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Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination

Feedback document

Thank you for the opportunity to provide feedback on whether or not the government should make an Article 14, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), declaration. It is our view that the government should make such a declaration as soon as possible for the reasons outlined below.

We do not require any information in our submission to be kept confidential.

1. Do you consider that existing domestic mechanisms for the resolution of complaints about discrimination (informal complaints, the New Zealand Human Rights Commission's dispute resolution service, tribunals and courts) are adequate and sufficient, and if not, why not?

The domestic mechanisms for resolving issues of racial discrimination are adequate in most instances. However, they are clearly not sufficient for dealing with all such issues as demonstrated by the communication taken to the Committee on the Elimination of Racial Discrimination (CERD) by the Taranaki Maori Trust Board, Treaty Tribes Coalition and Te Runanga o Ngai Tahu with respect to the foreshore and seabed legislation.

Generally speaking, where individual instances of racial discrimination occur, the majority can be successfully resolved by use of the domestic mechanisms. On the other hand, systemic racial discrimination and discrimination arising from Acts of parliament or actions of the Executive are not so easily resolved.

Even if the domestic mechanisms were wholly sufficient, that would not in itself be a good reason to continue the current situation with regard to Article 14. We are unable to think of any valid justification for New Zealand's position on this.

2. Do you consider that an individual complaints procedure to the United Nations under Art 14 of CERD will be of practical value to people in New Zealand, and if not, why not?

We consider that an Article 14 declaration so that CERD can consider complaints from individuals within New Zealand's jurisdiction will be of practical value because it will provide an avenue for consideration of instances of racial discrimination that have not, or are not able to be, resolved by the domestic mechanisms.

This is particularly important for two reasons:

- i) the difficulty of resolving racial discrimination arising from Acts of parliament or actions of the Executive due to the constitutional arrangements that have resulted from the notion of parliamentary supremacy; and
- ii) the lack of a regional Pacific human rights court - regional human rights courts in other parts of the world provide an additional layer of protection for the human rights of the citizens in the states that accept the jurisdiction of those courts which we do not have.

While we appreciate that the decisions of the UN treaty monitoring bodies, including CERD, are not necessarily considered binding by the state parties to the respective human rights treaties, nevertheless the monitoring bodies provide extremely useful oversight of how state parties are implementing their obligations under each treaty, as well as an avenue for individuals to have their complaints heard.

Furthermore, an Article 14 declaration would be a positive indication of the weight New Zealand gives to its binding obligations to eliminate racial discrimination as a state party to ICERD.

We note that 54 state parties accept the competency of CERD to consider complaints from individuals within their jurisdiction, including Australia which made an Article 14 declaration in 1993, and consider it is well past the time for New Zealand to do the same.

30 September 2011