



International Convention
on the Elimination
of all Forms of
Racial Discrimination

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

Sixty-sixth session

21 February – 11 March 2005

Decision 1 (66)

New Zealand Foreshore and Seabed Act 2004

The Committee has reviewed, under its early warning and urgent action procedure, the compatibility of the New Zealand Foreshore and Seabed Act 2004 with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, in the light of information received both from the Government of New Zealand and a number of Maori non-governmental organizations and taking into account its general recommendation XXIII (1997) on indigenous peoples.

The Committee appreciates having had the opportunity to engage in a constructive dialogue with the State party at its 1680th meeting on 25 February 2005, and also appreciates the State party's written and oral responses to its requests for information related to the legislation, including those submitted on 17 February and 9 March 2005.

The Committee remains concerned about the political atmosphere that developed in New Zealand following the Court of Appeal's decision in the *Ngati Apa* case, which provided the backdrop to the drafting and enactment of the legislation. Recalling the State party's obligations under article 2, paragraph 1 (d), and article 4 of the Convention, it hopes that all actors in New Zealand will refrain from exploiting racial tensions for their own political advantage.

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While noting the explanation offered by the State party, the Committee is concerned at the apparent haste with which the legislation was enacted and that insufficient consideration may have been given to alternative responses to the *Ngati Apa* decision, which might have accommodated Maori rights within a framework more acceptable to both the Maori and all other New Zealanders. In this regard, the Committee regrets that the processes of consultation did not appreciably narrow the differences between the various parties on this issue.

The Committee notes the scale of opposition to the legislation among the group most directly affected by its provisions, the Maori, and their very strong perception that the legislation discriminates against them.

Bearing in mind the complexity of the issues involved, the legislation appears to the Committee, on balance, to contain discriminatory aspects against the Maori, in particular in its extinguishment of the possibility of establishing Maori customary titles over the foreshore and seabed and its failure to provide a guaranteed right of redress, notwithstanding the State party's obligations under articles 5 and 6 of the Convention.

The Committee acknowledges with appreciation the State party's tradition of negotiation with the Maori on all matters concerning them, and urges the State party, in a spirit of goodwill and in accordance with the ideals of the Waitangi Treaty, to resume dialogue with the Maori community with regard to the legislation, in order to seek ways of mitigating its discriminatory effects, including through legislative amendment, where necessary.

The Committee requests the State party to monitor closely the implementation of the Foreshore and Seabed Act, its impact on the Maori population and the developing state of race relations in New Zealand, and to take steps to minimize any negative effects, especially by way of a flexible application of the legislation and by broadening the scope of redress available to the Maori.

The Committee has noted with satisfaction the State party's intention to submit its fifteenth periodic report by the end of 2005, and

requests the State party to include full information on the state of implementation of the Foreshore and Seabed Act in the report.

1700th meeting

11 March 2005