



Peace Movement Aotearoa

PO Box 9314, Wellington 6141, Aotearoa New Zealand. Tel +64 4 382 8129

Email pma@xtra.co.nz Web site www.converge.org.nz/pma

Racial Discrimination: UN Committee recommendations on New Zealand Concluding Observations of the Committee on the Elimination of Racial Discrimination

2 March 2013

The Concluding Observations of the Committee on the Elimination of Racial Discrimination on the New Zealand government's compliance with the International Convention on the Elimination of all Forms of Racial Discrimination were released this morning. The Concluding Observations are available at <http://www.converge.org.nz/pma/cerd82.htm>

The Committee, which comprises 18 independent human rights experts, considered the government's performance during its 82nd session, which was held in Geneva from 11 February to 1 March 2013. The Concluding Observations are based on information supplied in writing by the government, in an initial report and subsequent written replies to questions, and discussion during interactive dialogues with a government delegation led by the Minister of Justice, Judith Collins, on 21 and 22 February.

The Committee also took into account information provided by six non-governmental organisations (NGOs) - the Aotearoa Indigenous Rights Trust, Community Languages Association, Human Rights Foundation, New Zealand Federation Multicultural Councils, Peace Movement Aotearoa, and the Robson Hanan Trust; an individual report on children's rights, as well as information from other United Nations human rights monitoring bodies and procedures, and the Human Rights Commission.

The Concluding Observations follow the standard format of UN human rights monitoring bodies with four main sections:

A. Introduction: comprising a brief introductory paragraph.

B. Positive aspects: comprising three paragraphs about developments to combat racial discrimination, including the removal of barriers for foreign national children to access education; the implementation of the Healthy Housing Programme; other initiatives aimed at improving ethnic relations and raising the awareness of the population with regard to racial discrimination, integration, tolerance and multiculturalism; ratification of the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; and the official endorsement of the United Nations Declaration of the Rights of Indigenous Peoples of 2007 (albeit with some qualifications). The Committee welcomed the contributions of the Race Relations Commissioner to the Committee's work, as well as the active engagement of, and contributions from, NGOs.

C. Main areas of concern and recommendations: comprising sixteen paragraphs listing concerns and recommendations on a range of issues - half of the recommendations relate to the Treaty of Waitangi and the human rights of Maori, and the other paragraphs include issues around the Human Rights Amendment Bill, the National Action Plan on Human Rights, political racist speech, and detention of asylum seekers. A summary of some of the concerns and recommendations is included below.

D. Other recommendations: comprising eight paragraphs with recommendations on the ratification of other human rights instruments, Article 14 of the Convention, consultation with civil society, dissemination of the Concluding Observations, follow-up, and a paragraph inviting the government to submit its next periodic report by 21 December 2015.

The paragraphs listing concerns and recommendations about the Treaty of Waitangi and the human rights of Maori, include:

Treaty of Waitangi (paragraph 7): the Committee notes with regret that the Treaty of Waitangi is not a formal part of domestic law even though the government considers it the founding document of the nation, and that decisions rendered by the Waitangi Tribunal are not binding. The Committee recommends that public discussions and consultations should focus, among other things, on whether the Treaty of Waitangi should be set in place as a constitutional norm; and that the government considers adopting the recommendation by the UN Special Rapporteur on Indigenous Peoples that any departure from the decisions of the Waitangi Tribunal should be accompanied by a written justification.

Administration of justice (paragraph 11): the Committee remains concerned at the disproportionately high rates of incarceration and the over-representation of members of the Maori and Pasifika communities at every stage of the criminal justice system, and urges the government to intensify its efforts to address the over-representation of members of the Maori and Pasifika communities at every stage of the criminal justice system.

Marine and Coastal Areas (Takutai Moana) Act (paragraph 13): the Committee remains concerned that the Marine and Coastal Areas (Takutai Moana) Act 2011 contains provisions that, in their operation, may restrict the full enjoyment by Maori communities of their rights under the Treaty of Waitangi, such as the provision requiring proof of exclusive use and occupation of marine and coastal areas without interruption since 1840. The Committee urges the government to continue to review the Marine and Coastal Area (Takutai Moana) Act with a view to facilitating the full enjoyment of the rights by Maori communities regarding the land and resources they traditionally own or use, and in particular their access to places of cultural and traditional significance.

WAI 262 Report (paragraph 14): the Committee welcomes the 2011 WAI 262 report regarding Maori intellectual and cultural property rights, but is concerned that the government has not yet announced a timetable for implementing this decision. The Committee recommends that the government promptly announces a timetable to implement the Waitangi Tribunal's decision in a manner that fully protects the intellectual property rights of Maori communities over their traditional knowledge and genetic and biological resources.

Structural discrimination (paragraph 15): the Committee welcomes the government's recognition that structural discrimination is partly responsible for the persistent poor outcomes that the members of the Maori and Pasifika communities experience in the fields of employment, health and the administration of criminal justice. The Committee recommends that the government intensify its efforts to improve the outcomes of the Maori and Pasifika in the fields of employment, health and in the administration of criminal justice by, among other things, addressing the existing structural discrimination.

Languages (paragraph 17): the Committee is concerned at the finding by the Waitangi Tribunal that the Maori language is at risk of erosion, and also notes that while the government has adopted a Pasifika Language Framework, the Maori language strategy is yet to be elaborated. The Committee is also concerned at reports of inadequate funding to support the preservation of community languages, and recommends that the government should take specific measures aimed at preserving the Maori and Pasifika languages, as well as community languages, by ensuring that adequate funding is allocated for specific programmes. The Committee also urges the government to expedite the development of a new Maori language strategy.

Consultations with indigenous peoples (paragraph 18): the Committee is concerned by reports about the inadequacy of the consultations conducted by the government before awarding deep-sea oil seismic, drilling and hydraulic fracturing contracts to commercial companies, under circumstances that may threaten Maori communities' enjoyment of their rights to land and resources traditionally owned or used, and before pursuing negotiation of Free Trade Agreements that could similarly affect indigenous peoples' rights. The Committee also notes concerns expressed about the adequacy and genuineness of the consultation process surrounding the enactment of the Finance (Mixed Ownership Model) Amendment Act of 2012 and the State-Owned Enterprises Amendment Bill of 2012. The Committee reiterates the importance of securing the free, prior and informed consent of indigenous groups regarding activities affecting their rights to land and resources owned or traditionally used, as recognised in the United Nations Declaration on the Rights of Indigenous Peoples. The Committee urges the government to enhance appropriate mechanisms for effective consultation with indigenous people around all policies affecting their ways of living and resources.

Maori Freshwater and Geothermal Resources (paragraph 19): the Committee urges the government to ensure that any privatisation of energy companies be pursued in a manner that fully respects the rights of Maori communities to freshwater and geothermal resources, as protected by the Treaty of Waitangi.

On the detention of asylum seekers:

Immigration Amendment Bill of 2012 (paragraph 20): the Committee is concerned that the Immigration Amendment Bill 2012 - which provides for the mandatory detention of asylum seekers and persons falling within the ambit of the statutory definition of a "mass arrival", namely, those arriving in a group of more than 10 - may have the effect of depriving persons who are in need of international protection of their liberty solely based on the manner of their arrival. The Committee reiterates its position that state parties to the Convention should ensure the security of non-citizens, in particular with regard to arbitrary detention, and urges the government to ensure that the Immigration Amendment Bill accords to international standards in the treatment of persons in need of international protection so that it does not unfairly and arbitrarily discriminate against asylum seekers.

Australia / New Zealand agreement on refugees, February 2013 (paragraph 21): while the Committee welcomes the government's decision to admit 150 asylum seekers from Australian off-shore refugee detention centres located in Papua New Guinea and Nauru, it is concerned at reports that the government is considering sending future asylum seekers to the said facilities, which have been criticised by the UN High Commissioner for Refugees because of the conditions under which asylum seekers are detained and because of other problems. The Committee urges the government to refrain from sending asylum seekers to the Australian off-shore detention facilities until the conditions meet international standards.

- [Where you can find more information](#)

Updates and information on the 82nd session - when and where you can watch the session, media coverage, and who said what in Geneva are available at <http://www.converge.org.nz/pma/cerd82-sess.htm>

Background information on: the International Convention, the Committee, the NZ government and the Convention, the government's Report to CERD, the list of themes sent to the government by the Committee, NGO parallel Reports to CERD, what CERD has said about the NZ government before, the follow up procedure (2008 and 2009), and useful links and other relevant information is available at <http://www.converge.org.nz/pma/cerd82.htm>