rights institution, the New Zealand Human Rights Commission, which was again assigned ‘A’ status by the Global Alliance on National Human Rights Institutions in May 2016.

### C. Concerns and recommendations

#### **National Action Plan on Racism and the Race Relations Commissioner**

6. The Committee welcomes the continued role of the Race Relations Commissioner, and commends the work accomplished by the Commissioner during the reporting period. However, the Committee is concerned about the lack of a current national action plan on racism (art. 2.)

**7. Given the accelerated pace of demographic changes in New Zealand’s population, the Committee recommends that the Race Relations Commissioner play a leadership role in developing, in consultation with all stakeholders, a National Plan of Action Against Racial Discrimination and Xenophobia in line with the Durban Declaration and Programme of Action. The Committee calls on the State party to guarantee adequate funding for successful implementation of the Plan. The Plan should include but not be limited to:**

- (a) Assessing current and projecting future changes in New Zealand’s demographics;**
- (b) Assessing the adequacy of current structures and processes to respond appropriately to New Zealand’s changing demographics;**
- (c) Making necessary changes to ensure that the diversity of the population is appropriately reflected in planning and delivery of services;**
- (d) Developing and implementing measures aimed at increasing social cohesion;**
- (e) Developing a comprehensive plan, working in partnership with Māori and other relevant groups, that identifies actions, builds ownership and measures results to meet the targets of the Sustainable Development Goals Agenda to reduce inequalities in social indicators among ethnic groups in the population of the State party with respect to health, employment, education and housing, with special**

**emphasis on adequate, affordable and safe housing by 2030. The implementation plan should have a particular focus on security of tenure.**

#### **Racist hate speech and hate crimes**

8. The Committee is concerned that while the State party's legislation criminalizes incitement of racial disharmony and allows race-related hostility to constitute an aggravating factor in sentencing, there were no prosecutions for incitement of racial disharmony during the reporting period. The Committee is also concerned by the lack of comprehensive statistics relating to prosecutions, convictions and sanctions related to racist hate speech. The Committee notes with interest the State party's current efforts to address these gaps, but is concerned that existing legislation may be inadequate to effectively combat acts of racial hatred (arts. 2, 4.)

9. **Recalling its general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party:**

**(a) Review the adequacy of current legislation in addressing and sanctioning racist hate speech and incitement to racial hatred, and ensure that its legislative framework conforms to article 4 of the Convention;**

**(b) Ensure that all incidents of racist hate crimes and racist hate speech are investigated and prosecuted; that the perpetrators are sanctioned and that victims are compensated; and**

**(c) Set as a government priority the collection of reliable and comprehensive statistics, disaggregated by ethnicity of the victims, concerning investigations, prosecutions, convictions and sanctions for racist hate speech and incitement to racial hatred; and provide these data in the next periodic report.**

#### **Acts of racial discrimination**

10. The Committee notes with concern that while the Human Rights Commission has received many race-based discrimination complaints in recent years, including over 400 complaints alleging employment or pre-employment discrimination, human trafficking or harassment, the number of relevant investigations conducted and sanctions imposed is not clear from the information provided by the State party, and the Employment Relations Authority determined only six personal grievance cases featuring claims of racial discrimination or harassment, one of which was upheld. The Committee is also concerned about the lack of labor inspections data in the State party's report (arts. 2, 5, 6.)

11. **The Committee recommends that the State party ensure that acts of racial discrimination are investigated, prosecuted and sanctioned. The State party is requested to provide in its next periodic report information on: labour inspections and other administrative or legal procedures on racial discrimination; cases on labour conditions, harassment or human trafficking; data on inspection visits, violations detected and sanctions or penalties imposed during the reporting period; and compensation provided to victims, disaggregated inter alia by year, type of violation, age, sex, national origin and ethnic origin of the victim.**

#### **Treaty of Waitangi**

12. The Committee is concerned by the apparent lack of progress in implementation of the 2013 recommendations of the Constitutional Advisory Panel concerning the Treaty. It notes that an independent, Māori-led initiative has also undertaken wide-ranging consultation and issued its own report, *Matike Mai Aotearoa*<sup>18</sup>, which put forward other proposals for discussion on a range of constitutional models which also have not been taken

up by the State party. The Committee sees little progress during the reporting period in securing indigenous rights to self-determination under the Treaty or the power-sharing arrangement between hapū and the State party required by the Treaty. The Committee is concerned by reports that the Waitangi Tribunal is under-resourced, leading to long processing delays (arts. 2, 6.)

**13. The Committee recommends that the State party:**

**(a) Issue, without delay, a timetable for debating, in partnership with Māori, the recommendations of the Constitutional Advisory Panel regarding the role of the Treaty of Waitangi within its constitutional arrangements along with the proposals of the report of Matike Mai Aotearoa<sup>18</sup> and all stakeholders;**

**(b) Ensure that its public policy and legislative initiatives comply with the participation principle of article 2 of the Treaty of Waitangi;**

**(c) Give greater assurance that the State party recognizes the fundamental right to self-determination of Māori and the obligation to establish shared governance with hapū; and**

**(d) Provide adequate resources for the Waitangi Tribunal.**

**Māori land issues and the Treaty settlement process**

14. The Committee notes that its general recommendation No. 23, as well as the U.N. Declaration on the Rights of Indigenous Peoples, make unequivocal the requirement that any decision affecting the rights and interests of indigenous peoples must be subject to their free, prior and informed consent. The Committee takes note of the Treaty Settlement process that seeks to settle Māori historical land claims in exchange for an apology on behalf of the State party and a compensation package that may include cultural, financial and/or commercial redress and incentives, along with possibly a variety of “partnership opportunities” with the State party (arts. 2, 5, 6.)

**15. As the Settlement process and its implications and consequences go to the core of the land rights of Māori to own, develop, control and use their communal lands, territories and resources, and their rights under the Convention, the Committee urgently requests the State party to supply the following information:**

**(a) The total area of land and percentage of the total territory that has been the subject of the settlement process;**

**(b) The total area and percentage of land of territory not subjected to the settlement process and the reasons for the exemptions;**

**(c) The description of the compensation package given in each settlement and its current market value;**

**(d) The percentage of land under the ownership of Māori who declined to engage with the settlement process; and**

**(e) Whether in the view of the State party, completion of the settlement process will extinguish the rights under the Treaty.**

**Māori intellectual and cultural property rights**

16. While noting the steps taken, the Committee is concerned about the lack of progress in implementing the Waitangi Tribunal’s 2011 Wai 262 report regarding, among other issues, Māori intellectual and cultural property rights, and Māori taonga (treasured possessions including language, culture and knowledge) (art. 5.)

17. **The Committee recommends that the State party produce and publish a plan with targets and a timetable for implementing the remainder of the recommendations in the Wai 262 decision. It also recommends that the State party take the necessary steps to freeze recognition of the validity of acts taken under the framework established by the Wai 262 report that do not comply with the Treaty of Waitangi and the U.N. Declaration on the Rights of Indigenous Peoples.**

#### **Special Housing Area 62**

18. The Committee is concerned by conflicting information regarding consultation with local Māori in connection with the designation of Special Housing Area (SHA) 62 at Ihumātao on land traditionally and currently occupied by Māori. The Committee notes that this land has been sold to a commercial developer who is required to actively mitigate the effects of development. While noting the State party's position that it adequately consulted and obtained support from Māori authorities regarding the designation, the Committee is concerned by alternate reports that Māori have not had the opportunity to formally take part in decision-making with respect to use of the land (arts. 2, 5.)

19. **The Committee recommends that the State party review, in consultation with all affected Māori, the designation of Special Housing Area 62 to evaluate its conformity with the Treaty of Waitangi, the U.N. Declaration on the Rights of Indigenous Peoples and other relevant international standards, and that the State party obtain the free and informed consent of Māori before approving any project affecting the use and development of their traditional land and resources.**

#### **Marine and coastal rights**

20. The Committee is concerned about the application of the Marine and Coastal Area (Takutai Moana) Act of 2011 on Māori land and resource rights, and by reports that the State party has not attempted to review the Act in accordance with CERD/C/NZL/CO/18-20, para. 13. While noting the delegation's statement in this regard, the Committee remains concerned by reports that the State party has not consistently applied the principle of free, prior and informed consent in matters affecting Māori customary marine interests (arts. 2, 5, 6.)

21. **The Committee reiterates its recommendation that the State party review the Marine and Coastal Area (Takutai Moana) Act of 2011 with a view to respecting and protecting the full enjoyment of the rights by Māori communities regarding the land and resources they traditionally own or use, and their access to places of cultural and traditional significance. The Committee requests that the State party provide in its next periodic report all information on applications for recognition of customary interests in the common marine and coastal area.**

#### **Freshwater and geothermal resources**

22. The Committee is concerned by reports that the State party has granted private companies the right to use freshwater resources located on traditional Māori land despite consistent opposition by local Māori. The Committee welcomes the adoption of the 2017 Te Awa Tupua (Whanganui River Claims Settlement) Act. The Committee notes with interest the State party's efforts to engage and consult with iwi and hapū concerning their freshwater rights, and to provide advice to Māori organisations on geothermal assets (arts. 2, 5, 6.)

23. **The Committee urges the State party ensure the full respect for the rights of Māori communities to freshwater and geothermal resources, as protected by the Treaty of Waitangi and in accordance with the provisions of the Convention.**

### **Criminal justice**

24. Despite welcome reductions in Māori adult and youth offending in recent years through commendable efforts, the Committee is concerned by the State party's information that Māori remain overrepresented as offenders in rates of arrest, prosecution, conviction, imprisonment, re-imprisonment, and as victims (arts. 2, 5, 6.)

25. **In light of these concerns, the Committee recommends that the State party strengthen its efforts to address the root causes leading to disproportionate incarceration rates of Māori. It further recommends that the State party ensure that justice, social sector and care and protection initiatives for Māori are connected, have transparent governance frameworks, and are based on partnerships with and inclusion of Māori. The Committee also recommends that the State Party take robust measures to increase representation of Māori, Pasifika and other minority groups as decision-makers, including as prosecutors and judges, at all levels of the criminal justice system.**

### **Health**

26. The Committee is concerned that Māori and Pasifika have poorer health outcomes than other groups, including with respect to life expectancy, mortality, and disability. It notes with concern reports that despite the Māori Health Strategy (He Korowai Oranga) and the Healthy Families NZ initiative, Māori needs are not adequately integrated in health policies or in the administration of health services, and that Māori encounter significant barriers in accessing basic health services on an equal footing with other New Zealanders. The Committee is concerned by reports that structural biases exist in the health care system; that Māori providers are marginalized and their input into policy decisions is discounted; and that a negative differential compensation for Māori providers is maintained (arts. 2, 5.)

27. **The Committee recommends that the State party robustly increase the provision and accessibility of primary health care services to Māori and Pasifika communities; and ensure they are equally represented and empowered in decision-making processes concerning health and disability policy planning and service delivery and evaluation.**

28. **The Committee urges the State party to significantly reduce overall hospitalisations for medical conditions with a social gradient; and reduce disparities in both hospitalisation and mortality rates, particularly amongst Māori and Pasifika children.**

### **Employment**

29. The Committee is concerned by evidence of discrimination against Māori in employment. While welcoming the reduction in Māori unemployment in recent years and the State party's commitment to work toward reducing it to 7.5 percent by 2021, the Committee is also concerned by the State party's information that Māori, Pasifika and Asian ethnicities are underrepresented in the top three tiers of Public Service management. The Committee is further concerned by reports that qualified Māori nurses receive significantly lower pay (arts. 2, 5.)

30. **The Committee urges the State party to take effective measures to eliminate racial discrimination in public and private sector employment with respect to hiring, retention and promotions. It requests that in its next periodic report, the State party describe those measures along with goals, targets and results achieved. The Committee urges the State party to set targets to increase representation of Māori, Pasifika and other minorities in corporate governance and senior management in the public sector, and provide data on Māori, Pasifika and other minorities currently**

employed in the public sector with regard to distribution at job and managerial levels. The Committee requests additional information on programs undertaken to ensure effective implementation of the principle of equal opportunity and treatment in employment, without distinction as to race, colour, descent, or national or ethnic origin.

#### **Migrants**

31. While noting with interest the 2014 New Zealand Migrant Settlement and Integration Strategy and the Migrant Exploitation Prevention Strategy, the Committee is concerned by reports that migrant workers risk being subjected to labour discrimination and exploitation, including through receipt of salaries below the minimum wage. The Committee is also concerned about the exploitation of international students. The Committee is further concerned by reports of inadequate access to social services, including mental health programs, housing and employment for migrants, asylum-seekers and refugees. The Committee is also concerned by reports that some asylum seekers and undocumented migrants are detained in correctional facilities for criminal offenders, and by reports about the conditions in which some migrants are detained (arts. 2, 5.)

32. **The Committee recommends that the State party:**

(a) **Take appropriate and effective measures to ensure equal opportunity and equal treatment for migrants in employment;**

(b) **Provide information on progress made on the 16 indicators of the New Zealand Migrant Settlement and Integration Strategy in its next periodic report;**

(c) **Ensure that all asylum seekers and refugees have access to adequate and appropriate services to fully enjoy their economic, social and cultural rights, including social work and counselling services;**

(d) **Ensure adequate funding to support the continuation of psychosocial services; and**

(e) **Ensure that migrants are not detained in inappropriate facilities, and are never held with prisoners in correctional facilities; and consider further increasing its annual refugee quota.**

#### **Māori and Pasifika children**

33. The Committee is alarmed by reports of the alleged abuse of children in foster care or state institutions that are alleged to have included physical, sexual and emotional abuse. The reports focus on a period of approximately 40 years, during which time possibly 100,000 children were in care, the majority of whom were Maori children. The Committee notes the State party has expressed its intention to compensate victims. However, the Committee is concerned that such an approach by the State party will fail to expose the systemic problems that may have existed. The Committee is also concerned that Maori children are still more likely to be placed in state care. It notes the recent amendments to the Orange Tamariki Act 1989 (Children, Young Persons, and Their Families Legislation Act 2017) provides certain safeguards for children in care but concerns remain about among other things, parliamentary proposal to send “young offenders” to a military style boot camp for a year. (arts. 2, 5, 6).

34. **The Committee recommends that the State party:**

(a) **Immediately set up and empower an independent commission of inquiry into abuse of children and adults with disabilities in state care from 1950 until 1990,**

with the authority to determine redress, rehabilitation and reparations for victims, including an apology from the State party; and

(b) Take effective steps to reduce the number of Māori and Pasifika children in state care, including through effective and comprehensive application of the policy of "*whanau first*" placement for tamariki Māori.

#### **Māori language**

35. The Committee notes from statistics in the State party's report that the number of students receiving instruction in Māori language (te reo Māori) has steadily increased in recent years. However, it is concerned by other reports that low levels of conversational te reo Māori ability persist among Māori, in some instances because students are reportedly discouraged from using the language (art. 5).

36. **The Committee recommends that the State party strengthen the inclusion of te reo Māori instruction in its core educational curriculum for all New Zealand students, and increase its efforts to mainstream the use of the Māori language throughout the country.**

#### **Education**

37. The Committee regrets the scarcity of information or socioeconomic indicators to demonstrate that improved access to all levels of the education system and improved qualifications from educational institutions have translated into upward social mobility for Māori and Pasifika.

38. **The Committee encourages the State party to provide in its next periodic report information on measures taken to improve the educational outcomes of Māori and Pasifika students.**

### **D. Other recommendations**

#### **Ratification of other instruments**

39. **The Committee urges the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and ILO Conventions No. 169 (Indigenous and Tribal Peoples' Convention) and No. 189 concerning Domestic Workers.**

#### **International Decade for People of African Descent**

40. **The Committee invites the State party to support the International Decade for People of African Descent.**

#### **Consultations with civil society**

41. **The Committee recommends that the State party consult and broaden its dialogue with civil society organizations in the preparation of the next periodic report and in follow-up to the present concluding observations.**

#### **Declaration under article 14 of the Convention**

42. **The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention recognizing the Committee's competence to receive and consider individual communications.**



**Common core document**

43. The Committee encourages the State party to update its common core document (HRI/CORE/NZL/2010), in accordance with the harmonized guidelines on reporting. It urges the State party to observe the limit of 42,400 words for such documents (General Assembly resolution 68/268.)

**Follow-up to the present concluding observations**

44. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 15, 17 and 34 above.

**Dissemination of information**

45. The Committee recommends that concluding observations of the Committee be publicized in the official language of the State party and other commonly used languages.

**Preparation of the next periodic report**

46. The Committee recommends that the State party submit its combined twenty-third to twenty-fourth periodic reports, as a single document, by 22 December 2021, taking into account the reporting guidelines adopted by the Committee and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.