



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

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Committee on the Elimination of Racial Discrimination
Eighty-second session

Summary record of the 2222nd meeting

Held at the Palais Wilson, Geneva, on Friday, 22 February 2013, at 10 a.m.

Chairperson: Mr. Avtonomov

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The meeting was called to order at 10.05 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention *(continued)*

Eighteenth to twentieth periodic reports of New Zealand (continued)
(CERD/C/NZL/18-20 and CERD/C/NZL/Q/18-20)

1. *At the invitation of the Chair, the delegation of New Zealand took places at the Committee table.*
2. **Mr. de Bres** (New Zealand Human Rights Commission) said that the New Zealand Government prided itself on the many initiatives it had taken to guarantee the equality of all New Zealanders, particularly with regard to health, education and justice, and on having made significant progress towards the settlement of historical Treaty of Waitangi claims by Maori tribes (*iwi*). However, given that much work still needed to be done, the Committee could make a number of important recommendations in the concluding observations that it would submit to the New Zealand Government. It could, for example, welcome the proposed extension of the mandate of the New Zealand Human Rights Commission to include the promotion of racial equality and cultural diversity, while insisting on the need to maintain the post of Race Relations Commissioner. It could also invite the State party to make the necessary declaration under article 14 of the Convention, find a concerted solution to Maori claims over freshwater and geothermal resources, finalize the strategy to promote the Maori language and, lastly, establish a legal framework to combat incitement to hatred in social media and on the Internet.
3. **Mr. Sefuiva** (New Zealand Human Rights Commission) suggested that the Committee should recommend that the New Zealand Government cooperate closely with private-sector enterprises and trade unions to combat discrimination in employment, which primarily affected New Zealanders of Asian origin, and eliminate structural discrimination, which particularly affected Maori and Pasifika, especially in the areas of justice, education, health and employment. Finally, the Committee might wish to call for close cooperation between the Government, the Commission and civil society in drawing up the second National Human Rights Action Plan.
4. **Ms. Collins** (New Zealand) said that the Christchurch earthquake had had serious repercussions for all population groups (including Maori and Pasifika, many of whose sacred sites and cemeteries had been destroyed) and that many indigenous peoples had lost their jobs and homes. Maori communities had taken part in the recovery operations in cooperation with public bodies and services. The New Zealand Government was fully aware that alcohol and drug abuse, and ensuing mental disorders, were linked to the precarious living conditions of Maori. The by Maori for Maori organization helped community members to overcome their dependency by providing them with clinical and psychiatric care and by assisting them in finding employment. As a result of the claims settlement process, *iwi* were enjoying economic success. That was due to the existence of the Treaty of Waitangi, which established the rights of indigenous peoples to be totally free from corruption, and to the fact that the country, aware of the problems that it faced, was taking adequate steps to resolve them.
5. The police and judicial services were implementing a pilot project designed to gather essential information on victims of crime, including their age and ethnic origin. The country's crime rate was at its lowest level in 30 years. Between 2009 and 2011, the conviction rate for Maori and Pasifika had declined by 13 per cent and 16 per cent, respectively. The overrepresentation of members of those two communities in the criminal justice system was the result of their poor level of education and disadvantaged socioeconomic status rather than of their ethnic origin. To combat that phenomenon, the

Government had taken many measures to “improve public services” and was drawing up a plan to combat youth crime. Educational advisers in youth courts helped young offenders to return to the right path and resume their studies. With regard to adult offenders, emphasis was placed on preventing reoffending and preparing the social reintegration of prisoners about to be released. Police officers in New Zealand were not equipped with firearms and had only recently begun to use electric-shock dart guns (Taser), provided that they had been trained to handle them. The Taser models used were equipped with a video camera which automatically began to record as soon as the gun was pulled out of its holster. Statistics showed that the rate of use of such weapons was 4 per 1,000 arrests in the case of New Zealanders of European origin, and 7 per 1,000 arrests in the case of Maori. Its use was linked to the behaviour of the arrested person rather than to ethnic origin. To prevent reoffending, the Sentencing and Parole Reform Act of 2010, in addition to a sentence, provided for a warning to be given to offenders found guilty of the most serious and violent sexual offences. If they reoffended, they were liable for the maximum penalty for the offence committed and were not eligible for parole. The Act was not particularly unfavourable towards members of racial minorities, unless they reoffended despite having received a warning at the time of their first conviction.

6. **Mr. Bridgman** (New Zealand) said that all the “historical claims” under the Treaty of Waitangi, namely proceedings brought before 21 September 1992, must be settled before 2014. That ambitious aim would not prevent indigenous communities from conducting subsequent negotiations with the Crown. The pace of claim settlements had increased: 56 agreements had been reached since 1994, however 33 of those agreements had been reached in the past four years. Some 80 claims were currently before the Government. Another example of fruitful cooperation between the Crown and Maori was the Marine and Coastal Area (Takutai Moana) Act of 2011 which had repealed the Foreshore and Seabed Act of 2004 – an Act that had deprived Maori of their customary interests in certain parts of the foreshore and seabed. The 2011 Act had been adopted in response to the concerns and criticisms voiced by the Committee, public opinion in New Zealand and the Special Rapporteur on the rights of indigenous peoples. Under the new Act, Maori could bring before the High Court their customary (marine) title applications and could secure protection or recognition of their customary rights through an agreement with the Crown. Currently, 12 requests had been submitted to the Crown and another 12 were pending before the High Court.

7. The bill amending the Human Rights Act had changed the structure of the Human Rights Commission by abolishing the posts of Race Relations Commissioner and Equal Employment Opportunities Commissioner, whose functions had been entrusted to full-time commissioners with a general mandate. With a view to preventing the dissemination of hate speech on the Internet, particularly through social media, in May 2012 the Ministry of Justice had called for the recommendations made by the New Zealand Legal Commission regarding cyberbullying to be implemented as soon as possible. One of the recommendations sought to ensure that, in the digital age, the law minimized the potential risks relating to the use of new information technologies. The second National Human Rights Action Plan, which the Human Rights Commission was responsible for developing in cooperation with the Ministry of Justice and NGOs, should be submitted in late 2014 or early 2015, following the universal periodic review of New Zealand. The Plan would set out the specific objectives that would, if achieved, effectively improve the human rights situation. Over the past five years, 60 per cent of complaints of racial discrimination brought before the Commission had been filed by men; 9 per cent of complaints had been submitted by Pasifika, 16 per cent by Maori, 23 per cent by Asians, 29 per cent by New Zealanders of European descent (Pakeha), and the remaining 24 per cent by other ethnic groups. Where mediation failed, the Commission informed complainants of their right to bring the case before the Human Rights Review Tribunal. Neither the Commission nor the

Government was aware of any major cases of racial discrimination that had recently been brought before the courts.

8. **Mr. Chrisp** (New Zealand) said that the Treaty of Waitangi regulated the relationship between the Crown and Maori, and established the principle of equal rights for Maori and other New Zealand citizens. In accordance with the mandate entrusted to it, the Waitangi Tribunal had adopted a number of principles allowing for the Treaty to be interpreted in the light of social developments and the emergence of new circumstances, which would facilitate the settlement of “contemporary” claims (those submitted since 21 September 1992). Claims concerned the relationship between Maori tertiary institutions (wananga) and the Ministry of Education, and the provision of health services to Maori in a specific region, among others. Laws always referred to the Treaty of Waitangi in terms such as “to give effect to the Treaty of Waitangi” or even “taking into account the provisions of the Treaty of Waitangi”, where the wording used depended on the relevance of the law concerned to indigenous communities. On the issue of whether the recommendations made by the Waitangi Tribunal should be binding, as suggested by the Special Rapporteur on the rights of indigenous peoples, the New Zealand Government considered that the current system of recommendations took into account the interests of all the parties. In addition, section 8I of the Treaty of Waitangi Act 1975 establishing the Tribunal of Waitangi required the Minister of Maori Affairs to report to Parliament each year on the implementation of the recommendations made by the Tribunal. That provided Parliament with the opportunity to follow the progress made in settlement of Treaty claims.

9. The Maori language, *te reo Maori*, was an official language of New Zealand which the Crown was required to protect in cooperation with the members of its community. To that end, the Government was developing a new strategy to support the Maori language, while continuing to finance media broadcasting in that language as well as programmes already implemented under the previous strategy in relation to early childhood and primary education of Maori. The Ministry of Education was also conducting negotiations with the national trust for *kohanga reo* (preschool education centres, where classes were taught in Maori) to follow up on the recommendations made by the Waitangi Tribunal in its report of the inquiry into the matter. The Government had not yet announced by what date it intended to express its views on the findings of the Waitangi Tribunal in respect of the *Wai 262* (Flora and fauna) claim concerning the protection of Maori culture and identity, which had been submitted in 1991. The fact that the investigation had lasted 20 years further complicated matters as some of the findings had become obsolete in the meantime, while other agreements had been reached between the parties.

10. The Government had expressed reservations about article 19 of the United Nations Declaration on the Rights of Indigenous Peoples, concerned that it might be interpreted as giving Maori the right to oppose Government decisions. However, considering it important to consult with indigenous peoples, the Government was holding consultations on general and specific matters in order to protect the legitimate interests of Maori. Regarding oil and gas extraction in the Raukumara basin, the petroleum and minerals department of the Ministry of Economic Development had considered the consultations with Maori to be consistent with the protocols of the petroleum and mineral resources programme, but the tribes concerned had been dissatisfied with the level of consultation, which had caused some tension. A person had been recruited to liaise between the Government and the tribes. During the consultations, Maori had expressed the wish that a specific reference to the Treaty of Waitangi should be included in the Mixed Ownership Model Act. It had also been decided to permit the tribes concerned to purchase shares in the extraction companies on the same conditions as other investors, and to continue the consultations on the interests of Maori with regard to drinking water.

11. Maori lands fell into two categories, namely the lands retained by Maori since the signing of the Treaty of Waitangi, which often belonged to multiple landowners, and the traditional homelands returned to Maori, which were administered by the tribal authorities. With regard to the Trans-Pacific Partnership Agreement, the Government had organized a series of consultations to which it had invited Maori. Furthermore, every free-trade agreement entered into by New Zealand contained an exemption clause allowing the Government to take any measures deemed necessary to fulfil its obligations under the Treaty of Waitangi.

12. **Mr. Singham** (New Zealand) said that 72 per cent of the participants in a survey on perceptions of discrimination conducted in 2012 had considered Asian migrants to be victims of discrimination, while another national survey had shown less than 20 per cent of Asians had considered themselves to be subjected to racial discrimination. The majority of New Zealanders recognized the significant contribution made by migrants to the country's economy. Various private and public initiatives had been initiated to help migrants to find work. The Office of Ethnic Affairs published reports on the potential benefits to employers of hiring migrants. The skills and qualifications of migrants were validated when they registered with the competent professional body. The Office of Ethnic Affairs had introduced a programme to enhance the leadership role of ethnic minority women in order to enable them to gain access to public sector posts. One of the Government's priorities was to combat family violence. A Taskforce for Action on Violence within Families had been established in June 2005 to advise the Family Violence Ministerial Team on how to tackle and eliminate the phenomenon in New Zealand.

13. The Refugee Resettlement Strategy would be implemented in July 2013 to help refugees to become self-sufficient, to participate in public life, to enjoy healthy lives and to have access to education and housing. The Government was trying to prepare for potential mass arrivals of refugees. The bill to amend the Immigration Act, to be adopted in 2013, would simplify the processing of asylum claims and appeals. In the light of the discriminatory remarks made by a Member of Parliament about Muslims, the Office of Ethnic Affairs had introduced a long-term project entitled "Building Bridges", which involved forging links between the Muslim community and the rest of the population. The reference to "ethnic heritage" in paragraph 66 of the State party's report concerned minority groups from Asia, Africa, the Middle East, Latin America and Europe. The Government worked with NGOs cooperating with ethnic minorities and granted them subsidies. Although the Government lacked the necessary resources to safeguard the more than 150 existing community languages, the Ministry of Pacific Island Affairs had developed a Pacific languages framework to help the communities to preserve their languages.

14. **Mr. Powell** (New Zealand) said that the independent police oversight authority had conducted an investigation into the police raids carried out by the police in the Urewera mountains in 2007 and had issued its preliminary findings to the New Zealand police force. The date on which it would publish those findings was not yet known. Regarding racially motivated crime and the implementation by New Zealand of article 4 of the Convention, the Sentencing Act provided that racial hatred was an aggravating circumstance incurring a heavier penalty for any offence. Section 131 of the Human Rights Act made inciting racial disharmony an offence. The Immigration Act 2009 made no distinction between Commonwealth and non-Commonwealth citizens. It prohibited the submission of complaints on immigration legislation to the Human Rights Commission, which did not preclude the application of the principle of non-discrimination. Complaints in that regard should be made to the Immigration and Protection Tribunal. In the light of the universal periodic review, New Zealand had agreed to consider making the declaration under article 14 of the Convention and the Ministry of Justice was examining the issue. The Human Rights Act prohibited discrimination by individuals and the Government. No general principle required that all laws should be interpreted in accordance with the Treaty of

Waitangi. Nevertheless, more than 30 pieces of legislation referred to the provisions of the Treaty, and the Cabinet ensured that proposed laws and policies were consistent with the Treaty of Waitangi.

15. **Mr. Murillo Martínez** asked to what extent the 56 historical agreements signed with Maori met the expectations of the communities concerned. He wished to know whether the issue of the use of electric-shock weapons had been addressed during the consultations between the Government and indigenous communities.

16. **Mr. Bridgman** (New Zealand) said that when a claim was settled, the plaintiff group had to set up a body that represented it and that would receive the settlement assets. Some tribes had leveraged the assets they had received in settlement, which had enabled them to prosper.

17. **Mr. Vázquez** (Country Rapporteur) was concerned about the consequences of abolishing the post of Race Relations Commissioner and asked how the State party intended to enhance the visibility of the Race Relations Commissioner. He understood that some New Zealanders of European descent (Pakeha) tended to underestimate the level of racism faced by some Maori, to the point where they considered themselves to be victims of discrimination given the role played by Maori in public authorities. He invited the delegation to express its views on the subject.

18. **Mr. de Gouttes**, referring to general recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, asked whether the State party recognized customary justice, particularly in civil cases, and used mediation or conciliation to resolve conflicts. He recalled that the Committee was primarily interested in the decision to be taken by the State party concerning the declaration under article 14 of the Convention and invited it to keep the Committee informed of that decision.

19. **Ms. Collins** (New Zealand) said that the Human Rights Amendment Bill which was designed first and foremost to broaden the scope of action of the Race Relations Commission, would be submitted to the relevant parliamentary select committee for consideration and possible revision in the light of the comments received from NGOs and the public. Certain New Zealanders of European descent sometimes felt disadvantaged compared to Maori, whose legitimate claims they found difficult to accept, but the public authorities were striving to change attitudes and to provide forums for expressing any dissatisfaction in a peaceful and constructive way.

20. **Mr. Bridgman** (New Zealand) said that New Zealand recognized only one legal regime, applicable to all citizens, irrespective of their racial origin. However, there was some flexibility in the conduct of proceedings, particularly those of the Waitangi Tribunal, which took place in the Maori language in a traditional court setting. New Zealand placed increasing emphasis on restorative justice procedures in cases involving Maori by establishing State-subsidized programmes implemented by NGOs. New Zealand had not yet made a decision concerning the declaration under article 14 of the Convention, but the issue was being considered.

21. **Ms. Crickley** recommended establishing a group of experts from various sectors within the Race Relations Commission in order to enhance its visibility and encourage multidisciplinary discussions. She stressed the importance of involving all New Zealanders in the development of the strategy to promote the Maori language.

22. **Mr. Huang Yong'an** asked whether young Maori showed interest in learning their language and whether the State party intended to integrate indigenous languages into preschool education and was making efforts to address the shortage of qualified teachers.

He wished to know whether the Ministry of Maori Affairs came under the Ministry of Justice.

23. **Ms. Collins** (New Zealand) explained that the Ministry of Maori Development, the Office of Ethnic Affairs and the Ministry of Pacific Island Affairs all cooperated closely but were not attached to the Ministry of Justice.

24. **Mr. Chrisp** (New Zealand) said that his country had established a total immersion Maori-language programme benefiting about 10,000 Maori children. The programme was proposed as an option in primary and secondary schools. The shortage of teachers remained a problem, which the Government would try to address under the new Maori-language promotion policy.

25. **Mr. Calí Tzay** asked whether Maori history and culture were taught at school.

26. **Mr. Saidou** asked what measures the State party took to ensure that businesses fulfilled their social responsibility and whether the Human Rights Commission had local branches.

27. **Mr. Kemal** recommended that the State party should harness the potential of new technologies to facilitate Maori-language learning. He wished to know whether the State party had adopted a strategy to combat the dissemination of discriminatory content on the Internet.

28. **Ms. Collins** (New Zealand) said that her country was relatively unaffected by the dissemination of racist or insulting content on the Internet, but that the authorities were fully aware of the risks involved in new technologies and would shortly make cyberbullying an offence. Mediation would be the preferred approach to resolving that type of case.

29. **Mr. Vázquez** (Country Rapporteur) welcomed the fruitful dialogue that had been established with the delegation. Overall, New Zealand had made significant achievements in combating discrimination and had adopted best practices in several areas. He hoped that the Government would take into account the recommendations addressed to it, which would focus on asylum legislation, water management and consultation with Maori in areas of interest to them.

30. **Ms. Collins** (New Zealand) said that the competent authorities would submit written replies to the questions that the delegation had been unable to answer. New Zealand had adopted a realistic and proactive approach to combating racial discrimination and intended to continue its efforts by providing adequate follow-up to the Committee's recommendations.

The meeting rose at 1 p.m.