

Implementation Monitoring Table

(as at 30 September 2008)

Concluding observations of the United Nations Committee on the Elimination of Racial Discrimination (CERD) on New Zealand's compliance with the International Convention on the Elimination of Racial Discrimination

1. The Committee considered the fifteenth to seventeenth periodic reports of New Zealand (CERD/C/NZL/17) submitted in one document at its 1821st and 1822nd meetings (CERD/C/SR.1821 and 1822), held on 31 July and 2 August 2007. At its 1840th meeting (CERD/C/SR.1840), held on 15 August 2007, it adopted the following concluding observations.

A. INTRODUCTION

2. The Committee welcomes the report submitted by New Zealand, which is in conformity with the reporting guidelines, and notes with appreciation the regularity with which the State party submits its reports, in compliance with the requirements of the Convention. It appreciates the attendance of a large delegation, composed of representatives of various institutions concerned, and the extensive and detailed responses provided to the questions asked by Committee members, including in writing.

3. The Committee appreciates that the New Zealand Human Rights Commission took the floor before the Committee on an independent basis, which further demonstrates the willingness of the State party's authorities to pursue a frank and constructive dialogue with the Committee.

4.

B. POSITIVE ASPECTS

5. The Committee welcomes the importance given by the State party to the principle of self-identification when gathering data on the ethnic composition of its population, in accordance with General recommendation 8 (1990) of the Committee.

6. The Committee welcomes the adoption of the 2004 New Zealand Settlement Strategy and the Settlement National Plan of Action.

7. The Committee welcomes the New Zealand Diversity Action Programme.

8. The Committee appreciates the reduction of socio-economic disparities between Māori and Pacific peoples on the one hand, and the rest of the population on the other hand, in particular in the areas of employment and education.

9. The Committee appreciates the significant increase in the number of adults, including non-Māori, who can understand, speak, read and write the Māori language.

10. The Committee welcomes the ratification of the 1961 Convention on the Reduction of Statelessness in 2006.

11. The Committee notes with satisfaction that the State party has increased the budget provided to the New Zealand Human Rights Commission by 20 % per annum for the next four years.

**C. CERD RECOMMENDATIONS AND NEW ZEALAND GOVERNMENT
RESPONSE**

Recommendation Number	Comment and Recommendation	Government Response as at June 2008
Department Responsible		
<p>11</p> <hr/> <p>Ministry of Justice</p> <p>Human Rights Commission</p>	<p>The Committee notes that the Government of the State party has not formally endorsed the Human Rights Commission's New Zealand Action Plan for Human Rights, which also refers to race relations issues. (art.2)</p> <p>The Committee recommends that the State party provide more detailed information on measures adopted to follow-up on the Human Rights Commission's New Zealand Action Plan for Human Rights, regarding race relations issues. It encourages the State party to adopt, on the basis of the proposals made by the Human Rights Commission, its own Action Plan for Human Rights.</p>	<p>Cabinet decision in July 2007 directed Chief Executives of government departments to consider priorities in the Action Plan in their annual planning and reporting processes and to engage in dialogue with the Human Rights Commission on implementation of the Plan. No separate government action plan is envisaged.</p> <p>Human Rights Commission is currently conducting a mid-term review of the New Zealand Action Plan for Human Rights. Government departments have provided input into the review.</p>
<p>12</p> <hr/> <p>Ministry of Justice</p>	<p>The Committee, having taken into consideration the explanations provided by the State party, remains concerned that the New Zealand Bill of Rights Act (NZBORA) does not enjoy protected status and that</p>	<p>Issue addressed in New Zealand's Fifth Periodic Report under ICCPR (submitted in December 2007), stating that the present arrangements are considered to be satisfactory.</p>

	<p>enactment of legislation contrary to the provisions of that Act is therefore possible. The Committee considers that the requirement whereby the Attorney-General may bring to the attention of Parliament any provision of a Bill that appears to be inconsistent with the NZBORA is insufficient to guarantee full respect for human rights, in particular the right not to suffer from discrimination based on race, colour, descent or national or ethnic origin. (art. 2)</p> <p>The Committee recommends that the State party seek ways of ensuring that provisions of the Convention are fully respected in domestic law.</p>	<p>The Human Rights Review Tribunal has the power to make a declaration of inconsistency in relation to discriminatory provisions in legislation. This was used for the first time in May 2008 in relation to an instance of age discrimination in accident compensation legislation. The government is required to address the issue raised by the Tribunal and is considering its response.</p>
<p>13</p> <hr/> <p>Ministry of Justice</p>	<p>The Committee notes that the Treaty of Waitangi is not a formal part of domestic law unless incorporated into legislation, making it difficult for Māori to invoke Treaty provisions before courts and in negotiations with the Crown.¹ It welcomes, however, the holding of a public discussion on the status of the Treaty and the efforts to enhance Crown-Māori relationships. The Committee remains concerned that other steps</p>	<p>Public discussion on the constitutional status of the Treaty of Waitangi is continuing. It is incorporated in a range of domestic legislation.</p> <p>The Treaty of Waitangi Information Programme operated between 2004 – 2006 and it aimed to increase public awareness and understanding of the Treaty. The programme involved establishing a website about the Treaty, producing resources to</p>

¹ The term “Crown” is understood to refer to the Executive branch of Government. The Executive is comprised of those Members of Parliament who are Ministers of the Crown (collectively, the Executive Council) and the public service (including all government agencies and departments).

	<p>such as those described in paragraphs below tend to diminish the importance and relevance of the Treaty and to create a context unfavourable to the rights of Māori. (arts. 2 and 5)</p> <p>The Committee encourages the State party to continue the public discussion over the status of the Treaty of Waitangi, with a view to its possible entrenchment as a constitutional norm. The State party should ensure that such debate is conducted on the basis of a full presentation of all aspects of the matter, bearing in mind the importance of enhancing Crown-Māori relationship at all levels and the enjoyment by indigenous peoples of their rights.</p>	<p>support Treaty specific curriculum activities in primary and intermediate schools and developing and implementing a travelling exhibition on the Treaty (Treaty 2 U) which continued until June 2008.</p>
<p>14</p> <hr/> <p>Ministry of Justice</p> <p>Report-back required in August 2008</p>	<p>The Committee notes with concern the proposal to remove statutory references to the Treaty of Waitangi through the Principles of the Treaty of Waitangi Deletion Bill (2006). It welcomes, however, the undertaking by the State party not to support the progress of that Bill any further. (arts. 2 and 5)</p> <p>The State party should ensure that the Treaty of Waitangi is incorporated into domestic legislation where relevant, in a manner consistent with the letter and the spirit of</p>	<p>Parliament rejected the Principles of the Treaty of Waitangi Deletion Bill in November 2007. References to the principle of the Treaty of Waitangi continue to be included in relevant legislation.</p>

	<p>that Treaty. It should also ensure that the way the Treaty is incorporated, in particular regarding the description of the Crown's Treaty obligations, enables a better implementation of the Treaty.</p>	
<p>15</p> <hr/> <p>Ministry of Justice Ministry of Foreign Affairs and Trade</p>	<p>The Committee is concerned that, in the report of the State party, historical treaty settlements have been categorized as special measures for the adequate development and protection of Māori. It notes, however, the statement made by the delegation that such categorization should indeed be reconsidered. (art.2 (2))</p> <p>The Committee draws the attention of the State party to the distinction to be drawn between special and temporary measures for the advancement of ethnic groups on the one hand and permanent rights of indigenous peoples on the other hand.</p>	<p>New Zealand will consider restructuring its next CERD periodic report to include indigenous issues in a separate area from the special measures section of the report.</p>
<p>16</p> <hr/> <p>State Services Commission</p>	<p>The Committee notes the steps adopted by the State party to review policies and programmes in the Public service, which has led to the re-targeting of some programmes and policies on the basis of need rather than ethnicity. The Committee, while stressing that special measures are temporary and should be re-assessed on a regular</p>	<p>The State Services Commission has issued guidelines on special measures, but responsibility for their implementation lies with individual government departments.</p>

	<p>basis, is concerned that these steps have been adopted in a political climate unfavourable to the rights of Māori. (art.2 (2))</p> <p>The State party should ensure, when assessing and reviewing special measures adopted for the advancement of groups, that concerned communities participate in such a process, and that the public at large is informed about the nature and relevance of special measures, including the State party's obligations under article 2 (2) of the Convention.</p>	
<p>17</p> <hr/> <p>Ministry of Justice</p>	<p>The Committee welcomes the progress achieved in the settlement of historical Treaty claims, and notes that 2008 has been chosen as a cut-off date for the lodging of historical Treaty claims. While noting the assurances provided by the State party that claims submitted before 2008 can still be amended and supplementary information taken into account, the Committee notes the concerns expressed by some Māori that such a cut-off date may unfairly bar legitimate claims. (arts. 2 and 5)</p> <p>The Committee recommends that the State party ensure that the cut-off date for the lodging of historical Treaty claims will not</p>	<p>The closing date for the submission of historical Treaty claims was widely publicised by the Ministry of Māori Development and the Waitangi Tribunal from its enactment in 2006 until 1 September 2008, with increased publicity in the last few months.</p> <p>The effectiveness of this publicity was demonstrated by the dramatic increase in the number of claims submitted from 1 July to 1 September 2008. Around 2145 claims were submitted in this period, compared to approximately 5 - 6 claims received by the Waitangi Tribunal each month before the deadline was announced.</p>

	unfairly bar legitimate claims. It should pursue its efforts to assist claimants groups in direct negotiations with the Crown.	Claims submitted by the closing date will be able to be amended and added to after the closing date.
18 <hr/> Ministry of Justice	<p>The Committee notes with concern that recommendations made by the Waitangi Tribunal are generally not binding, and that only a small percentage of these recommendations are followed by the Government. The Committee considers that such arrangements deprive claimants of a right to an effective remedy, and weaken their position when entering into negotiations with the Crown. (arts. 2, 5 and 6)</p> <p>The Committee recommends that the State party consider granting the Waitangi Tribunal legally binding powers to adjudicate Treaty matters. The State party should also provide the Tribunal with increased financial resources.</p>	<p>The government does not intend to give the Tribunal binding powers to adjudicate Treaty matters, as it operates essentially as a truth and reconciliation process.</p> <p>The Tribunal received a funding increase in the 2007 budget.</p>
19 <hr/> Ministry of Justice Report-back required in August 2008	<p>The Committee notes the information provided by the State party on the follow-up given to its decision 1 (66) in relation to the Foreshore and Seabed Act 2004. It remains concerned by the discrepancy between the assessment made by the State party and that made by non governmental organizations on the issue.</p>	<p>Heads of Agreement were signed between two East Coast iwi, Ngati Porou and Te Whanau a Apanui, and the Crown in February 2008 pursuant to the Foreshore and Seabed Act. Negotiations have stimulated further dialogue on the Foreshore and Seabed.</p>

	<p>(arts. 5 and 6)</p> <p>The Committee reiterates its recommendations that a renewed dialogue between the State party and the Māori community take place with regard to the Foreshore and Seabed Act 2004, in order to seek ways of mitigating its discriminatory effects, including through legislative amendment where necessary; that the State party continue monitoring closely the implementation of the Act; and that it 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 Māori.</p>	<p>Ngati Pahauwera and the Crown signed the first combined Treaty settlement and foreshore and seabed Terms of Negotiation on 8 May 2008. Te Rarawa and the Crown signed Terms of Negotiation for foreshore negotiations on 12 June 2008.</p>
<p>20</p> <p>Ministry of Education</p> <p>Report-back required in August 2008</p>	<p>The Committee notes with concern that the New Zealand Curriculum, Draft for consultation 2006, does not contain explicit references to the Treaty of Waitangi. It notes, however, the assurances provided by the State party that other elements of the National Educational Guidelines as well as the Educational Act 1989 require an explicit reference to the Treaty of Waitangi, and that it is considering the recommendation to make references to the Treaty more explicit in the final version of the New Zealand Curriculum. (arts. 2 and 7)</p>	<p>As a result of consultation with Māori, references to the Treaty of Waitangi were included in the final version of the New Zealand Curriculum released in November 2007. The Treaty of Waitangi is also contained in the Draft Te Marautanga o Aotearoa, the partnership document to The New Zealand Curriculum, due for final release in late 2008.</p> <p>Ka Hikitia – Managing for Success: The Māori Education Strategy 2008 – 2012, acknowledges the Treaty of Waitangi as a document that protects</p>

	<p>The Committee encourages the State party to include references to the Treaty of Waitangi in the final version of New Zealand Curriculum. The State party should ensure that references to the Treaty in the curriculum are adopted or modified in consultation with the Māori.</p>	<p>Māori learners' rights to achieve true citizenship, as well as protecting te reo Māori as a taonga.</p>
<p>21 Ministry of Justice</p>	<p>The Committee reiterates its concern regarding the over-representation of Māori and Pacific people in the prison population and more generally at every stage of the criminal justice system. It welcomes, however, steps adopted by the State party to address this issue, including research on the extent to which the over-representation of Māori could be due to racial bias in arrests, prosecutions and sentences. (arts. 2 and 5)</p> <p>The Committee recommends that the State party enhance its efforts to address this problem, which should be considered as a matter of high priority. The Committee also draws the attention of the State party to its General recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.</p>	<p>The high rate of Māori imprisonment is a persistent problem which the Government is actively seeking to address. The Ministry of Justice, in cooperation with other agencies, is implementing an Effective Interventions Programme to improve the criminal justice system in New Zealand.</p> <p>Phase I Under the Programme of Action for Māori, Te Puni Kōkiri invested over \$2million in a small number of interventions that are designed, developed and delivered by Māori providers to identify and test facilitators of success for Māori in the justice sector. Six providers were selected and funded in 2007/08, and will be funded by other Government agencies from 1 July 2008 until at least June 2010. Formative evaluations of the six initiatives have yielded promising results.</p>

		<p>Consequently, a further five concepts are being considered for funding. Te Puni Kōkiri is also working with New Zealand Police on the development of iwi-led crime prevention plans (ICPPs). ICPPs provide an opportunity for Māori to utilise their expertise to take a lead role in criminal justice intervention planning and design. ICPPs are designed by Māori, take a long-term, incremental approach to improving Māori criminal justice outcomes, and are underpinned by Māori potential principles. Several iwi are in the throes of developing their plans.</p> <p>Phase II</p> <p>Phase two aims to consolidate on the work above, while keeping an intensive focus on improving outcomes for Māori across the entire system from prevention through to rehabilitation using a whānau development perspective. Work programmes are currently being developed to identify the specific drivers of Māori offending and their progress through the criminal justice process, and identify further initiatives (beyond those identified in other work areas) that can specifically address Māori incarceration rates.</p>
22	The Committee regrets that the State party has not	Data on the use of section 27 of the Sentencing Act

<p>Ministry of Justice</p>	<p>assessed the extent to which section 27 of the Sentencing Act 2002, providing for the courts to hear submissions relating to the offender’s community and cultural background, has been implemented and with what results.</p> <p>The Committee encourages the State party to undertake such an assessment, and to include information in this regard in its next periodic report.</p>	<p>is not currently recorded. The Sentencing Act requires Judges to consider a range of factors when sentencing offenders. The weight given to these factors is at the discretion of the Court.</p> <p>Section 27 is not the only way that information about the offender’s cultural background is put before and considered by the Court. Sections 8 and 26 also allow for the provision of this information.</p> <p>Section 8, which sets out the principles of sentencing, also provides that the Court must take into account the offender’s personal, family, whanau, community, and cultural background in imposing a sentence or other means of dealing with the offender with a partly or wholly rehabilitative purpose.</p> <p>Section 26 provides that information regarding the personal, family, whanau, community, and cultural background of the offender may be included in a pre-sentence report.</p>
<p>23</p> <hr/> <p>Department of Labour Ministry of Education</p> <p>Report-back required in</p>	<p>The Committee notes with satisfaction that the State party has resolved to lift its reservation to the Convention on the rights of the child that limits access to publicly funded education and health services for undocumented</p>	<p>A child that is unlawfully in New Zealand (that is they do not hold a permit to be in New Zealand) is not a person who can legally access education under section 6 of the Immigration Act 1987. Section 40 makes it an</p>

<p>August 2008</p>	<p>children, and that it plans to amend its Immigration Act to eliminate the offence for education providers of enrolling children without the appropriate permit. It remains concerned however that under the new Immigration Bill, undocumented children will only be authorized to attend school provided they are not alone in New Zealand and their parents are taking steps to regularize their status. (arts. 2 and 5)</p> <p>The Committee draws the attention of the State party to its General recommendation 30 (2004) on discrimination against non citizens, and recommends that public educational institutions be open to all undocumented children, without restrictions.</p>	<p>offence for a school to knowingly enrol a child who is not entitled to access education. The Immigration Bill will remove this offence entirely. At present, interim measures have been put in place to ensure that undocumented children, whose immigration status is being considered, still have access to education in New Zealand (these measures place no obligation for the child's parents to also be in New Zealand). Undocumented children that have not come to the attention of the Department of Labour are not entitled to enrol in schools.</p>
<p>24</p> <hr/> <p>Department of Labour</p>	<p>The Committee notes with concern that asylum-seekers may be detained in correctional facilities, even though such detention only concerns a very few individuals. It is also concerned at reports according to which proposals have been made to include health and character grounds in the Immigration Act as a basis upon which to exclude or expel asylum-seekers. (arts. 2 and 5)</p> <p>The Committee recommends that the State party put an end to the practice of detaining</p>	<p>Health and character grounds as a basis upon which to exclude or expel asylum-seekers have not been included in the Immigration Bill.</p> <p>Immigration New Zealand has never declined a claim to refugee status on health or character grounds, save those provided for by article 1F of the 1951 Convention relating to the status of refugees. Some people have been declined residency status on other character grounds, but this does not affect their protection from</p>

	<p>asylum-seekers in correctional facilities, and ensure that grounds upon which asylum may be refused remain in compliance with international standards, especially the 1951 Convention relating to the Status of Refugees.</p>	<p>refoulement. Such persons remain in NZ on long term permits.</p> <p>The Department of Labour has been in close consultation with the Department of Corrections regarding the care of the small number of asylum seekers detained in correctional facilities. Asylum seekers are segregated in detention when possible. The new Immigration Bill has an enabling feature which allows for the consideration of detention premises.</p>
<p>25</p> <hr/> <p>Ministry of Justice</p> <p>New Zealand Police</p>	<p>The Committee, having taken into consideration the information provided by the State party, remains concerned that there is no recording of complaints, prosecutions and sentences relating to racially motivated crime. (arts. 4 and 6)</p> <p>The Committee recommends that the State party study ways and means of assessing on a regular basis the extent to which complaints for racially motivated crimes are addressed in an appropriate manner within its criminal justice system. It should envisage, in particular, collecting statistical data on complaints, prosecutions and sentences for such</p>	<p>New Zealand Police (Police) is currently developing a policy on complaints of a racially motivated nature.</p> <p>Police are developing an online resource to assist frontline staff.</p> <p>Police will make use of the Crime and Safety Survey to monitor trends in racially motivated crime.</p>

	crimes.	
26 Human Rights Commission	<p>The Committee is concerned that the effectiveness of procedures to address racial discrimination may be compromised by a lack of public knowledge of the most appropriate avenues for particular complaints, inadequate accessibility by vulnerable groups and a lack of confidence by such groups in their effectiveness, as acknowledged by the Human Rights Commission. (art. 6)</p> <p>The Committee recommends that the State party adopt proactive measures aimed at addressing these difficulties.</p>	The Human Rights Commission is engaged in a multi-year project to improve accessibility of its enquiries and complaints service.
27 Department of Labour Te Puni Kōkiri	<p>The Committee recommends that the State party consider ratifying the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, the Convention relating to the Status of Stateless Persons, as well as the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.</p>	<p>The Government has no intention to ratify ILO Convention 169.</p> <p>Ratification of the Convention relating to the Status of Stateless Persons was considered in November 2006. The Government does not intend to ratify.</p> <p>The Government has no intention to ratify the Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.</p>
28	The Committee recommends that the State	Agreed.

	<p>party continue to take into account the relevant provisions of the Durban Declaration and Programme of Action when implementing the Convention in its domestic legal order, particularly as regards Articles 2 to 7 of the Convention.</p>	
<p>29 Ministry of Justice</p>	<p>The Committee notes again that the State party has not made the optional declaration provided for in Article 14 of the Convention, and invites it to consider doing so.</p>	<p>The Government has no intention to make the optional declaration in Article 14 of CERD.</p>
<p>30 Ministry of Foreign Affairs and Trade</p>	<p>The Committee recommends that the State party continue to make its reports readily available to the public at the time of their submission.</p>	<p>The New Zealand report received publicity in the lead up to its examination in Geneva in August 2007. All New Zealand human right treaties body reports are available on the Ministry of Foreign Affairs website (www.mfat.govt.nz). The website also posts a link to New Zealand's periodic report, as well as New Zealand's written response to the issues raised by the Committee, and the New Zealand CERD update document.</p> <p>The Human Rights Commission website is being upgraded to include more information on international human rights instruments, including the Convention on the Elimination of all forms of Racial Discrimination and the CERD Committee recommendations.</p>

<p>31</p> <hr/> <p>Ministry of Foreign Affairs and Trade</p>	<p>Pursuant to Article 9, paragraph 1, of the Convention, and Article 65 of the Committee's rules of procedure, as amended, the Committee requests that the State party inform it of its implementation of the recommendations contained in paragraphs 14, 19, 20 and 23 above, within one year of the adoption of the present conclusions.</p>	<p>The Ministry of Foreign Affairs and Trade coordinated New Zealand's report back to the Committee on recommendations 14, 19, 20 and 23. The response was forwarded to the Committee on 23 September 2008.</p>
<p>32</p> <hr/> <p>Ministry of Foreign Affairs and Trade</p>	<p>The Committee invites the State party to update its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting (HRI/GEN/2/Rev.4).</p>	<p>Agreed.</p>
<p>33</p> <hr/> <p>Ministry of Foreign Affairs and Trade</p>	<p>The Committee recommends to the State party that it submit its eighteenth, nineteenth and twentieth periodic reports in a single report, due on 22 December 2011, taking into account the guidelines for the CERD-specific document, as adopted by the Committee at its 71st session. The report should be an update document and address all points raised in the present concluding observations.</p>	<p>Agreed.</p>