



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination

### Concluding observations on the eighteenth to the twentieth periodic reports of New Zealand, adopted by the Committee at its eighty-second session (11 February–1 March 2013)

1. The Committee considered the eighteenth to twentieth periodic reports of New Zealand (CERD/C/NZL/18-20), submitted in one document, at its 2221st and 2122nd meetings (CERD/C/SR.2221 and 2222), held on 21 and 22 February 2013. At its 2230th meeting (CERD/C/SR.2230), held on 28 February 2013, it adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the submission by the State party of its combined eighteenth to twentieth periodic reports drafted in accordance with the Committee's guidelines for the preparation of reports including page limitations and takes into account the Committee's previous concluding observations. The Committee also welcomes the open dialogue with the high level delegation of the State party and its efforts to provide comprehensive responses and supplementary replies to issues raised by Committee members during the dialogue.

#### B. Positive aspects

3. The Committee notes with appreciation the numerous legislative and policy developments which have taken place in the State party since its last report to combat racial discrimination, including:

(a) The Immigration Act of 2009 that entered into force on 29 November 2010, which removed barriers for foreign national children to access education and limited the situations in which asylum seekers may be detained;

(b) The implementation of the Health Housing Programme that seeks to alleviate overcrowding in housing among Pasifika peoples;

(c) The publication of a new Equality and Diversity Policy for the Public Service in 2008;

(d) The ratification of the following international human rights instruments:

(i) The Convention on the Rights of Persons with Disabilities, on 25 September 2008; and

(ii) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, on 20 September 2011.

(e) The official endorsement of the United Nations Declaration of the Rights of Indigenous Peoples of 2007 (albeit with some qualifications), as well as the New Zealand Supreme Court's reliance on the Declaration in construing the scope of Māori rights to freshwater and geothermal resources in the case between the New Zealand Māori Council et al and the Attorney General et al SC 98/2012, [2013] NZSC 6, whose judgement was delivered on 27 February 2013.

4. The Committee welcomes the numerous valuable programmes, strategies and other initiatives aimed at improving ethnic relations and raising the awareness of the population with regard to racial discrimination, integration, tolerance and multiculturalism, including the Youth Employment Package, the Alcohol and Other Drugs Courts, the New Zealand Police ethnic strategy and recommendations included in the study "A Fair Go For All?".

5. The Committee welcomes the contributions of the Race Relations Commissioner to the Committee's work, as well as the active engagement of and contributions from organizations of civil society.

## C. Concerns and recommendations

### National human rights institution

6. While noting that the proposed Human Rights Amendment Bill is designed in part to improve the effectiveness and efficiency of the Human Rights Commission and to broaden its mandate to cover matters such as disability, the Committee is concerned that this amendment may negatively affect the visibility, accessibility and independence of the Race Relations Commissioner (art. 2).

**The Committee recommends that the State party consider retaining the designation of the Race Relations Commissioner in order to maintain its visibility and accessibility in the State party. The Committee also recommends that the State party ensure that any change effected by this amendment guarantees the independence of the Race Relations Commissioner to undertake its mandate effectively.**

### Treaty of Waitangi

7. The Committee recalls its previous concluding observations (CERD/C/NZL/CO/17, para. 13) and notes with regret that the Treaty of Waitangi is not a formal part of domestic law even though the State party considers it the founding document of the nation. The Committee also notes that the decisions rendered by the Waitangi Tribunal are not binding. The Committee notes that a constitutional review is underway and an independent Constitutional Advisory Panel has been appointed that will consider a wide range of issues including the role of the Treaty of Waitangi within the State party's constitutional arrangements (art. 2 and 5).

**The Committee recalls its previous recommendation (CERD/C/NZL/CO/17, para. 13), and urges the State party to ensure that public discussions and consultations are held on the status of the Treaty of Waitangi within the context of the ongoing constitutional review process. In particular, the Committee recommends that public discussions and consultations focus, inter alia, on whether the Treaty of Waitangi should be entrenched as a constitutional norm. The Committee further recommends that the State party consider adopting the recommendation by the Special Rapporteur on the rights of indigenous peoples that any departure from the decisions of the Waitangi Tribunal be accompanied by a written justification by the government.**

### **National action plan on human rights**

8. The Committee notes the lack of a comprehensive national human rights action plan in the State party after the 2005 human rights action plan reached its completion point. However, the Committee notes the State party's intention to develop a new human rights action plan, under the aegis of the National Human rights Commission, in connection with the universal periodic review process (art. 2).

**The Committee urges the State party to adopt a national action plan on human rights and ensure that it includes plans on how to combat racial discrimination in line with the Durban Declaration and Programme of Action. The Committee further recommends that the State party undertake adequate consultations with relevant stakeholders in developing the Action Plan.**

### **Incitement to racial hatred and violence**

9. While commending the State party for its legislation to combat incitement to racial disharmony under the Human Rights Act, the Committee is concerned at the absence of a comprehensive strategy to address incitement to racial hatred committed in cyberspace. The Committee, however, notes the intention of the State party to develop legislation to address the problem of incitement to racial hatred on the Internet, including the problem of cyber-bullying (arts. 2 and 4).

**The Committee recommends that the State party develop a comprehensive legislative framework for addressing the problem of incitement to racial hatred on the Internet in conformity with article 4 of the Convention.**

### **Political racist speech**

10. The Committee regrets the recent inflammatory remarks by a Member of Parliament vilifying persons from Central Asia or the Middle East based on their skin colour and country of origin as well as their religion, but welcomes the strong criticism of such statements by the Minister of Justice and Ethnic Affairs and the Race Relations Commissioner, among others, as well as the unanimous resolution passed by the Parliament reaffirming the State party's commitment to preserving an inclusive multi-ethnic society (arts. 4, 5 and 7).

**The Committee urges the State party to intensify its efforts to promote ethnic harmony through, inter alia, raising awareness in order to combat existing stereotypes and prejudices against certain ethnic and religious groups.**

### **Administration of justice**

11. The Committee notes the efforts made by the State party to address the overrepresentation of members of Māori communities in the criminal justice system, such as the introduction of the "Better Public Services" programmes, the "Drivers of Crime" initiative and reforms to the jury selection system with regard to the pool of jurors. The Committee, however, remains concerned at the disproportionately high rates of incarceration and the overrepresentation of members of the Māori and Pasifika communities at every stage of the criminal justice system (arts. 2, 4, 5 and 6).

**Recalling its previous concluding observations (CERD/C/NZL/CO/17, para. 21) and its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee urges the State party to intensify its efforts to address the overrepresentation of members of the Māori and Pasifika communities at every stage of the criminal justice**

**system. In this regard, the Committee urges the State party to provide comprehensive data in its next periodic report on progress made to address this phenomenon.**

12. The Committee is concerned at the absence of data on cases of racial discrimination punished or otherwise sanctioned by the public authorities of New Zealand (arts. 2 and 6).

**The Committee recommends that the State party include in its next periodic report data concerning such cases considered by the judiciary and other competent authorities in accordance with the provisions of the Convention.**

#### **Indigenous peoples**

13. While commending the State party for its repeal of the Foreshore and Seabed Act of 2004, the Committee remains concerned that the Marine and Coastal Areas (Takutai Moana) Act of 2011 contains provisions that, in their operation, may restrict the full enjoyment by Māori communities of their rights under the Treaty of Waitangi, such as the provision requiring proof of exclusive use and occupation of marine and coastal areas without interruption since 1840 (arts. 2 and 5).

**The Committee urges the State party to continue to review the Marine and Coastal Area (Takutai Moana) Act of 2011 with a view to facilitating the full enjoyment of the rights by Māori communities regarding the land and resources they traditionally own or use, and in particular their access to places of cultural and traditional significance.**

14. The Committee welcomes the Waitangi Tribunal's 2011 Wai 262 decision regarding Māori intellectual and cultural property rights, which makes recommendations for changes in law, policy and practice on matters relating to traditional knowledge, genetic and biological resources of indigenous species, and the relation of Māori communities with the environment in connection with conservation, language, cultural heritage, traditional healing and medicine, and proposes a partnership framework for Crown-iwi relations in this sphere. The Committee, is concerned, however, that the State party has not yet announced a timetable for implementing this decision (arts. 2, 5 and 6).

**The Committee recommends that the State party promptly announce a timetable to implement the Waitangi Tribunal's decision in a manner that fully protects the intellectual property rights of Māori communities over their traditional knowledge and genetic and biological resources.**

#### **Structural discrimination**

15. The Committee notes the efforts of the State party to improve the status of the Māori and Pasifika communities in New Zealand society, and welcomes the State party's recognition that structural discrimination in the State party is partly responsible for the persistent poor outcomes that the members of the Māori and Pasifika communities experience in the fields of employment, health and the administration of criminal justice. The Committee is also concerned at the high levels of school absenteeism and high dropout rates among Māori and Pasifika pupils (arts. 2 and 5).

**The Committee recommends that the State party intensify its efforts to improve the outcomes of the Māori and Pasifika in the fields of employment, health and in the administration of criminal justice by, inter alia, addressing the existing structural discrimination in the State party. The Committee also recommends that the State party consider strengthening its special measures to increase the level of educational attainment of Māori and Pasifika children, in particular by focusing its measures at addressing the root causes of absenteeism and high dropout rates in schools.**

### Discrimination against migrants

16. The Committee is concerned at reports of persistent discrimination against migrants, particularly of Asian origin, in the labour market, including reports of inadequate recognition of their educational qualifications, which leads to their concentration in low-paying jobs (arts. 2 and 5).

**The Committee recommends that the State party ensure the full and effective enforcement of the measures taken to protect Asian migrants, including targeted measures to strengthen equal access to the labour market in order to alleviate the concentration of qualified individuals in low paying jobs. The Committee further urges the State party to support a system for the objective assessment of their educational qualifications.**

### Languages

17. While noting that the teaching of Māori language (te reo Māori) is part of the general school curriculum and the existence of Māori Immersion Units, the Committee is concerned at the finding by the Waitangi Tribunal that the language is at risk of erosion. The Committee also notes that the State party has adopted a Pasifika Language Framework but regrets that the Māori language strategy is yet to be elaborated. It is also concerned at reports of inadequate funding to support the preservation of community languages (art. 2 and 5).

**The State party should take specific measures aimed at preserving the Māori and Pasifika languages, as well as community languages, by ensuring that adequate funding is allocated for specific programmes. The Committee also urges the State party to expedite the development of a new Māori language strategy.**

### Consultations with indigenous peoples

18. The Committee is concerned by reports by representatives of Māori communities regarding the inadequacy of the consultations conducted by the State party before awarding deep-sea oil seismic, drilling and hydraulic fracturing contracts to commercial companies, under circumstances that may threaten these communities' enjoyment of their rights to land and resources traditionally owned or used, and before pursuing negotiation of Free Trade Agreements that could similarly affect indigenous peoples' rights. The Committee also notes the concerns expressed by representatives of Māori communities concerning the adequacy and genuineness of the consultation process surrounding the enactment of the Finance (Mixed Ownership Model) Amendment Act of 2012 and the State-Owned Enterprises Amendment Bill of 2012 (arts. 2 and 5).

**The Committee recalls its general recommendation No. 23 (1997) and reiterates the importance of securing the free, prior and informed consent of indigenous groups regarding activities affecting their rights to land and resources owned or traditionally used, as recognized in the United Nations' Declaration on the Rights of Indigenous Peoples. It urges the State party to enhance appropriate mechanisms for effective consultation with indigenous people around all policies affecting their ways of living and resources.**

### Māori freshwater and geothermal resources

19. The Committee notes the recent decision of the New Zealand Supreme Court (27 February 2013) affirming that the Finance (Mixed Ownership Model) Amendment Act of 2012 does not materially impair the Crown's ability or obligation to ensure the rights of Māori communities to freshwater and geothermal resources, as protected by the Treaty of Waitangi.

**The Committee urges the State party to ensure that any privatization of energy companies is pursued in a manner that fully respects the rights of Māori communities to freshwater and geothermal resources, as protected by the Treaty of Waitangi.**

#### **Detention of asylum seekers**

20. The Committee notes the intention by the State party to table the Immigration Amendment Bill of 2012, which provides for the mandatory detention of asylum seekers and persons falling within the ambit of the statutory definition of a “mass arrival”, namely, those arriving in a group of more than 10. The Committee is concerned that this provision may have the effect of depriving persons who are in need of international protection of their liberty solely based on the manner of their arrival in the State party (arts. 2 and 5).

**The Committee recalls its general recommendation No. 30 (2004) on discrimination against non-citizens and reiterates its position that State parties to the Convention should ensure the security of non-citizens, in particular with regard to arbitrary detention. The Committee urges the State party to ensure that the Immigration Amendment Bill of 2012 accords to international standards in the treatment of persons in need of international protection so that it does not unfairly and arbitrarily discriminate against asylum seekers.**

21. The Committee welcomes the State party’s decision to admit 150 asylum seekers from Australian off-shore refugee detention centres located in Papua New Guinea and Nauru. However, the Committee is concerned at reports that the State party is considering sending future asylum seekers to the said facilities, which has been criticized by the Office of the United Nations High Commissioner for Refugees (UNHCR) because of the conditions under which asylum seekers are detained and because of other problems (arts. 2 and 5).

**The Committee urges the State party to refrain from sending asylum seekers to the Australian off-shore detention facilities until the conditions meet international standards.**

### **D. Other recommendations**

#### **Ratification of other treaties**

22. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying international human rights treaties which it has not yet ratified, in particular treaties with provisions that have a direct relevance to communities that may be the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

23. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

**Declaration to article 14 of the Convention**

24. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention. It further notes the statement by the delegation that the State party intends to consider making such a declaration at a stage when this will coincide with the next review of the State party under the universal periodic review of the Human Rights Council. The Committee, however, invites the State party to make the declaration as soon as possible.

**Consultations with organisations of civil society**

25. The Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report and the follow-up to these concluding observations.

**Dissemination**

26. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

**Follow-up to concluding observations**

27. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 8, 9, 14 and 17 above.

**Paragraphs of particular importance**

28. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 10, 15, 18 and 19 above, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

**Preparation of the next periodic report**

29. The Committee recommends that the State party submit its twenty-first and twenty-second periodic reports in a single document by 21 December 2015, taking into account the specific reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1), and addressing all the points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (HRI/GEN.2/Rev.6, chap. I, para. 19).