



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE

Seventy-fifth session

SUMMARY RECORD OF THE 2015th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 9 July 2002, at 3 p.m.

Chairperson: Mr. BHAGWATI

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 40 OF THE COVENANT (continued)

Fourth periodic report of New Zealand

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

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 40 OF THE COVENANT (agenda item 6) (continued)**

Fourth periodic report of New Zealand (CCPR/C/NZL/2001/4; CCPR/C/74/L/NZL;
written replies by New Zealand, document without a symbol distributed in English only)

1. At the invitation of the Chairperson, Mr. Caughley, Ms. Gwyn, Mr. Paki, Mr. Butler and Ms. Geels (New Zealand) took places at the Committee table.

2. The CHAIRPERSON welcomed the delegation of New Zealand and invited the head of the delegation to make his introductory statement.

3. Mr. CAUGHLEY (New Zealand) said that the valuable dialogue that had been established with the Committee in the course of the consideration of its previous periodic reports had reinforced New Zealand's view of the reporting process as essential to the effective working of the human rights treaty body system. The Committee's comments and suggestions arising from its consideration of the third periodic report (CCPR/C/64/Add.10) had been taken into account at a number of the points in the fourth report, which covered the period from January 1994 to December 1996 and outlined major developments up to November 2000. In a new procedure the current report had been circulated in final draft form to a range of individuals and non-governmental organizations (NGOs) for comment. Five submissions had been received and had been considered in the preparation of the final text. In addition, the report had been made available to the public and the Committee's concluding observations and recommendations would be publicized through a variety of channels. The fourth periodic report highlighted a number of significant developments such as the entry into force of the Human Rights Act 1993; the organization of the first elections under the "mixed member proportional" system in 1996; the enactment of the Domestic Violence Act 1995; the strengthened commitment of the Government to the Maori, in particular in the process of settling claims under the Treaty of Waitangi and in the elimination of disparities between Maori and non-Maori; the increasing significance of the Bill of Rights Act 1990 in judicial proceedings, government decision-making and parliamentary deliberations; and the greater use of the Covenant in judicial proceedings and within the Government.

4. Developments since the submission of the current report included the following: Parliament had adopted the Human Rights Amendment Act in 2001 and new provisions for parental leave in March 2002, and had promulgated the Employment Relations Act in October 2000. It had also taken a range of initiatives in order to target the disadvantages faced by the Maori and promote development programmes administered by the Maori themselves.

5. Following the terrorist attacks against the United States on 11 September 2001, his Government had contributed to international efforts to fight terrorism by participating in a wide range of diplomatic, legal, financial, humanitarian, intelligence and military activities. It had in particular advanced two pieces of legislation designed to implement Security Council resolution 1373 (2001). The implementation of measures to combat terrorism was not without its difficulties, as was reflected in a recent decision of the New Zealand High Court which had found that Immigration Service administrative instructions concerning detention of

asylum-seekers were not consistent with certain provisions of the Convention relating to the Status of Refugees. Lastly, at the international level, New Zealand had ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in 2000 and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in 2001. Work was also proceeding with a view to the ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. New Zealand had further ratified ILO's Worst Forms of Child Labour Convention (No. 182) in 2001. It continued to participate actively in the International Decade of the World's Indigenous People and had been represented at the inaugural meeting of the Permanent Forum on Indigenous Issues. It should be noted that by the end of 2003 New Zealand would be completely up-to-date with its reporting obligations under the six principal human rights instruments. New Zealand's ratification of the Covenant in 1978 had extended its effects to the Cook Islands and Niue, and to Tokelau. The Cook Islands and Niue were self-governing territories in free association with New Zealand and were responsible for preparing their own treaty body reports. Tokelau, however, was New Zealand's last remaining non-self-governing territory and the implementation of the Covenant on its territory was described in a section of the report before the Committee. It should be mentioned that New Zealand had, since 1994, devolved a series of executive and legislative powers to Tokelau, relating particularly to maintaining peace and order and to fiscal matters.

6. The CHAIRPERSON thanked Mr. Caughey for his introduction and invited the delegation of New Zealand to reply to questions 1 to 13 of the list of issues (CCPR/C/74/L/NZL), which read:

"Constitutional and legal framework within which the Covenant and the Optional Protocol are implemented (art. 2)"

1. Please provide information on the results of the Consistency 2000 Project and on any significant inconsistencies with the provisions of the Covenant that were identified. Describe the effect of the new Human Rights Amendment Bill and the changes it introduces.
2. Please explain what steps have been taken to protect all Covenant rights under national law in areas where deficiencies have emerged (see paragraphs 46 and 241). What remedies are available to persons whose rights under the Covenant have not been fully incorporated? In particular, how may a citizen seek remedy in a case of discrimination not covered by the Human Rights Act 1993 or the New Zealand Bill of Rights Act 1990?
3. Please explain further how the State party ensures that new legislative proposals are not consistent with the Covenant. How are the scope and application of the relevant international obligations determined? What measures exist to ensure that new policy and practice, as well as legislation, are consistent with the Covenant (paras. 47 and 48)?
4. Please indicate what steps the State party is taking to consider the withdrawal of its reservations to the Covenant.

Gender equality and the principle of non-discrimination (arts. 3 and 26)

5. Please provide information on the provisions that regulate maternity leave in New Zealand. Describe the efforts that have been made to increase awareness of existing unpaid parental leave rights.

6. What measures have been taken to reduce the gender pay gap (paras. 87 and 88)?

7. What measures have been taken with regard to the Committee's concern (CCPR/C/79/Add.47, para. 182) relating to the disadvantages experienced by Maori concerning access to health care, education and employment?

Liberty and security of the person; treatment of prisoners and other detainees; right to a fair trial (arts. 7, 9, 10 and 14)

8. Please provide further information on the Intellectual Disability (Compulsory Care) Bill which was introduced in Parliament in October 1999. In particular, describe the regime the Bill proposes for compulsory detention, how it is to be determined that a patient poses 'a substantial risk of danger to others', and what avenues of appeal or review against these decisions are proposed (para. 103).

9. Please provide information on the results of investigations by the Police Complaints Authority into alleged human rights violations and the punishments imposed on members of the police found to have committed these violations, as well as the remedies provided to victims (paras. 97-100).

10. Concerning preventive detention, please describe any measures taken to repeal the provision that permits punishment for possible future crimes. Of those who have been subjected to preventive detention, how many belong to the Maori minority group?

11. What measures have been taken to ensure that private companies contracted to provide prisoner escort and custodial services comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners? Please explain what avenues to establish civil and criminal liability may be pursued by prisoners alleging violations of their rights by private guards (para. 137).

12. How many young offenders are currently imprisoned with adults, and what has been the trend over the reporting period? Please indicate which of the various reasons given in the State party's reservation are invoked in these cases. What criteria are applied in determining that incarceration with adults would be of benefit in a particular case?

13. Please clarify the meaning of the following sentence of paragraph 182 of the report: '... there should be no general defence available to a person charged with possession of an objectionable publication, for example, child pornography'. How many convictions on such charges have occurred over the reporting period?"

7. Ms. GWYN (New Zealand) said in response to question 1 that, in the context of the Consistency 2000 Project, the National Human Rights Commission had not found any serious violations of part II of the Human Rights Act 1993 or of articles 2 or 26 of the Covenant in the country's legislation, regulations, policies or administrative practices. She considered, however, that some areas, including same-sex relationships, age of responsibility, retirement, family and dependants or language, should be addressed systematically in order to avoid discrimination. Following the 1999 general election, a number of government departments had identified many legislative provisions as potentially inconsistent with the Human Rights Act and constituting discrimination. Following the audit, the Ministry of Justice and the Ministry of Social Development had continued their work on the re-evaluation of human rights protection mechanisms. A similar process had been undertaken in 2001, directed by the Ministry of Justice and in consultation with the National Human Rights Commission. Once again, government departments had been requested to identify any inconsistencies between the Human Rights Act and legislation, policies and practices. The exercise had revealed significant problems with the application of the Act - originally intended simply to govern relations between citizens - to government activities. It was following that exercise and other consultations that the Human Rights Amendment Act had been adopted. The new Act had given rise to a new Human Rights Commission with a human rights commissioner, a race relations commissioner and an equal employment opportunities commissioner; its primary function was to promote respect for human rights in New Zealand society, encourage the development of harmonious relations between individuals and diverse groups in society, and develop a national plan of action on human rights. An "office of human rights proceedings" had also been created within the Commission. Any complaints relating to discrimination could henceforth be made to the Commission, whatever the government department concerned. They were dealt with, under the Human Rights Act, through a dispute resolution process that was quicker and more informal than previously. If the dispute could not be resolved, the complainant could take the case to the Human Rights Review Tribunal or to the Director of Human Rights Proceedings, requesting him to bring the complaint before the Tribunal. When a law or a regulation was found to contain unjustified discrimination, the Tribunal could make a declaration of inconsistency. The minister responsible must then table the declaration and the Government's response in Parliament.

8. Responding to question 2 and the Committee's concern about the non-inclusion of language as a ground for discrimination under the Human Rights Act and the New Zealand Bill of Rights, she noted that the Human Rights Commission had stated in its Consistency 2000 report that language was an inherent component of the "country of origin", cited in the Act as a ground for discrimination. With reference to the remedies available, also mentioned in question 2, it should be pointed out that any individual affected by a decision, recommendation, act or omission by a government department or organization covered by the Ombudsman Act could complain to an Ombudsman. After investigating the complaint, the Ombudsman could transmit his opinion to the appropriate department or organization and make such recommendations as he saw fit. He could also request the department or organization to notify him of any steps it proposed to take in order to give effect to his recommendations. If no action were taken, the Ombudsman could send a copy of his report and recommendations to the Prime Minister and thereafter make such report to the House of Representatives on the matter as he thought fit. Persons who felt that their rights under the Covenant had not been fully

incorporated could bring the issue to the attention of the Human Rights Commission, which could in turn report to the Prime Minister. Lastly, New Zealand citizens who considered that their rights under the Covenant had been breached could address a communication to the United Nations Human Rights Committee under the first Optional Protocol to the Covenant.

9. Referring to question 3, she said that ministers must, when considering new legislation, confirm compliance with applicable legal principles or obligations. In particular, they must draw attention to any aspects that had implications for the principles of the Treaty of Waitangi, the rights and freedoms contained in the New Zealand Bill of Rights Act or the Human Rights Act, the principles of the Privacy Act or New Zealand's international obligations, and were required to conform to the guidelines of the Legislation Advisory Committee. All policy papers to Cabinet and Cabinet committees must include a statement about any inconsistencies of the proposal with the Human Rights Act and how the issue might be resolved. Similarly, all policy and legislative proposals submitted to the Cabinet Social Equity Committee required a gender implications statement.

10. Mr. CAUGHLEY (New Zealand), replying to question 4, said that his Government was undertaking a review of New Zealand's reservations to the major international human rights instruments to which it was a party, bearing in mind developments in international case law and the international context.

11. Ms. GWYN (New Zealand), replying to question 5, said that Parliament had passed the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act in March 2002. Under the Act, women would be able to qualify for 12 weeks' paid parental leave following the birth or adoption of a child. The Ministry of Labour had a range of publications on the subject and provided information on its website. With reference to question 6, she said that the Government had taken various measures to reduce the gender pay gap, including the establishment of the funds referred to in paragraphs 80-82 of the report and the creation of a post of equal employment opportunities commissioner as part of the Human Rights Commission.

12. Mr. PAKI (New Zealand), replying to question 7 stressed the desire of the Maori to find their own solutions to their problems. They did not want to be simply consulted; they wanted to be directly associated with settling issues concerning them. Major progress had been achieved in that area. A programme was currently being implemented to reduce inequality between Maori and non-Maori in the health sector, taking ethnic, socio-economic, geographical and gender-specific aspects into account. New measures specifically aimed at the Maori had been taken for the prevention of pulmonary, cardiac and other disorders. Intersectoral community health projects were also being implemented, bringing together the capabilities of central and local authorities. It was planned to introduce mobile nursing services and early-diagnosis and rapid-response structures, which should help Maori families to manage their own health. As part of a programme to finance the development of the health professions, nearly 450 students had already received bursaries from the Ministry of Health.

13. Where employment was concerned, he referred Committee members to the contents of paragraph 269 of the report and said that the objective of the Maori Labour Market Strategy was to create a properly qualified and mobile workforce, and improve the employment situation of disabled persons and other vulnerable groups. The Maori unemployment rate had been approximately 12 per cent in March 2002 and had declined by nearly 1 per cent in a year.

14. In the sphere of education, pre-primary teaching centres were of fundamental importance, and efforts were currently being made to improve their quality and to strengthen collaboration between Maori and Crown establishments. The strategy that had been set up to improve the use and understanding of the Maori language and, more generally, the Maori situation in the sphere of education was a very positive initiative that merited being further developed and integrated into society in order to take due account of Maori aspirations in regional trends and appropriately reflect traditional Maori values centred on the family and the tribe.

15. Ms. GWYN (New Zealand), replying to question 8, said that the Bill submitted to Parliament in October 1999 had been adopted following substantial amendment. In particular, the new law not only focused on the question of compulsory care, but also on the rehabilitation of persons with an intellectual disability, as indicated by the title of the new Act. It was aimed at providing the courts with appropriate compulsory care and rehabilitation options for persons who had an intellectual disability and had been charged with, or convicted of, an offence punishable by imprisonment. Whereas the Bill had provided for compulsory care for persons who had not committed an offence but whose behaviour posed a serious risk to their health and safety or to those of others, the Act eventually adopted was limited to offenders. It contained, *inter alia*, provisions safeguarding the rights of a care recipient. The facilities where such persons received compulsory care were visited at least four times a year by a district inspector, who had access to every part of the facility and to every person in it, and to every record relating to a care recipient. A High Court judge could call for a report on a patient or summon him to appear before the court. Patients, or their representatives, could complain to the responsible district inspector if they considered that one of their rights had been breached.

16. Mr. CAUGHLEY (New Zealand), replying to question 9, directed Committee members' attention to paragraphs 35 and 36 of the written replies, which provided examples of complaints involving family violence. The Police Complaints Authority had recommended that police staff should be better trained to respond to cases of family violence. The role of the Authority had been reviewed in 2000, and a number of recommendations aimed at enhancing its independence had been made. One such recommendation was that the Authority should be composed of three members, including a chairman who held or had held judicial office. It should have its own investigative capacity.

17. In response to the first part of question 10, he said that the Sentencing and Parole Reform Bill had been adopted. Nevertheless, his Government had decided to maintain the indeterminate sentence of preventive detention as a sentencing option.

18. In response to the second part of question 10, he drew members' attention to the figures provided in paragraph 42 of the written replies to the list of issues. Generally speaking, preventive detention remained a useful sentencing option for certain sexual offences involving violence. However, his Government also recognized the need to reconcile such sentences with the obligation to protect civil rights. The system of preventive detention was, in particular, required to conform fully with the New Zealand Bill of Rights Act.

19. Replying to the first part of question 11, he referred the Committee to the information contained in paragraph 137 of the report. As to action that could be taken by prisoners alleging violations of their rights by private guards, he noted that the latter were subject to the ordinary civil and criminal liability regimes, although they benefited from the immunities available to State-employed prison staff where applicable.

20. In response to question 12, he noted that the need to separate young offenders aged 18 or 19 from adults was being given particular attention. Consideration was being given, for example, to whether it was desirable to hold young offenders in the same facilities as adults so as to enable them to benefit from adult education programmes. As of 10 August 2001, 33 young offenders (5 girls and 28 boys) had been imprisoned with adults. Of those, 13 had been housed in youth designated areas or in "at risk" accommodation. Since the number of young females held was very small, they were not separated from adults. The authorities were in the process of reviewing government policy on young offender imprisonment in the light of the Convention on the Rights of the Child and taking into account New Zealand's reservation to article 37 (c) of the Convention. Within that context, the authorities would take steps to determine the most appropriate arrangements for offenders aged 18 or under who were held with young adults aged 19 or 20.

21. Responding to question 13, he explained that the relevant sentence in paragraph 182 of the report expressed as an essential element of the offence that it was no defence for an accused to prove that he had not known that the material was objectionable or that he had had no reason to believe that it was objectionable. The aim of that provision was to encourage a person who was in possession of material that might be considered objectionable to err on the side of caution. Convictions for possession of objectionable material had increased from 3 to 26 between 1996 and 2001.

22. The CHAIRPERSON thanked the delegation of New Zealand and invited Committee members to ask further questions.

23. Mr. LALLAH commended the State party for its excellent detailed, objective and frank report, which provided extensive information not only on legislation, but also on practice regarding observance of human rights in New Zealand, without concealing areas where deficiencies had emerged. The numerous references to court decisions also shed useful light on that practice.

24. The delegation had mentioned two bills intended to give effect to United Nations Security Council resolution 1373 (2001). Had the text of those bills been made public and, if so, could the Committee be provided with a copy? The bills would certainly have an effect on protection of the rights of the person, and he would like to know whether they had undergone the various stages of the process of scrutiny of bills provided for in section 7 of the Bill of Rights Act, which had been explained in detail in paragraphs 27 et seq. of the report. In any event, he underlined the importance of ensuring that those bills were fully compliant with article 4 of the Covenant. He would also like to learn of the Attorney-General's conclusions in any cases where he had been consulted on a matter relating to section 7 of the Bill of Rights Act.

25. Regarding the question of refugees and asylum-seekers, he took it that the Government had changed its policy on recourse to detention since 11 September 2001. It appeared that the number of refugees in detention, which had been around 5 per cent before that date, had risen to nearly 95 per cent thereafter. Could the New Zealand delegation elaborate on that point? He also wished to know whether the change of policy was consistent with the guidelines contained in the Cabinet Office Manual alerting the Government to the possible effects of a decision on the human rights situation.

26. He noted with satisfaction from paragraph 41 of the report that the New Zealand courts were fully acquainted with the Covenant and made frequent reference to it in their deliberations. However, it would be useful to know whether the judicial authorities, when assessing an administrative decision, verified not only its compliance with the law, but also whether it respected the fundamental rights protected by domestic law.

27. He noted from paragraph 10 of the report that the New Zealand authorities referred to the example of Canada to justify certain delays in the constitutional reform process. In addition, he had taken note that the authorities appeared to be of the opinion that there was no need to reinforce the status of human rights protection standards. In his opinion, however, New Zealand would benefit following the example of a number of non-European countries, such as that of a large democracy like India, which attached great importance to human rights questions. He did not understand the reluctance of the New Zealand authorities to look to non-European countries which had administrative systems similar to that of New Zealand, since their experience could prove extremely useful. In that connection, he also noted that New Zealand was not willing to integrate the right to protection of language as a specific right that needed safeguarding, and he invited the delegation to comment on that point.

28. Mr. KLEIN thanked the State party for its excellent report, which had been prepared in the light of the concluding observations made by the Committee following its consideration of the third periodic report (CCPR/C/64/Add.10), and effectively reflected the jurisprudence of New Zealand's courts. Regarding the status of the Covenant in domestic legislation, it was clear from paragraphs 40 et seq. of the fourth report that, although not directly applicable, the Covenant could nonetheless be used in the interpretation of domestic laws. He would, however, like to know what happened in cases where the Covenant could not be used in that way because domestic legislation was more restrictive, as in the R. v. Barlow case (1995). He wondered what attitude the State party adopted in such cases and whether the Government had reacted to the conclusions reached by the court in the R. v. Barlow case. Was there any intention to amend the law, for example?

29. Lastly, he asked about the implementation of the provisions of article 12 (4) of the Covenant, given that paragraph 143 of the report indicated that New Zealand citizens who were not New Zealand passport-holders and travelled abroad had to obtain a visa in order to be able to return to their country. That situation hardly seemed compatible with the provisions of the Covenant, and he would like to hear the views of the delegation on the matter.

30. Mr. HENKIN said that he endorsed the questions asked by other Committee members and would confine himself to referring to what might be termed the transnational aspects of human rights. In particular, there appeared to be some transnational trafficking in women and children. That trafficking, although still limited, appeared to be growing fast and was a cause of

concern. He would be grateful if the delegation could provide some information in that regard. He would also like to know whether the New Zealand authorities considered that they had a responsibility towards persons who had left New Zealand following deportation, extradition, etc. He asked whether international adoption was practised in New Zealand and, if so, whether the Government considered that it had a responsibility towards adopted New Zealand children who were taken to live abroad. Lastly, he asked the delegation to consider the question of State party responsibility in cases where other States parties violated the Covenant. Did the Government take responsibility for the conduct of other States parties and how could that responsibility be expressed?

31. Ms. CHANET said that she too welcomed the quality of the report and the precise nature of the written and oral replies to the list of issues by the New Zealand delegation. She commended the State party for its Consistency 2000 project, which might usefully serve as a model for other States parties. Several other measures also deserved to be highlighted, such as the stay of proceedings that had been granted by the Court of Appeal in the Martin v. Tauranga District Court case because of an excessive delay between the charge and the trial. Nevertheless, she shared Mr. Klein's concern about the status of the Covenant in the State party. In acceding to the Covenant, New Zealand had made a commitment to ensure compliance with all of its provisions; only the modus operandi was left to the choice of the State party. She recalled the importance of the provisions of article 2 of the Covenant in particular and regretted that New Zealand had not taken any measures to give full effect to them, even though it demonstrated a genuine concern over compliance with international instruments. The State party should provide itself with the means to meet the international obligation it had entered into under article 2.

32. She wished to raise the question of pre-trial detention, particularly with regard to article 15 of the Covenant. Preventive detention, which could be extended beyond the length of the sentence determined by the court, was considered to be a measure designed to protect the general public. However, the aim of any detention was to protect the public and such an argument could not justify the continued use of such punishment. Furthermore, preventive detention was a separate penalty, ordered by a court, which raised questions not so much under articles 9 and 14 of the Covenant as under article 15. The measure was based on an assessment of the danger posed by the accused, without any reference being made to the initial offence, which was covered by the principal penalty. Preventive detention was therefore a type of double sentencing. She invited the New Zealand delegation to comment on the situation, particularly in relation to the provisions of the two paragraphs of article 15 of the Covenant.

33. Mr. YALDEN commended New Zealand for the quality of its report, although it was regrettable that seven years had elapsed since the submission of the third periodic report. As to the extension of the expiry date in respect of the Government's exemption from the new grounds in the Human Rights Act to 31 December 2001, as mentioned in paragraph 63 of the report (CCPR/C/NZL/2001/4), he wished to know the scope of that exemption and whether it had been extended again. While the role and composition of the recently established New Zealand Human Rights Commission were described in detail, it would be useful to know what action it took, for example, to combat discrimination in a specific area.

34. It would also be interesting to know how many complaints had been lodged concerning discriminatory treatment on grounds of racial or ethnic origin (particularly by Maori), gender or sexual orientation, and what action had been taken on them. Regarding sexual orientation, the report made numerous references to homosexual couples, but little was said about discrimination in matters of employment or housing, for example, to which they might be subjected. It would also be useful to know more about action taken on complaints of discrimination or sexual harassment in the context of equal employment opportunities.

35. The question on the list of issues relating to Maori was of a general nature and had thus, understandably, received a general response. He would, however, welcome further clarification of the status of the Maori language, such as where it could be used, remedies available to Maori-speakers in the absence of legal provisions prohibiting discrimination on grounds of language, and the objectives which the Government had set on the basis of the strategies it was putting in place. He would also like to know more about specific achievements in areas such as health, since the report focused on measures taken rather than results achieved. Regarding education, he asked whether the ultimate goal of teaching the Maori language was simply to preserve the Maori cultural heritage, or to educate bilingual citizens to work in the private and public sectors.

36. Mr. ANDO said that he was happy with the report and written replies to the Committee's questions provided by the State party. He noted that the Government was trying to strike a broad balance between anti-terrorist measures taken in the aftermath of 9/11 and the protection of individual rights, and between the principle of the universality of human rights and respect for specific customs in Tokelau.

37. He agreed with Mr. Yalden on the question of the Maori language and would welcome more detailed information on the process by means of which information had been compiled and incorporated in the report, as mentioned in paragraph 3 of the report.

38. As to the Bill of Rights Act referred to in paragraphs 9, 40 and 46, it would be recalled that, in many countries, the protection of human rights was one of the pillars of the Constitution; the reluctance to give the Bill of Rights primacy over domestic legislation was thus difficult to fathom, bearing in mind that a subsequent ordinary law could very well have the effect of breaching a right enshrined in the Bill of Rights.

39. On the question of the non-separation of juveniles and adults in prisons (report, para. 139), he asked for information on the findings of the departments that had been mandated to review the reservation made to the Convention on the Rights of the Child, and whose report had been due in September 2001. He would also welcome further details on the "common law" provisions referred to in paragraph 16 of the report.

40. The CHAIRPERSON said he had four questions. How often had the recommendations of the Ombudsman or the New Zealand Human Rights Commission been rejected or not acted on? Given that private companies managed prisons, what monitoring mechanisms were in place to guarantee respect for the fundamental rights of prisoners and the implementation of the standard minimum rules for the treatment of prisoners? Were there any legal provisions to safeguard the preservation of Maori customs and cultural practices, as provided for in article 27 of the Covenant, given that the Covenant was not automatically applicable in domestic law?

Lastly, he shared the concern of Committee members who were of the opinion that language should be listed among the possible grounds for discrimination and was not necessarily covered under “race”.

41. The delegation of New Zealand would need some time to prepare its replies to the questions that had just been raised. He therefore invited the delegation to reply to questions 14 to 24 of the list of issues, which read:

“Right of aliens (art. 13) ”

14. Please provide information on the frequency of detention of asylum-seekers and the criteria utilized to determine whether detention is necessary.

Freedom of association (art. 22)

15. What is the effect of the Employment Relations Act 2000 as compared to the Employment Contracts Act 1991 in securing full enjoyment of the right to freedom of association?

16. What are the limits on the right to strike? Please provide information on the frequency of strikes in the country.

Protection of family and children (arts. 23 and 24)

17. Please describe the outcome of the evaluations undertaken by the Ministry of Justice on the Domestic Violence Act 1995 to determine whether the Act’s objectives are being met (para. 197).

18. What legislation exists criminalizing trafficking in persons, and have the penalties provided been effective in combating this practice?

19. What measures have been taken to prevent child abuse? Please describe the practical effects of these measures.

Rights of minorities (art. 27)

20. What amendments have been introduced by the Maori Reserved Land Amendment Act, which came into force in January 1998 (para. 281)?

21. What steps is the State party taking to resolve the long-standing dispute on the allocation of Maori fishing assets held by the Treaty of Waitangi Fisheries Commission to tribal and urban Maori?

Dissemination of information about the Covenant (art. 2)

22. Please describe the steps taken to disseminate information on the submission of the reports and their consideration by the Committee, in particular the Committee's concluding observations. Please also provide information on the education and training on the Covenant and its Optional Protocol provided to government officials, schoolteachers, judges, lawyers and police officials.

23. What measures does the State party have in place to implement decisions of the Committee on communications submitted under the Optional Protocol to the Covenant?

TOKELAU

24. Please provide information regarding the application of the Covenant in the Non-Self-Governing Territory of Tokelau. Have any conflicts arisen between the provisions of the Covenant and the customary law of Tokelau?"

42. Mr. CAUGHLEY (New Zealand) said that the question on the detention of asylum-seekers was topical, given the events of 9/11 and the acceptance by New Zealand of some of the passengers of the MS Tampa, almost all of whom had been granted refugee status.

43. The new Employment Relations Act 2000 had brought about substantial changes. The right to strike was maintained, but the new Act laid down slightly different rules regarding cases in which strikes were unlawful.

44. The new Domestic Violence Act adopted in 1995 provided a broader definition of the family and family violence, and introduced mechanisms aimed at ensuring better enforcement than in the past and combating domestic violence more effectively.

45. Regarding trafficking in human beings, a bill on international organized crime was being considered by Parliament. The issue of child abuse had been addressed in the second periodic report submitted by New Zealand under the Convention on the Rights of the Child (CRC/C/93/Add.4). His Government attached great importance to the problem and was doing all it could to combat it; it had thus taken measures in the fields of awareness-raising, education, risk assessment, financing and professional services.

46. Mr. PAKI (New Zealand), replying to questions 20 and 21, said the Maori Reserved Land Amendment Act provided that rents were reviewed every 8 years rather than every 21 years as in the past, that they were brought into line with market levels, and that tenants and owners received compensation for rent increases and for the delay in introducing the new system respectively. The law also regulated pre-emptive rights and stipulated that leasing conditions, initially frozen for a period of three years following the date of the law's entry into force, should gradually be brought into line with the new provisions over a period of four years as from 1 January 2001. The negotiations with the Maori concerning the settlement of the historic dispute had concluded in April 2002 with an agreement awarding NZ\$ 47.5 million to Maori owners.

47. Regarding the dispute on the allocation of Maori fishing assets held by the Treaty of Waitangi Fisheries Commission, the Commission had received some feedback on the document setting out how it intended to resolve the dispute and was expected, in the near future, to release a draft proposal that would be submitted to the iwi (tribes) for comment at the end of July and to the New Zealand Government for consideration and approval at the end of August. The assets that had existed prior to the Treaty of Waitangi (Fisheries Claims) Settlement Act of 1992 were located mainly in coastal and deep waters and were valued at NZ\$ 350 million. Given that the assets acquired after 1992 were also valued at NZ\$ 350 million, the Maori would have a strong position in the fishing sector. Assuming that the Commission's proposal reflected the objectives of the 1992 Act and received the support of tribes, and further assuming that the issues raised by the courts were taken into due consideration and that the Government considered that the interests of all parties - those of the iwi and Maori living in towns - were protected, the Commission would be able to allocate the assets that had existed prior to the 1992 Act. At the same time, the Government would endeavour to introduce legislation on the issue of the assets acquired after 1992, with a probable target date of August 2003. The Commission was currently prevented by a legal decision from submitting to the Ministry of Fisheries the four possible plans that it had prepared. The Crown and the Commission had lodged an appeal and the case was due to be settled that summer; the Commission would therefore be able to report to the Ministry at the end of October, and the latter would in turn express its opinion at the end of November.

48. Mr. CAUGHLEY (New Zealand) said that a newsletter was published following the consideration of every report by a treaty body and incorporated the full text of the concluding observations made. It was also worth noting that the draft version of New Zealand's fourth periodic report had, before its adoption, been the subject of consultations with civil society. Also with the aim of disseminating the international instruments, the Human Rights Division of the Ministry of Foreign Affairs and Trade published a half-yearly newsletter, produced various human rights training materials and organized a yearly internal training course on international human rights law. The Ministry of Justice had published some guidelines on the implementation of the 1993 Human Rights Act and would, in the near future, be preparing guidelines for the public sector concerning the Bill of Rights Act. The decisions of the Committee were not enforceable but were viewed with the greatest respect. The Government intended to give due consideration to all the concrete recommendations made to it. Furthermore, it was understood that judges were broadly influenced by all the Views adopted by the Committee regarding communications submitted under the Optional Protocol in connection with New Zealand. With regard to Tokelau, he said that the archipelago was making progress towards self-determination and had been endeavouring to establish community institutions which respected the customs that lay at the very heart of society. The Covenant had been translated into the local language and disseminated among the public. In order to understand the actual situation in the archipelago, it was important to realize that it had a population of only approximately 1,500, that it was accessible only by boat and that there was no New Zealand administrative presence there.

49. Mr. SCHEININ said the report and replies submitted by New Zealand could in many respects serve as a model for other States parties. He welcomed the delegation's assurances that the Committee's findings concerning New Zealand would be duly taken into account, but pointed out that account also needed to be taken of the whole of the Committee's case law. He would like to know whether the New Zealand Government had taken a position on the issue of interim measures of protection since, unlike several States parties, the Committee took the view that a refusal to apply interim measures constituted a violation of obligations under the

Optional Protocol. He also welcomed the fact that reparations to Maori were made within the general framework of compensation applicable to the entire population without distinction based on ethnic origin: that would promote effective implementation. He would welcome full information, however, on the issue of self-determination for the Maori and the questions of land rights, fishing rights and fisheries, and in particular concerning the application of the Committee's conclusions in settling Maori fishing claims.

50. He had read the State party's report to the Counter-Terrorism Committee (S/2001/1269) and noted that some of the measures described, which had undoubtedly been adopted in response to the events of 9/11, raised issues under the Covenant. He wondered, for example, whether the human rights dimension was fully taken into account in the State party's cooperation with the Pacific island countries in the control of entry to their territory. Given that section 73 of the 1987 Immigration Act - which aimed to ensure that New Zealand did not grant terrorists entry to its territory - allowed the Minister of Immigration to order the deportation from New Zealand of any person suspected of involvement in terrorist activity, he wondered whether the principle of non-refoulement nevertheless continued to be observed. In addition, the fact that all applications for New Zealand travel documents were subject to careful screening, including checks against risk profiles, raised the question in his mind what criteria were applied in determining whether an individual or situation might represent a risk and what precautions were taken to avert any arbitrary discrimination. He had also read in the report that measures had been proposed that were aimed at keeping the immigration risk offshore, rather than having to manage it when it arose at the border or within New Zealand (report to the Counter-Terrorism Committee, para. 29). He would welcome any information that would make it possible to assess to what extent such measures were consistent with the State's obligations under the human rights instruments to which it was a party, and also on what safeguards had been established to ensure that the measures did not adversely affect genuine refugees. New Zealand law did not define a general offence constituted by a "terrorist act"; terrorist activity was viewed rather as an aggravating circumstance in acts constituting other criminal offences, which was very sound and fully consistent with article 15 of the Covenant. He understood, however, that the definition of terrorist acts was currently the subject of debate in New Zealand and requested that the Committee should be kept informed of any developments. He would also like clarification of the definition of a terrorist organization. To qualify as such, did an organization have to have committed at least one terrorist act or was the definition broader than that, as was the case in many other countries?

51. Mr. SOLARI YRIGOYEN commended the clarity of the State party's report and replies, which testified to its desire to observe and implement the provisions of the Covenant. In particular, he welcomed the recent improvement of legal provisions against domestic violence. It was unfortunate, however, that the delegation had not explained how the new legislation had improved upon the old or how it was implemented in practice. Some statistics would have been welcome, and also some information relating to freedom of conscience and religion, as the implementation of article 18 of the Covenant was not discussed in the report and was touched upon only briefly in the core document. He wondered what guarantees existed, notably concerning parents' right to provide their children with religious and moral education in accordance with their own beliefs. It would also be useful to know whether there was a law

on worship and, if so, what restrictions might be imposed, say, for security reasons. Lastly, he understood there was no compulsory military service in New Zealand, but would like to have that confirmed. If that was not the case, how was the right to conscientious objection guaranteed?

52. Mr. ANDO said domestic violence was always difficult to detect, and asked whether people in New Zealand who witnessed such violence or had good grounds to suspect that it was taking place were required to report it and, if so, by what specific means. He also wondered whether the legislation on that question had been evaluated.

53. Mr. LALLAH, referring to article 23 of the Covenant, said it was unfortunate that the report made no reference whatsoever to the Committee's general comments, despite the fact that they encapsulated all the Committee's experience and case law and could be extremely useful to New Zealand's judges. It was in the State party's interest to actively publicize the work of the Committee among specialists of that kind. He also found it rather unsatisfactory to have found out only during the current meeting that the State party had submitted a report to the Counter-Terrorism Committee. He hoped the secretariat would be able to provide him with a copy, so that he would be able to read it as soon as possible.

54. Mr. YALDEN, referring to annex E of the report, noted that, in a survey carried out in 1997, 87 per cent of the population had stated that they did not believe the Maori were entitled to special treatment because they had been oppressed in the past. He wondered whether that figure was still applicable in 2002, because if it was, it would mean there was a general race relations problem that required comment from the delegation.

55. The CHAIRPERSON thanked Committee members for their supplementary questions and invited the delegation to reply at the following meeting.

The meeting rose at 5.55 p.m.