



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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**COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION**

Seventieth session
30 July – 17 August 2007

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

NEW ZEALAND

1. The Committee considered the fifteenth to seventeenth periodic reports of New Zealand (CERD/C/NZL/17), submitted in one document, at its 1821st and 1822nd meetings (CERD/C/SR.1821 and 1822), held on 31 July and 2 August 2007. At its 1840th meeting (CERD/C/SR.1840), held on 15 August 2007, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by New Zealand, which is in conformity with the reporting guidelines, and notes with appreciation the regularity with which the State party submits its reports, in compliance with the requirements of the Convention. It appreciates the attendance of a large delegation, composed of representatives of various institutions concerned, and the extensive and detailed responses provided to the questions asked by Committee members, including in writing.

3. The Committee appreciates that the New Zealand Human Rights Commission took the floor before the Committee on an independent basis, which further demonstrates the willingness of the State party's authorities to pursue a frank and constructive dialogue with the Committee.

B. Positive aspects

4. The Committee welcomes the importance given by the State party to the principle of self-identification when gathering data on the ethnic composition of its population, in accordance with general recommendation No. 8 (1990) of the Committee.
5. The Committee welcomes the adoption of the 2004 New Zealand Settlement Strategy and the Settlement National Plan of Action.
6. The Committee welcomes the New Zealand Diversity Action Programme.
7. The Committee appreciates the reduction of socio-economic disparities between Maori and Pacific peoples on the one hand, and the rest of the population on the other, in particular in the areas of employment and education.
8. The Committee appreciates the significant increase in the number of adults, including non-Maori, who can understand, speak, read and write the Maori language.
9. The Committee welcomes the ratification in 2006 of the 1961 Convention on the Reduction of Statelessness.
10. The Committee notes with satisfaction that the State party has increased the budget provided to the New Zealand Human Rights Commission by a yearly 20 per cent over the next four years.

C. Concerns and recommendations

11. The Committee notes that the Government of the State party has not formally endorsed the Human Rights Commission's New Zealand Action Plan for Human Rights, which also refers to race relations issues (art. 2).

The Committee recommends that the State party provide more detailed information on measures adopted to follow up on the Human Rights Commission's New Zealand Action Plan for Human Rights, regarding race relations issues. It encourages the State party to adopt, on the basis of the proposals made by the Human Rights Commission, its own Action Plan for Human Rights.

12. The Committee, having taken into consideration the explanations provided by the State party, remains concerned that the New Zealand Bill of Rights Act (NZBORA) does not enjoy protected status and that the enactment of legislation contrary to the provisions of that Act is therefore possible. The Committee considers that the requirement whereby the Attorney-General may bring to the attention of Parliament any provision of a Bill that appears to be inconsistent with the NZBORA is insufficient to guarantee full respect for human rights, in particular the right not to suffer from discrimination based on race, colour, descent or national or ethnic origin (art. 2).

The Committee recommends that the State party seek ways of ensuring that provisions of the Convention are fully respected in domestic law.

13. The Committee notes that the Treaty of Waitangi is not a formal part of domestic law unless incorporated into legislation, making it difficult for Maori to invoke its provisions before courts and in negotiations with the Crown.¹ It welcomes, however, the holding of a public discussion on the status of the Treaty and the efforts to enhance Crown-Maori relationships. The Committee remains concerned that other steps such as those described in paragraphs below tend to diminish the importance and relevance of the Treaty and to create a context unfavourable to the rights of Maori (arts. 2 and 5).

The Committee encourages the State party to continue the public discussion over the status of the Treaty of Waitangi, with a view to its possible entrenchment as a constitutional norm. The State party should ensure that such debate is conducted on the basis of a full presentation of all aspects of the matter, bearing in mind the importance of enhancing Crown-Maori relationship at all levels and the enjoyment by indigenous peoples of their rights.

14. The Committee notes with concern the proposal to remove statutory references to the Treaty of Waitangi through the Principles of the Treaty of Waitangi Deletion Bill (2006). It welcomes, however, the undertaking by the State party not to support the progress of that Bill any further (arts. 2 and 5).

The State party should ensure that the Treaty of Waitangi is incorporated into domestic legislation where relevant, in a manner consistent with the letter and the spirit of that Treaty. It should also ensure that the way the Treaty is incorporated, in particular regarding the description of the Crown's obligations, enables a better implementation of the Treaty.

15. The Committee is concerned that, in the report of the State party, historical treaty settlements have been categorized as special measures for the adequate development and protection of Maori. It notes, however, the statement made by the delegation that such categorization should indeed be reconsidered (art. 2 (2)).

The Committee draws the attention of the State party to the distinction to be drawn between special and temporary measures for the advancement of ethnic groups on the one hand, and permanent rights of indigenous peoples, on the other.

16. The Committee notes the steps adopted by the State party to review policies and programmes in the public service, which has led to the re-targeting of some programmes and policies on the basis of need rather than ethnicity. The Committee, while stressing that special measures are temporary and should be re-assessed on a regular basis, is concerned that these steps have been adopted in a political climate unfavourable to the rights of Maori (art. 2 (2)).

The State party should ensure, when assessing and reviewing special measures adopted for the advancement of groups, that concerned communities participate in such a process, and that the public at large is informed about the nature and relevance of special measures, including the State party's obligations under article 2 (2) of the Convention.

17. The Committee welcomes the progress achieved in the settlement of historical Treaty claims, and notes that 2008 has been chosen as a cut-off date for the lodging of

historical Treaty claims. While noting the assurances provided by the State party that claims submitted before 2008 can still be amended and supplementary information taken into account, the Committee notes the concerns expressed by some Maori that such a cut-off date may unfairly bar legitimate claims (arts. 2 and 5).

The Committee recommends that the State party ensure that the cut-off date for the lodging of historical Treaty claims will not unfairly bar legitimate claims. It should pursue its efforts to assist claimants groups in direct negotiations with the Crown.

18. The Committee notes with concern that recommendations made by the Waitangi Tribunal are generally not binding, and that only a small percentage of these recommendations are followed by the Government. The Committee considers that such arrangements deprive claimants of a right to an effective remedy, and weaken their position when entering into negotiations with the Crown (arts. 2, 5 and 6).

The Committee recommends that the State party consider granting the Waitangi Tribunal legally binding powers to adjudicate Treaty matters. The State party should also provide the Tribunal with increased financial resources.

19. The Committee notes the information provided by the State party on the follow-up given to its decision 1 (66) in relation to the Foreshore and Seabed Act 2004. It remains concerned at the discrepancy between the assessment made by the State party and the one made by non-governmental organizations on the issue (arts. 5 and 6).

The Committee reiterates its recommendations that a renewed dialogue between the State party and the Maori community take place with regard to the Foreshore and Seabed Act 2004, in order to seek ways of mitigating its discriminatory effects, including through legislative amendment where necessary; that the State party continue monitoring closely the implementation of the Act; and that it take steps to minimize any negative effects, especially by way of a flexible application of the legislation and by broadening the scope of redress available to the Maori.

20. The Committee notes with concern that the New Zealand Curriculum, Draft for consultation 2006, does not contain explicit references to the Treaty of Waitangi. It notes, however, the assurances provided by the State party that other elements of the National Educational Guidelines as well as the Educational Act 1989 require an explicit reference to the Treaty of Waitangi, and that it is considering the recommendation to make references to the Treaty more explicit in the final version of the New Zealand Curriculum (arts. 2 and 7).

The Committee encourages the State party to include references to the Treaty of Waitangi in the final version of the New Zealand Curriculum. The State party should ensure that references to the Treaty in the curriculum are adopted or modified in consultation with the Maori.

21. The Committee reiterates its concern regarding the over-representation of Maori and Pacific people in the prison population and more generally at every stage of the criminal justice system. It welcomes, however, steps adopted by the State party to address this issue,

including research on the extent to which the over-representation of Maori could be due to racial bias in arrests, prosecutions and sentences (arts. 2 and 5).

The Committee recommends that the State party enhance its efforts to address this problem, which should be considered as a matter of high priority. The Committee also draws the attention of the State party to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

22. The Committee regrets that the State party has not assessed the extent to which section 27 of the Sentencing Act 2002, providing for the courts to hear submissions relating to the offender's community and cultural background, has been implemented and with what results.

The Committee encourages the State party to undertake such an assessment, and to include information in this regard in its next periodic report.

23. The Committee notes with satisfaction that the State party has decided to lift its reservation to the Convention on the Rights of the Child that limits access to publicly funded education and health services for undocumented children, and that it plans to amend its Immigration Act to eliminate the offence for education providers of enrolling children without the appropriate permit. It remains concerned however that under the new Immigration Bill, undocumented children will only be authorized to attend school provided they are not alone in New Zealand and their parents are taking steps to regularize their status (arts. 2 and 5).

The Committee draws the attention of the State party to its general recommendation No. 30 (2004) on discrimination against non-citizens, and recommends that public educational institutions be open to all undocumented children, without restrictions.

24. The Committee notes with concern that asylum-seekers may be detained in correctional facilities, even though such detention only concerns a very few individuals. It is also concerned at reports according to which proposals have been made to include health and character grounds in the Immigration Act as a basis upon which to exclude or expel asylum-seekers (arts. 2 and 5).

The Committee recommends that the State party put an end to the practice of detaining asylum-seekers in correctional facilities, and ensure that grounds upon which asylum may be refused remain in compliance with international standards, especially the 1951 Convention relating to the Status of Refugees.

25. The Committee, having taken into consideration the information provided by the State party, remains concerned that there is no recording of complaints, prosecutions and sentences relating to racially motivated crime (arts. 4 and 6).

The Committee recommends that the State party study ways and means of assessing on a regular basis the extent to which complaints for racially motivated crimes are addressed in an appropriate manner within its criminal justice system.

It should envisage, in particular, collecting statistical data on complaints, prosecutions and sentences for such crimes.

26. The Committee is concerned that the effectiveness of procedures to address racial discrimination may be compromised by a lack of public knowledge of the most appropriate avenues for particular complaints, inadequate accessibility by vulnerable groups and a lack of confidence by such groups in their effectiveness, as acknowledged by the Human Rights Commission (art. 6).

The Committee recommends that the State party adopt proactive measures aimed at addressing these difficulties.

27. The Committee recommends that the State party consider ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, the Convention relating to the Status of Stateless Persons, as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

28. The Committee recommends that the State party continue to take into account the relevant provisions of the Durban Declaration and Programme of Action when implementing the Convention in its domestic legal order, particularly as regards articles 2 to 7 of the Convention.

29. The Committee notes again that the State party has not made the optional declaration provided for in article 14 of the Convention, and invites it to consider doing so.

30. The Committee recommends that the State party continue to make its reports readily available to the public at the time of their submission.

31. Pursuant to article 9, paragraph 1, of the Convention, and article 65 of the Committee's rules of procedure, as amended, the Committee requests that the State party inform it of its implementation of the recommendations contained in paragraphs 14, 19, 20 and 23 above, within one year of the adoption of the present conclusions.

32. The Committee invites the State party to update its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document, approved by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1).

33. The Committee recommends to the State party that it submit its eighteenth, nineteenth and twentieth periodic reports in a single report, due on 22 December 2011, taking into account the guidelines for the CERD-specific document adopted by the Committee at its seventy-first session (CERD/C/2007/1). The report should be an update document and address all points raised in the present concluding observations.

ⁱ The term "Crown" is understood to refer to the Executive branch of Government. The Executive is comprised of those Members of Parliament who are Ministers of the Crown (collectively, the Executive Council) and the public service (including all government agencies and departments).