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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-first session

SUMMARY RECORD OF THE 1538th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 14 August 2002, at 3 p.m.

Chairman: Mr. DIACONU

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Twelfth to fourteenth periodic reports of New Zealand (CERD/C/362/Add.10; HRI/CORE/1/Add.33/Rev.1)

1. At the invitation of the Chairman, the members of the delegation of New Zealand took places at the Committee table.

2. Mr. CAUGHLEY (New Zealand), introducing the report of New Zealand, said that the International Convention on the Elimination of All Forms of Racial Discrimination had been the first international human rights instrument to be ratified by New Zealand and had influenced the very foundations of the country's human rights legislation and infrastructure. In the current report, which combined the twelfth, thirteenth and fourteenth periodic reports of New Zealand, the Government had made every effort to take account of the Committee's comments on the preceding report and to respond to its concerns. In an extensive process of consultation, the final draft of the report had been circulated for comment to a range of representatives of civil society and non-governmental organizations (NGOs), all concerned ministries and departments and the Office of the Race Relations Conciliator. The report had also been made available to the public and posted on the web site of the Ministry of Foreign Affairs and Trade. The Government intended to give wide publicity to the Committee's concluding observations and recommendations.

3. Noting that the presentation of the report was taking place only three weeks after a general election that had resulted in the formation of a coalition Government under Labour Party leadership, he said that New Zealand had made important progress in combating racial discrimination. In terms of legislation, the Ngai Tahu Claims Settlements Act 1998 and the latest Immigration Amendment Act 1999 were among the main measures adopted during the reporting period. The Employment Relations Act 2000, which had replaced the Employment Contracts Act 1991, allowed an employee to take legal action in cases of discrimination on the basis of colour, race or ethnic or national origin; the Human Rights Amendment Act 2001 provided for the amalgamation of the Human Rights Commission and the Office of the Race Relations Conciliator into a single institution. The new structure had wider powers, notably in the areas of the promotion and defence of human rights, race relations advocacy, investigation of certain complaints relating to human rights and immigration, and procedures for remedy. The aim of the new human rights commission, under the direction of the Chief Human Rights Commissioner and the Race Relations Commissioner, was to ensure a better understanding of race relations, promote the human rights dimension of the Treaty of Waitangi and the incorporation of its principles into domestic and international human rights law, and develop a national plan of action for the promotion and protection of human rights in New Zealand. In that regard, he emphasized that all complaints of discrimination in respect of all government activities could henceforth be made to the Commission. Moreover, under the new Sentencing Act 2002, courts must, when sentencing, treat hostility towards groups of a particular race, colour or nationality as an aggravating factor.

4. With regard to the Treaty of Waitangi settlement process, he said that Maori exercised a greater degree of self-determination and announced that the "fiscal envelope" policy, which had been a major subject of concern to the Committee in its consideration of New Zealand's preceding report in 1996, had been discontinued. The Treaty of Waitangi nonetheless remained a key area of focus for the New Zealand Government, since additional funding had been allocated to the negotiation process provided for under the Treaty in order to facilitate more effective participation by Maori. Negotiations with the Crown had also made good progress, and the total financial settlement figure for completed claims to date was close to $600 million. In general, the decisions taken by the New Zealand Government had allowed plenty of scope for the settlement of Maori's individual grievances and historical claims. He drew attention to two landmark settlements from 1994-1995 and 1996-1997, key features of which had been the apologies offered by the Crown, the recognition of *iwi* (tribes') special interest in particular sites and species, and the unprecedented size of the financial reparation. The Government was also making efforts, through special programmes, to raise Maori's living standards and give them greater control over their own affairs, particularly in respect of environmental resource management, fisheries, electoral rights and promotion of the Maori language and culture.

5. In terms of administrative and policy changes, he said that there had been a reassessment of the level of resources allocated to Maori and to Pacific peoples in 1997 and that the Government had launched various programmes and projects to address the specific needs of those populations, as well as other groups such as migrants, refugees and ethnic minorities, in areas such as health, education, employment, social welfare, housing, language and culture. The measures taken to assist disadvantaged communities included the establishment of Maori development commissions, the merger of the former Department of Work and Income and the former Ministry of Social Policy into a new Ministry of Social Development, the creation of a new Settlement Branch in the New Zealand Immigration Service, and the establishment of the Office of Ethnic Affairs within the Department of Internal Affairs. In this way, the new Government was encouraging the promotion of inter-ethnic understanding and respect for cultural diversity, and developing policies aimed at reducing socio-economic imbalances and speeding up the development of specific sectors of the population, particularly in the areas of education, health, employment and housing.

6. With regard to the impact on New Zealand of the events of 11 September 2001, he said that his Government had been very mindful of the need to strike an appropriate balance between the need to take effective steps to combat terrorist acts and the need to maintain respect for human rights. In the immediate aftermath of 11 September 2001, the Acting Prime Minister had exhorted New Zealanders not to equate Islam with terrorism. The New Zealand Federation of Ethnic Councils, the Office of Ethnic Affairs and the Muslim community had also called for tolerance and understanding. A number of positive strategies and networks had been put in place to improve racial harmony through community consultations and to inform the groups concerned of their right not to be subjected to racial discrimination. In July 2002, New Zealand had also ratified the United Nations Convention against Transnational Organized Crime and its Optional Protocols on migrant smuggling and trafficking in persons.

7. The immigration services no longer had the power to detain asylum-seekers who arrived at the border without identity papers or travel documents. New Zealand had a long-standing tradition of immigration, out of which the social and ethnic fabric of the country had been woven, and the Government had launched a range of programmes designed to assist migrants and refugees and help them integrate fully into the country's social and economic life.

8. At the Durban World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, New Zealand had reaffirmed its commitment to tolerance, respect for diversity and reparation for past errors. In that spirit, the Crown had offered its apologies to a number of communities that had, at various times, suffered injustice at the hands of the New Zealand Government.

9. Recalling that Tokelau was New Zealand's last remaining non-self-governing territory, he said that the report on Tokelau was annexed to New Zealand's report. Racial discrimination was neither present in the territory nor a matter of everyday concern, owing to the homogeneity and inclusiveness of its society. He also drew the Committee's attention to the New Zealand Government's efforts in the process of devolution of powers - including executive and legislative powers - in order to prepare the territory for self-government. In 1996, General Fono had been empowered to ensure peace, order and good government in the territory, and Tokelau was assured of the support of the New Zealand Government in its development of self-government.

10. Lastly, he said that, although difficult issues remained, New Zealand would continue its efforts to promote tolerance and non-discrimination. He assured the Committee that the New Zealand Government was doing everything in its power to implement the provisions of the Convention and promote social, economic and racial equality.

11. Mr. THORNBERRY (Country Rapporteur) thanked the delegation of New Zealand for its presentation of the report of the State party and for the supplementary information covering the period from 1 January 2000 to 31 July 2002.

12. With regard to article 1 of the Convention, he said that he was surprised at the difference between the information on the demographic make-up of the population given in the periodic report and the statistics provided in the supplementary information. The delegation should explain the methodology used in the census. He would also appreciate clarification concerning the phenomenon of "multiple identification" and its consequences. The delegation should explain what it understood by the terms "biculturalism" and "multiculturalism".

13. Turning to the implementation of article 2 of the Convention, he requested clarification on the status of human rights norms in New Zealand's domestic legal order and their place in the hierarchy of legislation. He would also welcome further information on the programmes of the New Zealand Human Rights Commission. In that connection, he asked the delegation to explain to what extent the restructuring of the Human Rights Commission and its merger with the Office of the Race Relations Conciliator had affected the latter's powers and those of the Commission for Racial Equality, and what effect the merger had had on the functions of the Race Relations Conciliator. The whole issue of relationships between the international human rights instruments and indigenous rights instruments was of great interest to the Committee, and the new

architecture for human rights would facilitate assessment of the relationship between the Treaty of Waitangi and international human rights law. He noted that New Zealand law prohibited racial discrimination (report, para. 12), and he wondered whether there were exceptions when discrimination might be "excused" or dealt with more leniently.

14. He welcomed the fact that, according to paragraph 157 of the report, the changes introduced under the Immigration Amendment Act 1991 had attracted more skilled migrant workers from the Asian region. He noted from paragraph 158 that the changes made to the 1991 Act in 1995 and 1998 with a view to facilitating migrants' transition to the labour market included new English language provisions. He wondered whether the delegation could provide further information concerning the new provisions and the impact that they might have had on migrants' access to New Zealand's labour market.

15. The supplementary paper (document without a symbol, distributed in the meeting room in English only) contained encouraging information on the recognition of wider family structures in the reception of migrants belonging to the humanitarian category and on opportunities for those on temporary residence permits to gain permanent residence. He commended the fact that the admission of refugees was an ongoing humanitarian priority in New Zealand's immigration policy, with a system based both on resettlement quotas and refugee status determinations. However, despite New Zealand's attractions, the number of applications for admission under the refugee resettlement programme or for refugee status seemed very low in comparison with the number of applications in other host countries such as Australia and the United Kingdom. Reliable sources suggested that the phenomenon could be attributable to the asylum policy applied by the New Zealand Government in the wake of the 11 September 2001 attacks, particularly with regard to the detention of refugees, and he wondered whether the delegation could provide a breakdown of asylum-seekers by country of origin, and the number of those who were detained. He drew the delegation's attention to the Office of the United Nations High Commissioner for Refugees (UNHCR) Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers. On the issue of racial discrimination in the context of counter-terrorism measures, he wondered whether all the legislative measures taken to implement Security Council resolution 1373 (2001), on the threats to international peace and security caused by terrorist acts, had been fully considered, particularly in relation to asylum-seekers and other vulnerable persons.

16. According to paragraph 19 of the report, the relationship between Maori and non-Maori in New Zealand society continued to be moderated, albeit not exclusively, by the Treaty of Waitangi. In any case, there was a robust debate on the Treaty's meaning for a modern society, and the issue was a source of tension between the Crown and the Maori (report, para. 21). He welcomed the Government's abandonment of the "fiscal envelope" proposal for the settlement of Maori complaints and claims for compensation, in favour of a policy requiring future settlements to treat like claims as like. He would be grateful for an explanation of what grievances were covered by the definition of historical claims - and therefore by the settlement - and under what conditions a settlement became final, since the fact that "a significant majority of the claimant community support them" (report, para. 24) did not appear to be a sufficient condition. With regard to the restitution of the Ngati Ruanui and the Ngati Tama lands confiscated by the Crown following the conflicts of the 1860s, he wondered whether the settlements were in line with the provisions of the Committee's general recommendation No. XXIII on the rights of indigenous peoples, and particularly the provisions of paragraph 5. The delegation should give some

examples of the grievances submitted and the compensation obtained in the form of land and territory. He wondered whether the Government's settlement policy was in any way comparable to a notion of extinguishment of aboriginal rights.

17. He requested further information on the Te Ture Whenua Maori Amendment Act 1993; in particular, he wished to know whether it represented a solution to the technical problem of land-locked Maori land or if the aim was to secure the future of Maori tribes by removing some of the obstacles to development they had faced in the past. He asked whether Maori were represented among the judges of the Maori Land Court, as required under the Te Ture Whenua Maori Amendment Act 1993. He noted that the documentation made a distinction between tribal Maori and urban, non-tribal Maori. Yet more and more urban people worldwide were identifying themselves as aboriginal. It was possible that the criteria of tribal structure and land would cease to apply in the future and that more and more aboriginal people would claim membership of an indigenous group without living within a traditional structure. He wondered whether that was part of the future of the Maori.

18. Despite the progress described, the Maori were still disadvantaged in many respects, including in the areas of education, health and general economic and social situation. They were also overrepresented in the criminal justice system, both as offenders and as victims. The same applied to Pacific islanders. He wondered, therefore, whether such inequality could be eliminated and whether the measures taken by the State party to that end amounted to a coherent national strategy for social justice. With regard to the possibility of racial segregation in large cities, he drew the delegation's attention to the Committee's general recommendation No. XIX on article 3 of the Convention.

19. With regard to implementation of article 4 of the Convention, he welcomed the State party's prohibition of incitement to racial disharmony (Human Rights Act 1993, sect. 61). It was also commendable that, under section 131 of the Human Rights Act, it was an offence for any individual or group to incite racial disharmony, and that section 134 made it an offence to refuse any person access to a public place on the grounds of colour, race or ethnic or national origin; it was nevertheless regrettable that the consent of the Attorney-General was required in order to initiate prosecutions.

20. With regard to article 5 of the Convention, he noted an increase in the number of Maori Members of Parliament and of Maori registered on the electoral rolls. He wondered whether that was evidence of Maori and non-Maori growing apart or a strong affirmation of Maori's place in the political system. He wished to know whether Maori customary law continued to apply. It appeared that, in judicial matters, courts were coming to rely both on customary law and on common law, and he requested more information on the subject.

21. Turning to the implementation of article 6 of the Convention, he noted that, according to paragraph 172 of the report, the entry into force of the Human Rights Act 1993 had resulted in a substantial increase in the number of complaints to the Office of the Race Relations Conciliator, and he wondered what that said about the state of race relations in New Zealand. As to the implementation of article 7 of the Convention, he would like to know more about the overall objectives of the national policy on the Maori language, following its declaration as an official language. He wondered whether Maori was widely used in official business, and requested information on the other minority languages spoken in New Zealand. He asked whether

Pacific islander children received any mother-tongue education and whether the State party advocated bilingualism. Lastly, he requested additional information on the situation in Tokelau, and particularly on the application of human rights standards there in the context of the local culture and customs.

22. Mr. HERNDL asked whether section 131 of the Human Rights Act 1993, which made incitement to racial disharmony an offence, was still in force, given that the Act had been amended in 2001. Referring to the fact that the Race Relations Conciliator had considered invoking section 131 in respect of complaints on the emergence of fascist and neo-Nazi groups that had subsequently dispersed (report, para. 139), he wondered whether criminal proceedings had been brought against those groups or whether the groups had disbanded of their own accord. He also asked whether the State party had enacted legislation to prohibit the production and dissemination of films, video cassettes or publications inciting racial hatred. Lastly, he wondered whether the New Zealand Government intended to make a declaration under article 14 of the Convention.

23. Mr. VALENCIA RODRÍGUEZ asked whether cases of racial discrimination could be taken to the Race Relations Conciliator and, if so, what action was taken on complaints from individuals who believed themselves to be victims of racial discrimination.

24. With regard to the Crown Proposals for the Settlement of Treaty of Waitangi Claims, he wondered why the Maori had declined to join with the Crown to consider the feedback from the consultative process. He also wondered whether the Maori community was represented in the Ministry of Maori Development. He noted that, according to paragraph 35 of the report, the four Maori Development Commissions, established to develop policies and processes to close the economic and social gaps between Maori and non-Maori, had only advisory status, and he wondered what account was taken of their recommendations by executive and decision-making bodies. It would be helpful if the delegation could describe the measures taken to encourage self-sufficiency within the Maori community, in accordance with the State party's objectives (report, para. 50). Paragraph 53 of the report mentioned the problems associated with the implementation of the Resource Management Act, and he wondered to what extent Maori organizations were involved in that process or were consulted when decisions were made.

25. He noted that, according to the 1993 census, minorities had a higher rate of unemployment than the rest of the population, and that that applied particularly to recently arrived groups. The State party must prioritize efforts to eliminate that problem. He also emphasized the importance of programmes for the promotion of Maori women, who were at risk of double discrimination. It was also vital to strengthen Maori language programmes, without cutting back on English-teaching programmes for new immigrants. Lastly, he wondered what action had been taken on the 33 complaints to the Tenancy Tribunal concerning the application of the Residential Tenancies Act, some of which concerned cases of racial discrimination.

26. Mr. de GOUTTES commended New Zealand on the quality of its report (CERD/C/362/Add.10), which was substantial, comprehensive and detailed. The State party frankly admitted that economic and social disparities persisted between Maori and Pacific

islanders, on the one hand, and Maori and non-Maori, on the other. While the measures taken by the Government to rectify that situation were impressive, it had to be said that many socio-economic indicators still bore witness to the non-integration and marginalization of the Maori and the Pacific islanders.

27. With regard to the implementation of articles 2 and 4 of the Convention, he was concerned that victims of racist acts needed to obtain the Attorney-General's consent in order to take proceedings (report, para. 139). With regard to article 6, he said that, while paragraph 174 of the report gave figures on the complaints received by the Office of the Race Relations Conciliator, no information was provided on the action taken in respect of those complaints. In general, the delegation should provide details concerning penalties imposed and any reparation awarded to the victims of racist acts.

28. He wondered what stage the New Zealand Government had reached in reviewing its position on making a declaration under article 14 of the Convention, as mentioned at the end of paragraph 3 of the report. He asked whether the Government had involved NGOs in the preparation of its report. Lastly, he wondered what steps had been taken to publicize the text of the Convention and, in particular, the Committee's conclusions and recommendations.

29. Mr. AMIR said he was pleased to note that New Zealand human rights legislation was so comprehensive. He requested the delegation to provide information on the international legal status of the Cook Islands and to indicate whether New Zealand had arrested any individuals involved, directly or otherwise, in the attacks of 11 September 2001.

30. Mr. THIAM asked whether there were any remedies of appeal against decisions taken by the Attorney-General. He asked whether a victim of racist acts could apply to the Race Relations Conciliator if the Attorney-General deemed his or her complaint inadmissible.

31. Mr. PILLAI welcomed the establishment of the Office of Ethnic Affairs in May 2001, which demonstrated the New Zealand Government's desire to strengthen ethnic minorities' integration into society. In that connection, he requested further information on the specific measures the State party had taken to promote inter-ethnic tolerance and to discourage anything that tended to strengthen racial division, in accordance with article 2 of the Convention.

32. Mr. ABOUL-NASR welcomed the fact that, in the immediate aftermath of the attacks of 11 September 2001, the Acting Prime Minister had exhorted New Zealanders not to associate the Muslim community with those acts of terrorism. In that context, he would be interested in knowing what had happened in New Zealand to prompt the Prime Minister to make such a statement. He asked whether Muslims had been victims of racist acts. He also wished to know how many Arab or Muslim asylum-seekers were currently in detention, as well as their countries of origin and the kind of treatment they had received.

33. Mr. TANG Chengyuan asked what measures had been taken by the State party to narrow the social and economic gaps between Maori and non-Maori. He was concerned at the numerous reports indicating that the New Zealand Government had tightened up its asylum policy considerably since 11 September 2001. Asylum-seekers should not be regarded as criminals and placed in detention on the basis of their country of origin.

34. Ms. JANUARY-BARDILL wondered what the Government was doing to encourage employers to hire people from minority groups. She noted that, according to paragraph 140 of the report of New Zealand, most harassment complaints received related to employment. The delegation should provide details of how such complaints were dealt with.

35. Mr. CAUGHLEY (New Zealand) said his delegation would like time to prepare the fullest possible answers to the many questions put by members of the Committee.

36. The CHAIRMAN suggested that the meeting should be suspended in order to allow the delegation to prepare its replies.

37. It was so decided.

The meeting was suspended at 5.15 p.m. and resumed at 5.30 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Discussion of a document on organizational matters of interest to the Committee on the Elimination of Racial Discrimination (continued) (CERD/C/61/Misc.4)

38. The CHAIRMAN invited the Committee to resume its consideration of the document on organizational matters of interest to the Committee, in particular the paragraph on page 3 concerning the introductory statement of the representative of a State party. He pointed out that the paragraph suggested limiting the introductory statement of the State party's representative to 30 minutes.

39. Mr. RESHETOV said that, while he fully supported the Chairman's proposal, he wondered how it could be applied in practice. That implied that the decision should be communicated to States parties in order to ensure that they to complied with it, and that the Chairman would have to stop the State party representative if he or she exceeded the time allowed, which could prove somewhat delicate.

40. Mr. ABOUL-NASR, supported by Mr. PILLAI, said there was no need to be too strict. States parties simply had to be made aware of the Committee's recommendation.

41. The CHAIRMAN suggested that, in order to ensure flexibility, the final sentence of the paragraph concerning the State party representative's introductory statement could be amended to indicate that, "as a general rule", such statements should not exceed 30 minutes.

42. It was so decided.

43. The CHAIRMAN invited the Committee to consider the next paragraph, which dealt with the role of country rapporteurs and proposed that their comments should also not be longer than 30 minutes.

44. Mr. de GOUTTES said that, according to the final sentence of the paragraph, "country rapporteurs may transmit the text of their comments to the representatives of the States parties concerned". That sentence clearly showed that there was no obligation in that regard, which was important given that many rapporteurs were very late in preparing their comments and that it was

not always possible for them to transmit the text to the State party before the Committee began its formal consideration of the periodic report. Perhaps a final sentence could be added to the paragraph, to the effect that country rapporteurs were encouraged to hold a preliminary, informal meeting with a member of the mission in question.

45. The CHAIRMAN said that he agreed with that suggestion but wondered whether the responsibility for calling such a meeting should rest with the country rapporteur or the State party.

46. Mr. RESHETOV said that, while it was always preferable to have a preliminary discussion with the representatives of a State party whose periodic report was due to be considered by the Committee, such a decision could be taken only by the State party. It would be better to say that it was desirable to hold such a meeting.

47. Mr. KJAERUM supported Mr. de Gouttes's proposal and proposed that the letter sent by the Committee to States parties to inform them when their periodic report was to be considered should indicate the name of the rapporteur appointed by the Committee for the country concerned and state that a preliminary meeting between the rapporteur and a member of the mission or the delegation would be very useful. It would then be up to the State party to take the initiative and contact the rapporteur.

48. Ms. JANUARY-BARDILL said that, while she supported the idea of preliminary interviews, such interviews would not always be possible since many States parties, particularly the smaller developing countries, did not have permanent missions to the United Nations Office at Geneva.

49. Mr. RESHETOV said that, while it was true that certain States parties did not have a diplomatic mission in Geneva, a preliminary interview with a member of the delegation who had been sent to present the State party's report could be held the day before the Committee considered the report.

50. Mr. de GOUTTES proposed that, in order to take account of the various views expressed, the final sentence of the paragraph should be amended to read: "In order to assist States parties in replying to questions, country rapporteurs may, wherever possible, transmit the text of their comments to the representatives of the States concerned, through the secretariat. A preliminary meeting between the country rapporteur and a member of the Permanent Mission of the State party to the United Nations Office at Geneva is also recommended."

51. Mr. TANG Chengyuan said that he did not see any use in formalizing the practice of holding preliminary meetings and would prefer that the decision was left to the rapporteur's discretion.

52. The CHAIRMAN suggested that, as there was no consensus on the matter, the Committee might wish to consider the text again at a later date.

53. It was so decided.

The meeting rose at 6 p.m.