



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination Ninety-third session

Summary record of the 2568th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 15 August 2017, at 3 p.m.

Chair: Ms. Crickley

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The meeting was called to order at 3 p.m.

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

Combined twenty-first and twenty-second periodic reports of New Zealand (CERD/C/NZL/21-22; CERD/C/NZL/Q/21-22)

1. *At the invitation of the Chair, the delegation of New Zealand took places at the Committee table.*

2. **Mr. Bridgman** (New Zealand) said that his Government was firmly committed to meeting its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, and took a strategic and system-wide approach to ending direct and indirect discrimination against ethnic minorities. The measures taken included improving access to maternity and child health services for Pasifika peoples and access to reintegration services for young Maori offenders. The strengthening partnership between the Government and the Maori people was a source of pride; although historically the rights of the Maori had largely been ignored, Maori perspectives now commonly informed decision-making and several government departments were working to reinforce their internal procedures to ensure that they took Maori-Crown relationships into consideration.

3. Based on the principles of partnership, protection and participation, the Treaty of Waitangi was the source of human rights for all New Zealanders and provided a framework for the State to promote, protect and respect indigenous rights. The Government had accepted a moral obligation to resolve historical Maori grievances in accordance with the principles of the treaty by means of treaty settlements, which had the force of law and whose durability was safeguarded by the Post-Settlement Commitments Unit of the Ministry of Justice. Such settlements could comprise cultural, financial and commercial redress, although the most important component of the redress granted was the Crown apology.

4. One of the most ethnically diverse countries in the world, New Zealand was expected to become even more so in future. In the early twentieth century, most immigrants hailed from England, Scotland, Wales and Ireland; the second half of the century had seen the beginning of a significant influx of Pacific Islanders. It was predicted that the nation's Asian, Maori, Middle Eastern, Latin American and African populations would grow in the coming decades. The Office of Ethnic Communities promoted the economic and social benefits of ethnic diversity, seeking to ensure the fair and equitable treatment of ethnic minorities. That diversity, it should be noted, was well reflected in the Government, which included members of parliament who were of Korean, Chinese and Indian descent. In addition, the degree of Maori and Pasifika representation among members of parliament was higher than the corresponding proportion of the general population.

5. Nevertheless, significant socioeconomic inequalities persisted among ethnic communities. Maori and Pasifika groups were overrepresented in the criminal justice, social welfare and State care systems; one of the Government's priorities was to reduce the incarceration rate among those population groups. Initiatives such as dedicated public funds and formal agreements with Maori and Pasifika communities sought to achieve that end. In comparison with the general population, Maori and Pasifika peoples fared worse in the areas of health, education, employment and housing; programmes such as Whānau Ora took a family-centred approach to improving community outcomes in those sectors. The Government had also implemented a Maori education strategy and a Pasifika education plan, two culturally responsive approaches which were based on the principles of participation, engagement and achievement. In addition, it had funded scholarships for students in health sciences in order to increase the number of Maori and Pasifika health workers, another State priority.

6. The Government sought to address inequalities by identifying the needs of the country's most vulnerable citizens and applying rigorous evidence-based practices to meet those needs through investment in social services, following a so-called "social investment" approach. Although it did not specifically target interventions by ethnic group, the approach

aimed to tailor solutions so that they best served disadvantaged groups, which included the Maori, Pasifika and other ethnic minorities.

7. Several steps had been taken to address the employment, economic and housing issues which affected ethnic minorities in the country. The Government had established a programme to reduce Maori unemployment to 7.5 per cent by 2021 and one of the priorities of the Business Growth Agenda was to raise Maori and Pasifika workforce participation levels to match those of the rest of the population. The Pacific Economic Strategy, meanwhile, sought to ensure more sustainable job opportunities for Pasifika people. A child material-hardship package totalling 790 million New Zealand dollars had come into effect in 2016, and helped to counter poverty, particularly among Maori and Pasifika communities. Lastly, the Maori Housing Strategy aimed to improve housing and increase housing choices for the community.

8. In response to the Committee's 2013 recommendation regarding discrimination against migrants, the Government had approved the New Zealand Migrant Settlement and Integration Strategy. The strategy identified five interconnected and measurable settlement and integration outcome areas, namely, employment; education and training; English language proficiency; health and well-being; and inclusion.

9. Although the Maori and other ethnic minorities still faced direct and indirect discrimination, the Government had acknowledged responsibility for such inequalities and was taking appropriate action. Progress was being made towards ultimately achieving a society which realized the full benefits of ethnic diversity.

10. **Ms. Devoy** (New Zealand) said that New Zealand was an ethnically diverse country that had acknowledged past wrongdoings and was working to resolve the historical grievances of the indigenous community. However, more needed to be done to promote social cohesion and improve race relations. As a matter of priority, the Government must review existing structures and processes in the light of recent demographic shifts. Prior consultation with ethnic minorities was key to the policymaking process.

11. In the recent past, an overwhelmingly disproportionate number of Maori children had been arbitrarily placed in State care and subjected to physical, psychological and sexual abuse. For many commentators, that treatment had led to the current situation whereby Maori made up over half the prison population, despite accounting for only 14 per cent of the national population. There was a need for a full and public inquiry into the systematic abuse of children and vulnerable adults with disabilities held in State institutions. The root causes of systemic discrimination must be identified and eliminated through a cohesive, justice-system-wide approach. The implementation of the Treaty of Waitangi must be strengthened and indigenous rights afforded more protection. Prior consultation with the Maori was vital with regard to such issues as legislative proposals on child protection and landownership.

12. There was a need for a centralized system for recording data on hate crimes. In 2016, a major campaign backed by the Government and the United Nations Educational, Scientific and Cultural Organization (UNESCO) had been launched to encourage a national conversation about racial prejudice and intolerance.

13. Although some progress had been made regarding economic and social participation, the Maori and Pasifika peoples suffered from rising income inequality and poverty and, together with persons of Asian heritage, were more likely to live in cold, overcrowded homes than New Zealanders of European origin. In order to address the various health issues created by the housing situation, the Government must do more to improve the quality of accommodation.

14. The Government had rebuilt the Mangere Refugee Resettlement Centre. However, the annual refugee quota had not been increased for three decades. Measures must be taken to ensure that all asylum seekers and refugees had full access to housing, mental health care and other services.

15. **Ms. McDougall** (Country Rapporteur) said that the Government, NGOs and the New Zealand Human Rights Commission had provided the Committee with a wealth of

detailed information. In particular, the State party had submitted a significant amount of high-quality statistical data in its follow-up report.

16. The New Zealand authorities were to be congratulated on having recognized the Treaty of Waitangi as a founding document of the nation and on having undertaken to raise public awareness of that text. Other positive elements included the use of the Maori language in statutory titles and official documents, the attempt to reflect Maori cultural norms in all public policies and the continued mandate of the Race Relations Commissioner. In addition, mention should be made of the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, and of the State party's willingness to apologize, on behalf of the Crown, for historical injustices and to acknowledge that inequalities existed between different ethnic groups with regard to the enjoyment of economic and social rights and that action must be taken in that regard.

17. Turning to the implementation of the recommendations contained in the Committee's 2013 concluding observations (CERD/C/NZL/CO/18-20), the Committee was concerned at the current situation whereby the New Zealand Human Rights Commission took guidance from the Ministry of Justice with regard to the setting and monitoring of strategic directions and targets. As a result, the Race Relations Commissioner, who reported to the Commission, did not seem to enjoy full independence.

18. She welcomed the fact that the national action plan on human rights used universal periodic review recommendations as targets and that provision was made for consultation on the plan through an interactive web site, but she would appreciate more information on the actual content of the plan.

19. She noted that no progress had been made with regard to the full protection of the rights of indigenous peoples under the Treaty of Waitangi and the Convention. Nor had there been any positive developments relating to the constitutional recognition of the Treaty of Waitangi, or to arrangements for power-sharing between the *hapū*, or subtribes, and the Crown in line with that instrument. Moreover, the Treaty did not seem to have been explicitly and systematically incorporated into legislative and policy initiatives. The recommendations of the Constitutional Advisory Panel, which merely referred to the need to continue discussions and increase efforts to educate the public with regard to the Treaty, were disappointing.

20. It was extremely unfortunate that the decisions of the Waitangi Tribunal were not binding in nature. No action had been taken to ensure that departures from the Tribunal's decisions were accompanied by a written justification by the Government, nor had any reason been given for inaction in that regard.

21. Information on any measures taken to implement the Committee's recommendation on the review of the Marine and Coastal Area (Takutai Moana) Act 2011, relating to the full enjoyment by Maori of traditionally owned land and resources and of access to places of cultural and traditional significance to them, would be welcome. She asked whether any steps had been taken to announce a timetable for action on the recommendations in the Waitangi Tribunal's 2011 report on the Wai 262 claim, regarding Maori intellectual and cultural property rights relating to traditional knowledge and genetic and biological resources.

22. The Government's failure to entrench the Treaty of Waitangi in constitutional law could perhaps be explained by the fact that the instrument clearly provided for the inalienable right of the Maori to self-determination and freehold title to all the lands of the territory. She wished to point out that general recommendation No. 23 of the Committee called upon States parties "to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources". Moreover, general recommendation No. 23 and the United Nations Declaration on the Rights of Indigenous Peoples both set out a minimum standard whereby no decisions affecting the rights and interests of indigenous peoples were to be taken without their free, prior and informed consent. She asked whether that standard had been met in respect of the New Plymouth District Council (Waitara Lands) Bill, Ihumatao and the Otuaatua Stonefields Historic Reserve, the Kermadec Ocean Sanctuary, deep-sea oil, seismic exploration and

drilling projects, the Marine and Coastal Area (Takutai Moana) Act 2011, and freshwater and geothermal resources.

23. Information on the standards and principles governing the Waitangi Tribunal claims-settlement process, the percentage of land subjected to the process to date, the percentage of decisions under which the Maori had been allowed to retain their land and the amounts of compensation awarded and the method by which they had been calculated would be useful. Although consultation was carried out with the Maori and efforts had been made to mainstream Maori issues, the State continued to dominate the decision-making process. Moreover, the current situation relating to land rights was completely one-sided, to the detriment of the Maori.

24. She asked why the State party had not carried out an official and independent inquiry into the arbitrary placement in care of large numbers of Maori children over several decades and their subjection to physical, sexual and psychological abuse. The authorities had not even met with the petitioners in that regard. Moreover, provisions allowing for the placement of Maori children with the *whānau* (extended family), *hapū* (subtribe) or *iwi* (tribe) had been removed from a recent piece of child-protection legislation prior to its adoption. Noting that there were plans to introduce one year's military training for young offenders, she asked whether the delegation could provide any information in that regard and whether the State party had taken account of the disproportionate effect that such a measure would have on Maori youth.

The meeting was suspended at 4.25 p.m. and resumed at 4.35 p.m.

25. **Mr. Kut** noted with satisfaction that the information requested by the Committee in its previous concluding observations regarding the State party's follow-up to specific recommendations had been received within one year of the State party's previous review.

26. He said that the Committee welcomed the adoption of the second national human rights action plan for 2015-2019, but would still like to receive more information on its contents, the resources allocated for its implementation and its impact thus far. Likewise, it would be useful to hear more about the State party's approach to implementing the Harmful Digital Communications Act 2015 and its impact on the ground. The delegation should also describe the steps taken by the State party to give effect to the Waitangi Tribunal's recommendations on Maori intellectual and cultural property rights and explain how laws such as the Ka Mate Attribution Act 2014 contributed to protecting those rights. He would also appreciate more information on the Maori Language Strategy, the Maori Language (Te Reo Māori) Bill and the Achieving through Pasifika Languages programme.

27. **Mr. Murillo Martínez** said that the Committee remained concerned by the significant overrepresentation of the Maori in the State party's prison population. Noting that the State party had set itself the goal of reducing recidivism by 25 per cent for all offenders by 2017, especially among the Maori, he asked whether it had achieved that goal and, if not, what measures it envisaged taking to remedy that situation. He also wished to know what percentage of the prison population had access to social reintegration programmes and to what extent such programmes took into account the cultural specificities of the Maori.

28. The Committee had received reports that, in the intercultural dialogue on dealing with the past, due consideration was not given to Maori customary law, even though it was part of the State party's legal system. He would appreciate it if the delegation would comment on the veracity of those reports and, if they were accurate, describe the measures being taken by the State party to rectify that oversight.

29. **Mr. Yeung Sik Yuen** said that the Committee had been given to understand that the criteria for acceptance of complaints of hate speech and incitement to racial hatred brought under sections 61 and 131 of the Human Rights Act were very stringent and that the principle of the reversal of the burden of proof did not seem to apply in such cases. He had been surprised to learn that, in the case of *Wall v. Fairfax New Zealand Limited*, which had been brought in response to the publication of two cartoons deemed by the plaintiff to be insulting to and to stir up racial hatred against the Maori and Pasifika communities, the Human Rights Review Tribunal had ruled that their publication did not constitute a

violation of section 61 of the Human Rights Act, despite the cartoons being highly offensive. It was his understanding that the plaintiff had subsequently appealed the Tribunal's decision before the High Court. The Committee would like to be informed of the outcome of that appeal.

30. Noting that hostility towards a group of persons by reason of their race, colour or nationality was considered an aggravating circumstance if an offence was partly or wholly committed on that basis, he said that the State party should step up its efforts to collect statistical data on hate crimes, disaggregated by race and other characteristics, and share those data with the Committee.

31. According to the submission of the New Zealand Human Rights Commission, the State party had the seventh highest incarceration rate of all the member countries of the Organization for Economic Cooperation and Development. The State party should take heed of the Commission's observation that, if Maori were imprisoned at the same rate as non-Maori, the total prison population would be halved, and should take steps to ensure that the same approach to sentencing was followed for Maori and non-Maori alike.

32. **The Chair** asked whether the Government had granted the request made by the Human Rights Commission for a consultation on the appropriateness of the existing criteria for acceptance of complaints of hate speech and incitement to racial hatred brought under sections 61 and 131 of the Human Rights Act.

33. **Ms. Shepherd** said that, in its previous concluding observations, the Committee had recommended that the State party should consider strengthening its special measures to increase the level of educational attainment of Maori and Pasifika children. While the Committee welcomed the efforts of the Ministry of Education to give effect to that recommendation, which had led to the increased enrolment of Maori children in early childhood education, a reduced Maori dropout rate at the secondary level and increased Maori participation in higher education, more needed to be done to improve the academic performance of Maori and Pasifika students. She asked what measures the State party envisaged taking to that end and how it would measure their impact. Although the Pasifika Education Plan had brought about an improvement in terms of Pasifika students' access to education, academic performance and level of bilingualism, she would be interested to know whether those positive outcomes translated into commensurate upward social mobility, as Maori and Pasifika students were still lagging behind other ethnic groups. It would be useful to receive reliable socioeconomic data that attested to the effectiveness or otherwise of the State party's efforts to increase the level of educational attainment of Maori and Pasifika students, including data relating to employment. She hoped that the Pacific Economic Strategy would bear fruit and help Pasifika students access more skilled jobs.

34. The Committee had received reports that, despite the Maori language enjoying special protection under the Treaty of Waitangi, the State party was not sufficiently committed to preserving it at all levels of the education system and that it was often sidelined. As a result, there were fewer children proficient in the language and the Committee had been informed that children could even be punished for using it instead of English. She asked whether educators could be held accountable for breaching the terms of the Treaty relating to the preservation of the Maori language and how the State party planned to prevent the language from falling into disuse.

35. **Mr. Marugán** said that, while the State party's decision to increase its annual refugee resettlement quota from 750 to 1,000 in 2018 was laudable, it might consider increasing that quota further. The Committee had received reports that refugees who arrived in New Zealand under the Refugee Quota Programme were treated differently to other categories of refugee. Indeed, it was his understanding that only the family members of refugees who had arrived in New Zealand under the Refugee Quota Programme were eligible to apply for family reunification and that those individuals received little or no help from the State party to cover travel and housing expenses. He asked whether his understanding of the situation was correct and, if so, whether the State party planned to revise its existing family reunification policy. There was also evidence to suggest that many

refugees struggled to access housing in New Zealand. He asked how the State party guaranteed the right of refugees to housing in practice.

36. The Committee had been given to understand that, apart from the recently rebuilt Mangere Refugee Resettlement Centre, there were no specialized holding centres for migrants, who could be detained in any police station, and that detention conditions for migrants tended to be poor. He asked how the State party planned to ensure that all migrants enjoyed decent detention conditions and whether NGOs had access to all places of detention for migrants. The Committee had also been informed that, despite being an open centre, the Mangere Refugee Resettlement Centre placed restrictions on the freedom of movement of its residents. He asked whether that information was correct and, if so, to what extent the right of residents to leave the facility was restricted. Noting that Immigration New Zealand worked closely with the Department of Corrections to care for the small number of asylum seekers detained in correctional facilities, he said that it would be useful to hear more about the nature of that partnership and the conditions in which asylum seekers were detained in such facilities. Did NGOs working with migrants receive financial support from the Government?

37. The delegation should also describe the measures taken by the State party to address the persistent discrimination suffered by migrants in access to employment and indicate what progress had been made in introducing a system for the objective assessment of their academic qualifications as a means of reducing the high number of qualified individuals in low-paying jobs. The Committee remained concerned about the harsh working conditions endured by seasonal workers and international students which, in some cases, amounted to exploitation. He would appreciate more information on the national strategy to curb the exploitation of migrants and on the role of the Labour Inspectorate in preventing racial discrimination and the abuse of migrants in the workplace, including the frequency of visits by labour inspectors to companies known to employ migrants, the violations most frequently detected, the sanctions imposed on offending employers and the number of cases involving racial discrimination. Did the Labour Inspectorate follow a specific action plan for combating racial discrimination in the workplace?

38. Noting that the Human Rights Commission had received 1,102 complaints of discrimination on the basis of race, colour, ethnic or national origin during the reporting period, he said that it would be useful to know the subject of those complaints, when they had been lodged, how many had been resolved or referred to the Human Rights Review Tribunal, what sanctions had been imposed on the perpetrators and what reparation had been provided to the victims.

39. He had been surprised to learn that only one case of human trafficking had been detected in 2017 and would like to know the reasons behind that implausibly low number. The delegation should outline the State party's policy for combating human trafficking for the purposes of sexual and labour exploitation and describe the content of the training provided to law enforcement officers and members of the judiciary.

40. **Mr. Calí Tzay** said that the historical wrongs done to the Maori were manifold; they included the introduction of residential schools, which had resulted in their deculturation and assimilation into Western culture and persistent ill-treatment and violations of their rights. Recalling that, in 2012, the Prime Minister of New Zealand had issued a formal apology to the Maori for the historical injustices that they had suffered at the hands of the Crown, he asked whether appropriate investigation, reconciliation and compensation mechanisms had been created following the apology. He found it regrettable that the Housing Accords and Special Housing Areas Act 2013 effectively authorized the construction of residential homes on protected Maori lands, in violation of the Treaty of Waitangi. The high levels of violence and criminality that characterized Maori communities and the overrepresentation of the Maori in the country's prison system were a direct consequence of their deculturation. The State party should support the efforts of Maori communities to recover their language and culture in order to improve the current situation. The recognition by the State party of Maori lands and the Maori's right of ownership of those lands was a precondition for their participation in community life and their enjoyment of the right to self-determination enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, which the State party claimed to wholeheartedly support. He asked

how the State party intended to ensure the effective realization of Maori land rights and create the conditions necessary for the full enjoyment by the Maori of their rights as an indigenous people.

41. **Mr. Avtonomov** said that he wished to know whether the precedent established in the landmark *Wi Parata v. Bishop of Wellington* case, in which the Treaty of Waitangi had been dismissed as a “simple nullity”, had been set aside in any subsequent legal cases. In addition, it would be helpful if the delegation could provide examples of court decisions in which Maori customary law had been recognized, clarify the current legal situation regarding the exercise of Maori land and resource rights, and indicate whether there were plans to adopt measures to protect the Moriori community.

42. **Mr. Khalaf** said that he would be grateful for clarification regarding the legal status of the Treaty of Waitangi, which was described in the State party report variously as a treaty and as a founding document of government in New Zealand, and regarding the measures taken to give full effect to its provisions. It would be useful if the delegation could indicate which specific law protected the rights enshrined in the Convention and provide comprehensive data on hate crimes, including data on the specific crimes that had been tried and the charges brought against the perpetrators.

43. **Mr. Amir** said that he would appreciate updated information on the use and occupation of marine and coastal areas by Maori communities, the protection of Maori land rights and the prevalence of alcoholism in Maori communities, in particular among Maori young people.

44. **Mr. Kemal** said that he wished to know the precise proportion of the prison population that was Maori and whether, in the delegation’s view, the Government placed sufficient emphasis on combating the high level of criminality in Maori communities. In that connection, he would urge the State party to prioritize preventive measures and to consider the possibility of imposing, where appropriate, sentences that were more in keeping with Maori traditions than standard custodial sentences.

45. **Mr. Bossuyt** said that he would be grateful if the delegation could explain the basic principles of the State party’s migration policy and indicate which categories of children unlawfully present in New Zealand were not entitled to free education and how many asylum seekers were currently present in the country. He wished to emphasize that asylum seekers should be held separately and treated differently from criminals.

46. **Ms. Mohamed** said that she would like to know whether the submission of a claim to the Human Rights Review Tribunal was the only avenue of redress available to a person who had been subjected to discrimination on grounds of race, skin colour or ethnic origin and whether compensation was automatically awarded to victims. In addition, she would appreciate clarification on whether the Maori language was taught in State schools.

47. **Mr. Yeung Sik Yuen** said that he wished to highlight his concerns regarding the proposal to establish a special housing area in Ihumātao on land that had allegedly been seized from Maori communities in the nineteenth century.

48. **Mr. Marugán** said that he would be grateful if the delegation could indicate whether the success of the Migrant Settlement and Integration Strategy across its five measurable outcome areas had been evaluated and, if so, what the results had been. In addition, it was unclear which of the specific indicators used to measure the success of the Strategy concerned discrimination and which of them were used to measure its success in the area of education and training. In that connection, it would be helpful to learn what steps had been taken to improve the access of migrants to high-quality employment. Lastly, he wished to know whether the Strategy provided for measures to support unaccompanied minors, whether any such measures were currently being implemented and what the State party’s policy was in that regard.

The meeting rose at 6 p.m.