



Peace Movement Aotearoa

PO Box 9314, Wellington 6141, Aotearoa New Zealand. Tel +64 4 382 8129

Email pma@xtra.co.nz Web site www.converge.org.nz/pma

Racial Discrimination: UN Committee recommendations on New Zealand Concluding Observations of the Committee on the Elimination of Racial Discrimination

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The Concluding Observations of the Committee on the Elimination of Racial Discrimination on the New Zealand government's compliance with the International Convention on the Elimination of all Forms of Racial Discrimination were released overnight, and are available at www.converge.org.nz/pma/cerd93.htm

The Committee, which comprises 18 independent human rights experts, considered the government's performance during its 93rd session, which was held in Geneva from 31 July to 25 August 2017. The Concluding Observations are based on information supplied by the government in its Periodic Report, statistical information, and discussion during interactive dialogues with a government delegation led by Andrew Bridgman, Secretary for Justice and Chief Executive of the Ministry of Justice, on 15 and 16 August.

The Committee also took into account information provided in parallel reports from Peace Movement Aotearoa, the New Zealand Council of Trade Unions, Action for Children & Youth Aotearoa, Save Our Unique Landscape (SOUL), Multicultural New Zealand, and a combined NGO report from STIR: Stop Institutional Racism, Te Runanga o Aotearoa, New Zealand Nurses Organisation, Auckland University of Technology, Pukenga Consultancy Ltd, Tamaki Tiriti Workers, Health Promotion Forum, Awa Associates, Waka Oranga and the New Zealand Public Health Association, as well as information from other United Nations human rights monitoring bodies and procedures, and the Human Rights Commission. During the 93rd session, additional updated information was provided in writing by Peace Movement Aotearoa and verbally by NGO representatives in Geneva.

The Concluding Observations follow the standard format of UN human rights monitoring bodies with four main sections:

A. Introduction: has a brief introductory paragraph.

B. Positive aspects: has three paragraphs which commend the government's acknowledgment "that social inequities exist today between racial groups and the acceptance by the state party of responsibility to correct them", and the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017; and welcome the government's recent efforts to establish policies, programmes and administrative measures to ensure further the protection of human rights and implementation of the Convention, including the Second Human Rights National Plan of Action 2015-2019, and

educational and linguistic strategies and measures targeting Maori and Pasifika. The Committee also noted with appreciation the active role of a vibrant civil society, and the Human Rights Commission.

C. Main areas of concern and recommendations: has thirty three paragraphs listing concerns and recommendations on a range of issues. Of the sixteen sets of recommendations, eight relate specifically to the Treaty of Waitangi and the collective and individual rights of Maori (summarised below); and four are about the human rights of Maori and Pasifika in relation to health (including structural biases against Maori in the health system), employment (including evidence of discrimination against Maori workers), education, and state care of Maori and Pasifika children (summarised below). The other recommendations are about the National Action Plan on Human Rights, the Race Relations Commissioner, racist hate speech and hate crimes, acts of racial discrimination, and migrant workers, refugees and asylum seekers.

D. Other recommendations: has eight paragraphs with recommendations on topics including the ratification of other human rights instruments, the International Decade for People of African Descent, consultation with civil society, Article 14 of the Convention, the requirement to provide follow-up on three of the Committee's recommendations within one year (on paragraphs 15, 17 and 34), dissemination of the Concluding Observations, and a paragraph inviting the government to submit its next periodic report by 22 December 2021.

The paragraphs listing concerns and recommendations about the Treaty of Waitangi and the collective and individual human rights of Maori are outlined below (for the full text, please refer to the Concluding Observations), and include:

Treaty of Waitangi (paragraphs 12 and 13): the Committee is concerned by the apparent lack of progress in implementation of the 2013 recommendations of the Constitutional Advisory Panel concerning the Treaty, and that the recommendations in the Matike Mai Aotearoa report 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 hapu and the state party required by the Treaty. The Committee recommends that the state party: (a) issue, without delay, a timetable for debating, in partnership with Maori, 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 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 Maori and the obligation to establish shared governance with hapu; and (d) provides adequate resources for the Waitangi Tribunal.

Land issues and the settlement process (paragraphs 14 and 15): The Committee notes that its General Recommendation No. 23, as well as the UN 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. As the settlements process and its implications and consequences go to the core of the rights of Maori to own, develop, control and use their communal lands, territories and resources, and their rights under the Convention, the Committee urgently requests the government to supply a range of detailed

information about settlements, and whether it views the settlement process as extinguishing rights under the Treaty.

Maori intellectual and cultural property rights (paragraphs 16 and 17): the Committee is concerned about the lack of progress in implementing the Waitangi Tribunal's 2011 WAI 262 report regarding, among other issues, Maori intellectual and cultural property rights, and taonga. The Committee recommends that the state party produce and publish plan with targets and a timetable for implementing the remainder of the recommendations in the WAI 262 decision; and that it 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 UN Declaration on the Rights of Indigenous Peoples.

Special Housing Area 62 (paragraphs 18 and 19): the Committee is concerned by conflicting information regarding consultation with local Maori in connection with the designation of Special Housing Area (SHA) 62 at Ihumatao, and is concerned that Maori have not had the opportunity to formally take part in decision-making with respect to use of the land. The Committee recommends that the state party review, in consultation with all affected Maori, the designation of Special Housing Area 62 to evaluate its conformity with the Treaty of Waitangi, the UN Declaration on the Rights of Indigenous Peoples and other relevant international standards, and that the state party obtain the free and informed consent of Maori before approving any project affecting the use and development of their traditional land and resources.

Marine and coastal rights (paragraphs 20 and 21): the Committee is concerned about the application of the Marine and Coastal Area (Takutai Moana) Act of 2011 and by reports that the state party has not consistently applied the principle of free, prior and informed consent in matters affecting Maori customary marine interests. 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 Maori communities regarding the land and resources they traditionally own or use, and their access to places of cultural and traditional significance.

Freshwater and geothermal resources (paragraphs 22 and 23): the Committee is concerned by reports that the state party has granted private companies the right to use freshwater resources located on traditional Maori land despite consistent opposition by local Maori; and urges the state party ensure full respect for the rights of Maori communities to freshwater and geothermal resources, as protected by the Treaty of Waitangi and in accordance with the provisions of the Convention.

Criminal justice (paragraphs 24 and 25): the Committee is concerned by the state party's information that Maori remain overrepresented in rates of arrest, prosecution, conviction, imprisonment, and re-imprisonment; and recommends that the state party strengthen its efforts to address the root causes leading to disproportionate incarceration rates of Maori. It further recommends that the state party ensure that justice, social sector and care and protection initiatives for Maori are connected, have transparent governance frameworks, and are based on partnerships with and inclusion of Maori. The Committee also recommends that the state party take robust measures to increase representation of Maori, Pasifika and other minority groups as decision-makers, including as prosecutors and judges, at all levels of the criminal justice system.

Maori language (paragraphs 35 and 36): the Committee recommends that the state party strengthen the inclusion of te reo Maori instruction in its core educational curriculum for all New Zealand students, and increase its efforts to mainstream the use of the Maori language throughout the country.

Maori and Pasifika children in state care (paragraphs 33 and 34): 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 over 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 but 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) provide certain safeguards for children in care but concerns remain about, among other things, the proposal to send “young offenders” to a military style boot camp for a year.

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 Maori and Pasifika children in state care, including through effective and comprehensive application of the policy of “whanau first” placement for tamariki Maori.

Where you can find more information

- **Updates and information on the 93rd session** - where you can watch the interactive dialogues, the government delegation, who said what in Geneva, and media coverage - is available at <http://www.converge.org.nz/pma/cerd93-sess.htm>
- **Background information and an outline of the process** - including information on the International Convention on the Elimination of Racial Discrimination (ICERD), the Committee on the Elimination of Racial Discrimination (CERD), New Zealand and ICERD, the government's report to CERD, the List of Themes CERD sent to the government, NGO parallel reports to CERD, what CERD has said about New Zealand before, and the 2017 Concluding Observations - is available at www.converge.org.nz/pma/cerd93.htm
- **New Zealand and the International Convention on the Elimination of All Forms of Racial Discrimination** index page, www.converge.org.nz/pma/cerd.htm
- **Links to this update**, on Facebook and in pdf format, www.converge.org.nz/pma/cerd.htm