

## NEW ZEALAND

### CCPR A/39/40 (1984)

161. The Committee considered the initial report of New Zealand (CCPR/C/10/Add.6) including the reports on Niue and Tokelau (CCPR/C/10/Add.10 and 11) at its 481<sup>st</sup>, 482<sup>nd</sup> and 487<sup>th</sup> meetings, held on 7 and 10 November 1983 (CCPR/C/SR.481, 482 and 487).

162. The report was introduced by the representative of the State party who pointed out that, before his country had ratified the Covenant, it had found it necessary to undertake an extensive review of domestic law and practice owing to his country's wish to ensure scrupulous compliance with the obligations which it had been about to accept and to the fact that New Zealand had neither a written constitution nor a bill of rights. He referred to the means by which the rights set forth in the Covenant were secured and protected in New Zealand and to the major pieces of legislation adopted following that review to promote human rights in his country, i.e. the Human Rights Commission Act 1977. He emphasized the long-standing recognition by the executive and legislative branches of government that the absence of formal restraint on the authority of Parliament to legislate did not sanction legislation that invaded individual liberties, as well as the existence of an alert, informed and critical public opinion that found expression in a free press.

163. The representative also informed the Committee of a number of relevant developments which had taken place in his country since the submission of the report, notably, the entry into force of the Official Information Act 1982 which created a statutory presumption that official information was to be made available unless there was good reason for withholding it on one of the grounds specified in the Act, the Citizenship (Western Samoa) Act 1982 concerning the citizenship of a large number of Western Samoans and the Industrial Law Reform Bill recently introduced in the Parliament and designed, *inter alia*, to ensure that membership in trade unions was voluntary.

164. Members of the Committee commended the excellence and comprehensiveness of the report in so far as it fulfilled the requirements set out in the Covenant and was consistent with the guidelines laid down by the Committee. Noting the wide-ranging activities of the New Zealand Human Right Commission, members requested more information on its educational programmes and asked whether teaching about human rights was included in the curricula of schools and universities and in the professional training of lawyers, police officials, security services, civil servants and teachers. It was also asked whether only the act of accession to the Covenant was published or the text of the Covenant as well and, if so, in what language.

165. As regards article 1 of the Covenant, information was requested about the efforts made by New Zealand for the effective promotion of the principles laid down in this article and, particularly, about its position with regard to Namibia and Palestine.

166. Commenting on article 2 of the Covenant, members referred to the Race Relations Act and wondered why the Act, which had recently been promulgated and which prohibited discrimination

on several grounds, had failed to mention discrimination on grounds of political or other opinion, property, birth or other status as provided for in this article; and what justification was there for educational establishments to be maintained wholly or principally for students of one race or colour as mentioned in the Act. In this connection, reference was made to the recently enacted Citizenship (Western Samoa) Act 1982 and an explanation was requested of the human rights issues, mainly dealt with in article 2, paragraph 1, article 12, paragraph 4, and article 24, paragraph 3 of the Covenant, to which this Act had given rise. Noting that the incorporation of the provisions of the Covenant in domestic legislation and the granting of superior status to those provisions was a very efficient means of meeting the requirements of article 2, paragraph 2 of the Covenant, as that enabled the provisions of the Covenant to be invoked directly before the courts and the administrative authorities and prevented Parliament from enacting legislation that could restrict individual rights contrary to those provisions, members asked whether any proposals had been made for enacting a bill of rights. Noting that the common law system in which New Zealand was based on precedent rather than on written law, one member asked how the opinions of judges in New Zealand were adapted to contemporary situations, what framework governed the exercise of their discretion and what guarantees existed to ensure that they complied with New Zealand's obligations under the Covenant.

167. More information was requested on the terms of reference and functioning of the New Zealand Human Rights Commission, the Ombudsman and the Race Relations Conciliator and it was asked whether the Commission's and the Ombudsman's power of investigation extended to breaches of the rights and freedoms recognized in the Covenant and to acts committed by local government officers; who removed the Ombudsman and members of the Commission and on what basis their removal could be effected; what had been, since its establishment, the number and subject of investigations carried out by the Commission; and of civil actions it had brought before the Equal Opportunities Tribunal; whether complaints were brought to the Equal Opportunities Tribunal more frequently by the Commission or by the individuals themselves; and whether referral of complaints to the Conciliator precluded referral to the courts.

168. With respect to article 3 of the Covenant, members appreciated the honesty of the Government in describing frankly the difficulties encountered in applying this article and welcomed the efforts made to improve the situation. They requested information about the percentage of females attending high schools and universities as well as their numbers in the various professions and in Parliament and the foreign service. It was also asked whether the objective sought by the adoption of the Equal Pay Act 1972 had been attained.

169. In relation to article 6 of the Covenant, some members pointed out that the right to life included other aspects than those mentioned in the report regarding the death sentence and requested information on infant mortality, particularly in ethnic communities such as Maoris, and on whether the figures varied with regard to urban or rural population or a particular category of population.

170. In connection with articles 7 and 10 of the Covenant, explanation was requested of a statement in the report to the effect that, with certain limited exceptions, the person adversely affected cannot take the law into his own hands; and it was asked whether corporal punishment had

been abolished and what were the forms of punishment that could be inflicted on pupils and whether any abuses were committed. Concern was expressed in the Committee that, in theory, it was possible under New Zealand law to convict a child aged between 10 and 14 years, since children under 18 years of age required rehabilitation rather than punishment; and that the reservation made by New Zealand concerning the segregation of juvenile offenders from adults did not seem to be a matter of necessity and shortage of suitable facilities but one of deliberate choice. Information was requested on New Zealand's success with the rehabilitation of prisoners and on the contents of the police instructions used in the only prison on the island of Niue in the absence of any local rules and regulations governing the administration of prisons. Noting that in the case of Tokelau, where there was no prison, prisoners had to be transferred to New Zealand prisons, one member pointed out that such a procedure made visits by families and friends extremely difficult and could lead to unduly harsh conditions of confinement. With reference also to article 18 of the Covenant, it was noted that, according to the report, a prisoner could be required to attend the services of a denomination to which he belonged, and it was pointed out that this seemed to be an infringement of the right to freedom of religion and conscience consecrated in the Covenant.

171. Commenting on article 9 of the Covenant, members recalled that the Committee had been in favour of a broad interpretation of the concept of deprivation of liberty and noted that the report seemed to be confined to cases of arrest and detention under criminal law. They stressed the need for safeguards to protect the rights of those detained on other grounds such as infectious diseases, vagrancy, unsound mind and so forth and asked whether New Zealand had taken steps in that direction.

172. As regards article 14 of the Covenant, it was asked why it had been considered necessary to establish an Equal Opportunities Tribunal in New Zealand; whether the Judicial Committee of the Privy Council tried cases and what its functions and powers were; what was the composition of the Children and Young Persons' court and what recourse procedure was available against its decisions; whether the cost of litigation was a problem in New Zealand and, if so, what was being done about it; who paid for interpretation services when an accused person or a witness did not speak or understand English; and whether there existed purely moral means of compensation, such as publication in newspapers of the decision rescinding a sentence.

173. As regards article 17 of the Covenant, it was asked whether citizens were protected against possible abuse in the handling of the computer-based information system referred to in the report; what procedures were available to them in the event of unwarranted intrusion upon their privacy and whether they could claim compensation for it. Noting that the monitoring of telephone calls was regulated in New Zealand by legislation, but that the Human Rights Commission was granted some authority in the area of respect for privacy, one member asked whether the Commission had ever examined the application of the New Zealand Security Intelligence Service Act 1969 and the Misuse of Drugs Amendment Act 1978 and, if so, whether it had made any comments or recommendations; and whether any new measures to improve the protection of privacy had been initiated or were planned for the future.

174. In connection with articles 18 and 19 of the Covenant, it was asked whether the New Zealand authorities had taken specific measures to protect the Maori religion; what specific means were

available to ensure freedom of expression and opinion; whether section 123 of the Crimes Act 1961 relating to blasphemous libel was fully compatible with the Covenant, to what extent it was applied, whether any proceedings had been initiated under it during the past 10 years and what had been the decisions of the courts.

175. Referring to the reservation made by New Zealand with regard to article 20 and recalling that the Committee had expressed the view that prohibition of war propaganda was compatible with freedom of opinion, some members wondered whether New Zealand might not consider withdrawing its reservation on that article.

176. In relation to article 22 of the Covenant, it was asked what was the justification for the refusal to register a union which fulfilled satisfactorily the conditions required for registration on the pretext that the interests of its members might be represented adequately by an already existing union.

177. With respect to articles 25 and 27 of the Covenant, it was asked what criteria had been followed to determine who was a Maori and to set the number of Maori seats in Parliament at four; whether the administration recruited a percentage of Maoris proportionate to their number; whether there was any legislation to protect Maoris' fishing rights and to prevent the pollution of their fishing grounds; whether a person who had been educated in Tokelau could find employment in New Zealand; whether the Tokelauans could enjoy the benefit of all the resources in this exclusive economic zone recognized as such by New Zealand under an agreement with them; whether there had been any encroachment, for economic reasons, on the lands and other property rights of indigenous peoples; and what were the practical results of the measures taken in favour of the Maori and Pacific island peoples.

178. Replying to questions raised by Committee members, the representative of the State party explained that in order to promote education in the field of human rights, the New Zealand Human Rights Commission organized lectures in schools, arranged weekend forums for senior students and had a library of video material ready for distribution, and arranged lectures and seminars for police officers, public servants, lawyers and university students. The Covenant had been published in English, and pamphlets explaining its provisions had been published in English, Maori and all the relevant Pacific Island languages; in addition, copies of the report of New Zealand to the Human Rights Committee were available in public libraries.

179. Replying to questions posed under article 1 of the Covenant, the representative stated that for many years his country had defended the right of self-determination of the peoples of southern Africa and Palestine in the United Nations and in other international bodies, and he gave details about his country's policies in this regard.

180. As regards article 2 of the Covenant, the representative pointed out that the limited coverage of distinctions in the Race Relations Act did not reflect a belief that discrimination on grounds specified in article 2, paragraph 1, either existed or was permissible, since one of the basic principles of the New Zealand legal system was the equality of all persons before the law; that no person could claim preferential rights on the basis of any of the distinctions referred to in this

article, or could be placed at a disadvantage under the law by reference to such distinctions. He also stated that maintaining an educational establishment for students of one race was in conformity with article 1, paragraph 4, of the International Convention on the Elimination of All Forms of Racial Discrimination which authorized “special measures taken for the sole purpose of securing adequate advancement of certain racial groups or ethnic groups or individuals”; that there were no schools in New Zealand reserved for the majority race (Europeans), but that there were certain schools reserved for Maoris for the specific purpose of promoting the advancement of the Maori people. Replying to a question concerning the implications of the enactment of the Citizenship (Western Samoa) Act, he gave a detailed account of the historical background since the attainment of independence by Western Samoa in 1962 and pointed out that the Act was in conformity with the fundamental principles of international law based on the concept of the State having responsibility for a specific territory and a specific population and with a decree issued by Western Samoa in 1959 under which the acquisition of another citizenship automatically entailed the loss of Samoan nationality. The two States had therefore agreed on the principles and procedures to follow in matters concerning citizenship and migration, by adopting a protocol relating to the Treaty of Friendship.

181. Regarding the question whether the protection of human rights was adequate in the absence of a basic law detailing those rights, the representative repeated what he had said in his introductory statement in this respect; he briefed the Committee on the growing debate in his country as to whether a Bill of Rights was needed as a super guarantee of human rights and stated that his Government so far had been of the opinion that the guarantees offered by a written Constitution and a Bill of Rights were not significantly superior to New Zealand’s unwritten Constitution and that the conscience of the people, including those who wielded power, was the ultimate guarantee of the protection of human rights. He also explained that the doctrine under which courts were generally bound by prior decisions was not an inflexible one, and that the common law had repeatedly shown itself to be a living and dynamic system; that in areas where the common law had not developed rapidly enough or had been found inadequate for some other reason, statute law bearing on human rights had been introduced as required.

182. The representative provided more information on the powers and the functioning of the New Zealand Human Rights Commission and the Ombudsman, whose power extended to local bodies as well as to central government and could investigate any matter referred to them by a Parliamentary Committee or the Prime Minister. He explained the grounds on which the Ombudsman was able to determine that a complaint about administrative action was justified and referred to certain cases to demonstrate that the Ombudsman promoted the rights recognized by the Covenant. He pointed out that since the Chief Ombudsman, or an Ombudsman nominated by him, was a member of the New Zealand Human Rights Commission, the possibility of any conflict between the two institutions was greatly reduced, and indicated that the removal from office of an Ombudsman required parliamentary approval since he was an officer of Parliament. He also informed the Committee that from 1979 to 1983 the Human Rights Commission had undertaken more than 2,000 investigations, mostly concerning discrimination on grounds of sex; that most complaints had been settled without recourse to the Equal Opportunities Tribunal; and that the Equal Opportunities Tribunal had heard seven cases relating to sexual, religious and racial discrimination, with the Commission taking action on three occasions on behalf of groups, as

compared to action initiated on four occasions by individuals. Replying to another question, he indicated that if an act or an omission was unlawful by virtue of the provisions of the Human Rights Commission Act and the Race Relations Act alone, the aggrieved person had to use the procedure provided for in the two Acts and that, subject to that provision, nothing in either Act affected the right to bring civil or criminal proceedings which might have been brought if the legislation had not been passed.

183. As regards article 3 of the Covenant, the representative explained the major efforts which had been made to increase educational opportunities for women and gave impressive statistics showing the percentage of female enrolment in various educational institutes and universities as well as in professional and technical occupations and in the diplomatic service. Noting that Government Service Equal Pay Act, 1960, had been extended in 1980 to cover emoluments other than base wages and salaries, he pointed out that all measures taken to achieve equal opportunities in employment in the private sector, including the Equal Pay Act, had been implemented; that guidelines had later been established to arrive at equitable pay levels for both sexes; and that, according to the 1981 census, the average ordinary wage of women in industrial occupations was 76.4 per cent of the average male wage.

184. Replying to questions raised under article 6 of the Covenant, he informed the Committee that infant mortality rates in New Zealand had generally decreased over the past 10 years; that his country occupied an intermediate position in the infant mortality rates of developed countries, except in the case of the post-neonatal infant mortality rates, for which New Zealand ranked highest among the developed countries, the major reason being the sudden infant death syndrome whose nature and high incidence in his country were not yet understood; that differences in urban and rural life expectancy might exist but that no relevant statistics were currently available.

185. In connection with questions posed under articles 7 and 10 of the Covenant, the representative stated that, in certain specified cases, New Zealand's law allowed for private justice whereby it recognized a very limited power of citizen's arrest, but if that limited power was exceeded, the person involved exposed himself to criminal and civil liability; that corporal punishment or flogging had been abolished a long time ago; that the Children and Young Persons Act provided special procedure and special protection for all young persons who had committed offences; that the practice was to segregate persons under the age of 17 from other offenders and to keep their detention as short as possible; and that the Minister of Justice was considering a proposal to establish two experimental regional prisons for offenders aged 17 and over. He noted the concern voiced in the Committee that the New Zealand Police Instructions referred to in the report on Niue did not have force of law in Niue and therefore might not be in compliance with the Covenant and that he would convey that view to the Niuean authorities. Stressing that the initiative for the transfer of Tokelauan prisoners to New Zealand prisons did not lie with the New Zealand Government, he indicated that if family members of friends travelled to New Zealand to visit the prisoners, the Justice Department would permit extended visiting times; that the New Zealand Prisoners' Act and Rehabilitation Society would assist in finding accommodation for visitors but there was no provision for financial

assistance from the Government. He acknowledged that the question concerning the Penal Institutions Regulations under which a prisoner might be required to attend the religious service of a denomination to which he belonged was a penetrating one which would be referred to the competent New Zealand authorities.

186. With respect to questions raised under article 9 of the Covenant, he admitted that the portion of the report dealing with this article could have been broader in scope, since the liberty of person could be affected by means other than the application of criminal law. In this connection he stated that the rights of persons placed in mental institutions against their will were safeguarded under the Mental Health Act which contained provisions for the committal, care, treatment and discharge of such patients and their right of appeal, i.e., to a judge of the High Court who could order an inquiry and order the patient's discharge if deemed appropriate.

187. Replying to questions posed under article 14 of the Covenant, the representative stated that the Equal Opportunities Tribunal was established because the technique of special tribunals, which had been widely used in this country, had been thought to have advantages in term of continuity of experience, specialist membership, flexibility of procedure and the expeditious dispatch of cases brought before them; that the Judicial Committee of the Privy Council, inter alia, heard appeals from members of the Commonwealth which had not abolished such final appeal from their own courts, and that, since New Zealand had not done so, the Judicial Committee was its supreme judicial body; that the Children and Young Persons' Court was composed of a district court judge; that eligibility for legal aid now covered only persons with very low incomes and that a recommendation made 1983 to extend that aid to people with modest income was being studied by the Government; and that material or moral compensation, as such, did not exist formally in New Zealand law but that as a matter of practice, compensation was paid on an ex gratia basis.

188. In connection with questions raised under article 17 of the Covenant, he stated that the New Zealand Human Rights Commission had not yet examined the operation of the New Zealand Security Intelligence Service Act, 1969; that the Computer Centre was excluded from the Commission's jurisdiction and that the Chief Ombudsman had already conducted an investigation into the Security Intelligence Service.

189. As regards questions raised under articles 18 and 19 of the Covenant, the representative stated that no specific measures had been taken with respect to the Maori religion, as distinct from Maori culture and language, and that those Maoris who professed a religion had generally adopted the Christian faith; that freedom of expression and opinion was a fundamental principle of New Zealand common law; that some limitations and restrictions imposed by both common law and statute were thought to be compatible with the Covenant; and that the problem of the compatibility of section 123 of the Crimes Act 1961 relating to blasphemous libel with article 19 (3) of the Covenant would have to be brought to the attention of his authorities for consideration.

190. Commenting on questions put to him regarding New Zealand's reservations on

article 20 of the Covenant, he stated that there was no current problem of war propaganda in his country and that, if such a problem arose, the need for legislation making war propaganda a specific offence could be reconsidered.

191. Replying to a question raised under article 22 of the Covenant, the representative explained that an essential feature of the system established by the Industrial Relations Act was that only one registered union could cover a particular category of workers; that there was a right of appeal to the Arbitration Court against refusal to register a union on the grounds that its members could be represented adequately by an existing union; that the failure to register a union did not mean that it ceased to exist but rather that it was deprived of the benefits that flowed from registration; and that in his Government's view, this restriction was permissible under the terms of article 22, paragraph 2, of the Covenant.

192. With respect to questions raised under articles 25 and 27 of the Covenant, the representative explained how the law determined who was Maori for the purpose of elections and pointed out that, in practice, persons of Maori descent were not required, when enrolling, to produce any evidence of their ancestry and that people had a certain freedom of choice as to whether they enrolled in one type of electorate or another. The answer to the question concerning the allocation of only four Maori seats in Parliament was that a number of Maoris chose to enrol on the non-Maori roll. The total on Maori electoral rolls currently made up 3.72 per cent of the total on all-electoral rolls. In 1967, the electoral law had made it possible for a person registered as a Maori elector to stand for Parliament in any electorate. At present there were six Maori members of Parliament - four in the Maori seats and two in others. He also pointed out that several areas in his country were recognized by legislation as reserves where Maoris had exclusive fishing rights and that a full 200-mile exclusive economic zone has been established around Tokelau and that all the resources of that zone belonged to the people of that island. Replying to other questions, he stated that the Treaty of Waitangi of 1840 had confirmed and guaranteed to the Maori people the possession of their lands, estates, forests and fisheries; that there was still a strong feeling of injustice among some minority groups with respect to a number of land claims; that there was now a markedly more sympathetic attitude to land claims; that it was the Government's general policy to revert land that was no longer required for the purposes for which it had been acquired from the original owners and that payment of compensation was now authorized for the descendants of those who had been dispossessed of their lands the previous century. He informed the Committee of the wide range of educational and social programmes which had been established and which had contributed in many ways to the advancement of the Maori people and he admitted that more had still to be done for them as well as for other minority groups.



## CCPR A/40/40 (1985)

430. The Committee considered the initial report of New Zealand (Cook Islands) (CCPR/C/10/Add.13) at its 579<sup>th</sup> and 582<sup>nd</sup> meetings, held on 28 and 29 March 1985 (CCPR/C/SR.579 and 582). 18/

431. The report was introduced by the representative of the Cook Islands who explained that, following consultations with the Government of the Cook Islands, the obligations set forth in the Covenant had been extended to the Cook Islands when New Zealand had ratified the Covenant. He noted that the laws and administrative practices relating to the protection of human rights reviewed in the report came within the exclusive purview of the Government of the Cook Islands. The fundamental rights of Cook Islanders were set out in a written Constitution, but perhaps the strongest guarantee of such rights was the high level of political awareness and participation of the population.

432. In discussing the relationship of the Cook Islands with New Zealand, the representative recalled that the Islands had exercised their right to self-determination in 1966, under United Nations supervision, and that they had chosen full self-government in free association with New Zealand. After providing additional details regarding the Islands' international relations and status, the representative drew attention to several relevant developments that had occurred since submission of the report, including the passage of the Ombudsman Act in 1984, the adoption of a constitutional amendment modifying eligibility rules for election to Parliament and the entry into force, with respect to the Cook Islands, of the Convention on the Elimination of All Forms of Discrimination against Women.

433. Members of the Committee commended the Government of the Cook Islands on the high quality of the report which, in their view, compared favourably with reports submitted by larger countries and which demonstrated a full grasp of the Committee requirements.

434. One member of the Committee inquired about the size of the Cook Islands population and about the nature and cause of the movement of the population among the islands and away from the Cook Islands. He also requested information about the policies and efforts of the Cook Islands with respect to the problems of Namibia and apartheid, the right of the Palestinian people to self-determination, and the question of Democratic Kampuchea and Afghanistan.

435. Regarding article 2 of the Covenant, members asked whether the provisions of the Covenant had been incorporated into the domestic legislation of the Cook Islands and whether they could be invoked before the courts. Additional clarification was also sought as to why sections 2 to 6 of the Constitution Act 1964 and articles 2, 37 (5) and 41 of the Constitution enjoyed a special status.

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18/ The initial report of New Zealand (CCPR/C/10/Add.6), including the reports on Niue and Tokelau (CCPR/C/10/Add. 10 and 11) was considered by the Committee at its 481<sup>st</sup>, 482<sup>nd</sup> and 487<sup>th</sup> meetings, held on 7 and 10 November 1983 (CCPR/C/SR.481, 482 and 487).

436. With reference to article 3 of the Covenant, it was asked whether women in the Cook Islands were free from discrimination and whether there was in fact equality between spouses, for example in the case of divorce.

437. In connection with article 8 of the Covenant, one member requested clarification of the term "community service order" which was used in the report and which might be interpreted as a form of forced labor.

438. In connection with article 9 of the Covenant, members of the Committee requested information as to whether there were frequent cases of arrested persons' not being promptly informed of the grounds for their arrest, whether anyone had ever sought damages for unlawful arrest or detention and whether the authorities were permitted to arrest or detain persons for reasons other than criminal actions. In the latter case, it was asked whether the guarantees provided for in article 9 of the Covenant, which in certain respects seemed broader in scope than guarantees provided under domestic laws, were adequately ensured.

439. Concerning article 10 of the Covenant, it was asked whether the treatment of juvenile offenders was in conformity with the provisions of that article and whether the practice of exercising strict control over a prisoner's correspondence was compatible with due respect for privacy.

440. With regard to article 12 of the Covenant, it was noted that, according to the report, exit from the Cook Islands was restricted by law in certain instances. It was asked whether, in cases where authorization to leave had been denied, legal recourse was available to the individual concerned. Members also asked whether freedom of travel between the Cook Islands and New Zealand was complete and requested further details about the relationship of the Cook Islands and New Zealand regarding nationality and the issuing of passports.

441. With reference to article 14 of the Covenant, it was asked whether there was a legal profession in the Cook Islands and whether legal assistance was readily available so that individuals could exercise the rights set forth in article 14, paragraph 3; whether there were sufficient justices of the peace; what the qualifications were for appointment as a judge or commissioner of the High Court; whether judges could be appointed on contract, as implied in article 58 (2) of the Constitution, and, if such contracts were renewable, whether that would not place judges unduly under the influence of the executive; whether recourse to customary law was encouraged; whether the independence of the legal profession was ensured; how many Cook Islands citizens were lawyers; on what basis legal aid was granted - whether it was available for civil as well as criminal cases - and how many persons had applied for such aid.

442. Commenting on article 18 of the Covenant and noting that under the Religious Organizations Restrictions Act 1975 the establishment of some religious organizations in the Cook Islands required prior ministerial approval, members asked whether under such powers the practice of any religion had ever been prohibited and, if so, for what reason. They also asked what the rationale for that Act was; whether the Maoris had their own religious practices; whether members of the clergy were allowed to teach at all levels in the Islands' secular schools; and whether there were any religious schools.

443. With regard to article 19 of the Covenant, one member inquired whether the press was government-owned and, if so, how it was possible to prevent government control of the media and to ensure political pluralism.

444. Commenting on the fact that there was no legislation prohibiting war propaganda, one member asked whether the enactment of legislation to bring the Cook Islands into compliance with article 20 of the Covenant was being contemplated.

445. Although aware of New Zealand's reservation in respect of article 22 of the Covenant, members asked whether workers were free to exercise their right to form trade unions and why there were no trade unions. Information was also requested about various aspects of the law governing the establishment of trade unions. One member asked whether at some stage New Zealand might not wish to consider withdrawing its reservation to article 22.

446. In connection with article 25 of the Covenant, it was asked how members of Parliament were elected; whether the requirement for resignation from the public service of elected officials would not deter public servants from seeking elective office; how many political parties there were and what their relative strength was; and whether the constitutional amendment excluding certain persons from Parliament for life was consistent with the Covenant. Several members asked whether the hereditary basis for membership of the House of Arikis did not contravene article 25 or if local political groups considered that it did.

447. Regarding article 27 of the Covenant, members of the Committee asked why the scope of customary Maori law was restricted to only two areas and was not made more broadly applicable, whether Maori women enjoyed the same rights and opportunities as other women and whether the principle of proportionality in the ethnic composition of the staffs of the organs of government, the educational system and the civil service was adequately respected. Several members asked for additional information about the situation of minorities in general, in terms of their enjoyment of the rights set out under article 27 of the Covenant.

448. Replying to a question concerning the size and movements of the population, the representative noted that there had been a strong trend between 1976 and 1984 towards migration by young Cook Islanders to New Zealand to take advantage of better educational and employment prospects, but that more recently the population appeared

to have stabilized at about 17,000, reflecting the increasing confidence of Cook Islanders in the economic future of their country. The reduction of traditional family size was also expected to be a stabilizing factor. The population drift from the northern group of islands had also levelled off.

449. With regard to questions posed under article 1 of the Covenant, the representative noted that the Cook Islands expressed their views concerning such international affairs through New Zealand. They exerted an influence in their own right in the Pacific region and did not aspire to influence any further afield.

450. As to why the Covenant had not been incorporated into domestic law, the representative was of the view that the real issue was whether or not the legal system in its entirety provided adequate protection for fundamental rights - and by that criterion such rights were guaranteed in the Cook Islands. Concerning the special status of certain sections of the Constitution Act 1964 and the Constitution, he noted that those "entrenched" provisions involved fundamental matters such as the functions of the Head of State and the principles that the Cook Islands should be self-governing, that the Constitution should be the supreme law, that external affairs and defence should be the responsibility of New Zealand after consultation and that Cook Islanders should be New Zealand citizens.

451. Replying to the question concerning article 3 of the Covenant, the representative explained that women had equal opportunities with men to participate in public life but that their number in the public service was relatively small since such involvement represented a departure from the traditional role of Polynesian women. For the previous 13 years, however, the Speaker of the Parliament had been a woman and there had also been a woman Cabinet minister in a previous Government. Women were strongly represented in the House of Arikis. Divorces were very few, and when they did occur the family assets were divided equally between the partners. There was no legislation concerning the status of women because it was taken for granted that they enjoyed every right, particularly the traditional rights of Polynesian women in the home.

452. With respect to the question concerning the possible interpretation of community service as forced labour, posed under article 8 of the Covenant, the representative stated that forced labour was not permitted but that prisoners could work if they chose, in return for a modest remuneration.

453. Replying to questions raised under article 9 of the Covenant, he stated that, while the Criminal Procedure Act required that a person be brought before a court within 48 hours of his arrest, in practice no one had ever been held longer than overnight before that was done; that although a remedy was available there had never been an action in the courts seeking damages for false imprisonment; and that under the law arrests without a warrant were prohibited, except in certain prescribed circumstances such as when a person was clearly about to commit a crime.

454. Regarding the questions raised under article 10 of the Covenant, the representative stated that juveniles in the prison in Rarotonga were kept in separate accommodation

and that prisoners' correspondence was checked in order to establish the nature of the communication.

455. In connection with questions posed under article 12 of the Covenant, he explained that Cook Islanders were free to leave the Cook Islands whenever they wished, subject to obtaining a tax clearance, that they had free access to New Zealand citizenship and were entitled to hold New Zealand passports and that New Zealanders were obliged to obtain residence permits for visits to the Cook Islands exceeding 90 days.

456. Replying to questions posed under article 14 of the Covenant, the representative stated that there were two firms of solicitors in Rarotonga, each employing two or three lawyers, and four qualified lawyers in government service. All lawyers were graduates of New Zealand universities. There was no law society or bar association. There were at least three justices of peace on every island and there were now three European justices of peace in addition to those of Maori origin. The qualifications for judges were stipulated in the Constitution and no Cook Islander had as yet met such qualifications. Although judges were given three-year appointments and could be reappointed there was no danger of undue government influence, since they were not resident and only visited the Cook Islands occasionally, in connection with their duties. In actual practice, judges departed of their own accord and their resignations were accepted with reluctance.

457. Regarding the questions posed under article 18 of the Covenant, the representative of the Cook Islands acknowledged that on its face, the Religious Organizations Restrictions Act appeared to be inconsistent with the obligation under the Covenant to ensure freedom of religion. It had been passed because of the frequency of visits to the country by evangelists of obscure religious sects whose influence on some people had caused concern. The Act had not been effective in dealing with that problem and neither did it restrict the establishment of other religions. The concerns of the Committee on that score would, however, be conveyed to the Government with a view to recommending that the Act be repealed. The Church participated in education at all levels.

458. With respect to article 19 of the Covenant, the representative noted that one daily newspaper was published by the Cook Islands Broadcasting and Newspaper Corporation, which was a statutory body required by law to maintain a proper balance in selecting and presenting the news. It also ran an island-wide AM radio station. Other newspapers, generally weeklies, were also published, usually representing the views of the parliamentary opposition. There was also a privately-owned FM station broadcasting to Rarotonga, but no television.

459. Replying to questions raised under article 22 of the Covenant, the representative of the Cook Islands pointed out that trade unions were permitted and there were no obstacles to freedom of association. The Government was the major employer and there was a public service association as well as a union of dockside workers. The absence of other trade-union activity indicated that Cook Islands workers had thus far felt no need for it.

460. In connection with questions raised under article 25 of the Covenant, the

representative stated that the requirement for the resignation from the public service of public servants who had been elected to Parliament was consistent with the principle of the separation of powers. There were two main political parties. At the most recent election, support for those parties had been evenly divided, with the result that there was currently a coalition government. The House of Arikis was strictly an advisory body. As an inherited part of the Cook Islands system, it was not part of the electoral process and could not be changed. The appointment of Arikis was a matter of lineage and succession and could not be made subject to elections. The representative also stated that he would convey to his Government the questions raised with regard to the constitutional amendment concerning membership of Parliament.

461. Replying to questions raised by Committee members under article 27 of the Covenant, the representative of the Cook Islands stated that approximately 95 per cent of the population were Cook Islands Maoris of pure and mixed blood, the remaining 5 per cent being Europeans of predominantly New Zealand origin.

462. Customary law was concerned almost exclusively with land questions, chiefly titles. The Government had decided, in principle, that the protection of customary law afforded by the Cook Islands Act of 1915 should be embodied in the Constitution.

463. As to the general situation of minorities, he pointed out that Europeans constituted the only ethnic minority in the Cook Islands and they were not discriminated against in any way.

464. Concluding the consideration of the report of New Zealand (Cook Islands), the Chairman thanked the delegation of the Cook Islands for its co-operation with the Committee and welcomed the fruitful dialogue that had begun. He expressed the hope that it would be possible for the Government of the Cook Islands to co-ordinate the second periodic report with the one due from New Zealand.

## **CCPR A/44/40 (1989)**

363. The Committee considered the second periodic report of New Zealand (CCPR/C/37/Add.8), including the reports of Niue and Tokelau (CCPR/C/37/Add.11 and 12) at its 888<sup>th</sup> to 891<sup>st</sup> meetings, held on 4 and 5 April 1989 (CCPR/C/SR.888-891).

364. The report was introduced by the representative of the State party, who referred to a number of important recent developments, including the termination by the Constitution Act of 1986 of the residual power of the United Kingdom Parliament to enact law for New Zealand; the extension of the jurisdiction of the Waitangi Tribunal by the Treaty of Waitangi Amendment Act 1987; and the declaration of Te Reo Maori, pursuant to the Maori Language Act, as an official language of New Zealand. The representative also noted that, since the submission of the report, a white paper containing a draft bill of rights had been published, but that a large majority of the submissions received during the extensive process of consultation had not favoured the proposal to entrench it into New Zealand law. Accordingly, the Justice and Law Reform Committee to which the white paper had been referred had concluded that New Zealand was not yet ready for an entrenched bill of rights and had recommended its enactment in the form of an ordinary statute. Additionally, he stated that the Government had decided to accede to the Optional Protocol; that it had introduced legislation in 1988 to ensure full compliance with all the provisions of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment so as to be able to ratify it as soon as possible; that a separate human rights section had been established within the Ministry of External Relations and Trade; and that his Government was devoted to the needs and aspirations of the Maori people and had therefore restructured the Maori Affairs portfolio.

365. With regard to Niue and Tokelau, the representative explained that, while Niue was a self-governing country in free association with New Zealand, Tokelau remained New Zealand's last Non-Self-Governing Territory. He reaffirmed New Zealand's commitment to assisting Tokelau towards greater economic self-sufficiency and self-government, while respecting the wish of the islanders to retain their constitutional links with New Zealand.

### Constitutional and legal framework within which the Covenant is implemented

366. With reference to that issue, members of the Committee wished to know whether the Covenant had been resorted to by the courts for interpretive purposes or otherwise, since the Covenant was not directly applicable as a law; what the current state or public debate was on the need for a bill of human rights and what the Government's public information activities were in that regard; how soon such a bill of rights might be enacted; whether there had been new developments since the submission of the report in respect of the enactment of the Imperial Laws Application Act and the removal of the right to appeal to the Privy Council; and whether the population in Niue spoke a language of their own and, if so, whether the Covenant had been translated into that language. They also wished to receive information on factors and difficulties, if any, affecting the implementation of the Covenant; on activities relating to the promotion of greater public

awareness of the provisions of the Covenant, in particular with regard to the teaching of human rights to police officers, members of the armed forces, civil servants, doctors and social workers as well as to Maoris and Pacific Islanders; whether the people in Niue and Tokelau had been adequately made aware of their rights under the Covenant; and what kind of publicity the second periodic report and its consideration by the Committee would be given in New Zealand.

367. Commenting on the draft bill of rights, members wished to know whether it was planned to incorporate the provisions of the Covenant into the bill all at once or only gradually; the extent to which the Government's position had been influenced by the public debate; and why further public education on the issues was considered necessary.

They also sought further information on how differences between the Committee's jurisprudence and that of New Zealand's judicial branch were dealt with; whether New Zealand intended to maintain its reservations to the Covenant; whether any reservations were contemplated in ratifying the Optional Protocol; and why the Privy Council link had been abolished. Additionally, they wished to know what the status of the Treaty of Waitangi was within the legal structure of New Zealand; what means were available to the Maori people for ensuring full compliance with the provisions of that Treaty; what the practical effect of merging the Human Rights Commission and the Race Relations Office would be; and what functions the Special Commissioner for Maori Affairs would have.

368. In connection with the International Terrorism (Emergency Powers) Act 1987, it was inquired what the criteria were for defining an act of international terrorism; whether any such state of emergency had as yet been declared under the Act; whether any of the rights provided for under the Covenant would be suspended in the event of a state of emergency; and how the provision relating to the punishment of acts committed outside New Zealand could be enforced. Members also sought clarification as to why the Act allowed for a declaration of emergency for less substantial reasons than those set out in article 4 of the Covenant.

369. Responding to questions raised by members of the Committee, the representative of the State party drew attention to the case of *Department of Labour v. Latailakepa* (1982), where the Covenant had been invoked as the basis for a broader application of domestic legislation. The Imperial Laws Application Act had been adopted on 28 July 1988 and had entered into force on 1 January 1989. A report on the restructuring of the New Zealand courts recommending the abolition of the Privy Council link had been issued by the Law Commission. The Commission had also recommended, *inter alia*, that the current Court of appeal should be reconstituted as a Supreme Court that would constitute the final appeals body.

370. Replying to other questions, the representative pointed out that the Human Rights Commission sought to promote greater public awareness of the provisions of the Covenant through a variety of means, particularly through various publications. Details concerning activities directed specifically towards the Maoris and the Pacific Islanders, such as the Maori translation of the Covenant and its Optional Protocol, were included in the Commission's annual report. Human rights education was provided at schools and universities, including courses in human rights and ethics for doctors, and the Royal New



Zealand Police College provided human rights training to police officers. The question of civil and political rights in Niue had been discussed during public meetings held recently by the Constitutional Review Committee in the villages and the Committee planned to propose the inclusion of specific provisions in the Constitution providing for the protection of such rights. The provisions of the Covenant were a regular topic of consideration by the traditional and governmental authorities in Tokelau; they had been translated into Tokelauan and distributed to those in positions of authority and to the public at large. The translation of Covenant in Niuean could be recommended to the Government Niue. As had been the case with respect to New Zealand's initial report, the Ministry of Foreign Affairs intended to publish, for wide distribution, a document containing both the second periodic report and the New Zealand delegation's replies to the questions raised.

371. In reply to questions raised in connection with the draft bill of rights, the representative recalled that, in the course of consultations on the white paper published in 1985, many had argued that the common law already contained human rights precepts and that the independence of the judiciary guaranteed the preservation and development of those precepts. The lack of consensus had been the decisive factor in taking the decision not to approve the bill of rights as initially proposed. Currently, there were some plans to adopt a bill of rights as a "supreme law" though a provision establishing that it could be repealed, amended or modified only by a law adopted in Parliament either by 75 per cent of its members or by a majority poll of those voting, but that idea had run into opposition both within and outside the legislature. The fact that there were no specific limitations to Parliament's authority to amend the bill of rights did not mean that Parliament could encroach on fundamental rights.

372. Responding to other questions, the representative stated that the idea of merging the Human Rights Commission with the Race Relations Office had arisen from a recommendation made by the Race Relations Conciliator, who had noted a certain degree of overlapping in the jurisdiction of the two offices. However, that plan did not imply that the separate functions would actually be merged. New Zealand had not yet had any experience of domestic terrorism and the broad scope of the International Terrorism Act had been determined by the desire to control international terrorism. No state of emergency had ever been declared since the enactment of that legislation. A large-scale public debate had preceded the enactment of the provisions of the Terrorism Act relating to the declaration of an emergency and the process had resulted in considerably narrowing the grounds constituting a sufficient basis for issuing such a declaration.

### Self-Determination

373. In connection with that issue, members of the Committee wished to know New Zealand's position with regard to the self-determination of the peoples of South Africa, Namibia and Palestine and inquired whether New Zealand had taken any measures to prevent public and private support for the apartheid régime of South Africa. They also asked whether there were any provisions for periodic consultations in respect of Tokelauan self-determination; whether the Government envisaged an association with Tokelau similar to that with Niue; and whether the various statements in the report relating to New Zealand also applied to Tokelau and Niue. Further information was also

sought regarding the increase in the population of Tokelau; regarding Tokelau's share in the fishery treaty; and regarding the Devolution Programme that sought to restore autonomy to the Maori people.

374. In his reply, the representative of the State party said that New Zealand had consistently condemned apartheid, had supported the creation in South Africa of a multi-racial State based on equality, non-discrimination and mutual respect, and had to that end contributed regularly to the United Nations Trust Fund for South Africa. His government had also given effect to all measures against South Africa recommended by the Commonwealth as well as to the sanctions prescribed in various Security Council resolutions. The arms embargo was strictly enforced and since 1987 all existing export and import prohibitions relating to South Africa had also applied to Namibia. Various economic and commercial measures to prevent support for the apartheid régime had been instituted and New Zealand was a participating member of Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa. New Zealand regarded the South African occupation of Namibia as illegal and supported Security Council resolution 435 (1978) as the only satisfactory basis for a settlement. It recognized the United Nations Council for Namibia as the only body legally entitled to administer Namibia until the Territory attained genuine independence. New Zealand had consistently taken the position that Security Council resolution 242 (1967) provided the basis for a just, durable and comprehensive settlement in the Middle East and considered that a key element in the negotiation of such a settlement had to be the realization of the rights and aspirations of the Palestinian people, in particular their right to self-determination.

375. Replying to questions raised in connection with Niue and Tokelau, the representative pointed out that periodic consultations on the question of Tokelauan self-determination took place within the framework of visits every five years by a United Nations Special Committee concerned with the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. Under a formal consultation system, the leaders of Tokelau made regular visits every three years to Wellington for direct discussions with the Government. There were also periodic consultations through general meetings (Fono) of the people of Tokelau in their own Territory. The Tokelauans had made it clear that for the time being they wished to retain the links they currently had with New Zealand. Many young people from Niue who came to New Zealand for higher education did not return to their island, whereas most Tokelauans eventually went home. That explained why the population of Niue had suffered a serious decline, while that of Tokelau had not. The Tokelau 200-mile zone was not one of the better fishing grounds and therefore was less likely to be attractive to other countries. A substantial body of New Zealand law and practice related to Niue and Tokelau, but there were also marked differences.

#### Non-discrimination and equality of the sexes

367. With reference to that issue, members of the Committee wished to know whether there was any general statutory prohibition of discrimination on grounds of political or other opinion, language, property, sex and birth or other status; whether the Proceedings

Commissioner of the Human Rights Commission had exclusive powers to bring cases before the Equal Opportunities Tribunal; whether the parties could appeal an adverse Commission decision; in what respects the rights of aliens were restricted as compared with those of citizens; and what the results had been of the positive programme of appointments of women to senior positions within the public service and to public boards and committees. Further information was sought regarding equality of the sexes in the fields of education, occupation and public life in Niue and Tokelau; regarding measures taken with respect to paid maternity leave; and regarding New Zealand's reservations to the Convention on the Elimination of All Forms of Discrimination against Women. It was also asked whether Maori women, as a minority, suffered broad discrimination; whether certain Maori and Tokelauan traditions discriminated against women; and whether schools continued to exist for the education of a single sex, race or religion.

377. In his response, the representative of the State party said that the general statutory prohibitions regarding discrimination were to be found in the Human Rights Commission Act 1977 and the Race Relations Act 1977. There was no specific statutory prohibition relating to political or other opinion, language, property or birth, but that did not mean that discrimination on such grounds either existed or was permissible. Legislation extending the jurisdiction of the Human Rights Commission to new grounds of discrimination would probably be introduced later in 1989. The Human Rights Commission did not have exclusive powers to initiate actions before the courts, since actions could also be initiated by the injured parties if the Commissioner or the Commission decided that their case was without merit. Aliens could not vote unless they were permanent residents. There were few legislative restrictions on the types of work aliens could seek. Social security benefits were determined on the basis of residence, not citizenship.

378. In reply to other questions, the representative explained that, through the Equality Management Programme, which featured training and various career advisory services, women had made inroads at the middle management level, although their representation at the senior management level remained low (8.4 per cent of the total). The State Sector Act 1988, instituting equal employment opportunity programmes in departments, was expected to increase the number of women in senior management posts and on departmentally controlled boards and committees. There were no laws discriminating between the sexes in Niue and Tokelau. There were 140 female government employees compared with 235 male in Niue, and 70 of a total of 190 in Tokelau. Most villages in Niue had well-organized women's groups and a National Council of Women had been established in 1986 to make women aware of their potential and to provide them with business training. Representatives of women's organizations had also begun to participate in the General Fono. A special Maori Women's Secretariat had been set up to carry out programmes in areas where Maori women were at a disadvantage. While certain of Maori or Tokelauan customs could be characterized as discriminatory, any measures taken to eliminate discriminatory traditions had to be balanced against the importance of rediscovering their culture and language. There were no schools open exclusively to the majority race, but some schools for certain minority races had been established. Notification had been sent to the Secretary-General of the withdrawal of the reservation to the Convention on the Elimination of All Forms of Discrimination against

Women concerning the employment of women in underground mines.

### Right to life

379. With regard to that issue, members of the Committee wished to receive additional information concerning article 6 of the Covenant in the light of the Committee's general comments Nos. 6 (16) and 14 (23) and regarding the comprehensive accident compensation scheme mentioned in the report. They also inquired whether the Government had reached any conclusions in respect of the abolition, under the Crimes Act, of the death penalty for treason. Additionally, it was asked why post-natal mortality was almost twice as high among the Maori people as among other groups.

380. In his reply, the representative of the State party referred to the New Zealand Nuclear-Free Zone and Disarmament and Arms Control Act of 1987, which banned nuclear weapons from New Zealand, and noted that his country was a staunch advocate of the Treaty of Rarotonga and had strongly supported arms reduction as well as resolutions on a comprehensive nuclear test-ban treaty. The Government intended to abolish the death penalty for treason in a new Crimes Bill to be introduced shortly and a bill on the total abolition of the death penalty had recently been referred to a Select Committee of Parliament. The higher post-natal mortality rate for Maori children was the result of their mothers' having been exposed to risk factors such as early procreation, lower socio-economic status, smoking and a reluctance to use health services. The Health Department was seeking to deal with the problem through the establishment of bicultural services. The common law system under which compensation for personal injury or death had been treated earlier had proved to be unfair, since it depended on proof of negligence. Under the new scheme, the need to prove negligence had been eliminated and small amounts of compensation were also provided to all dependants.

### Treatment of prisoners and other detainees

381. With reference to that issue, members of the Committee wished to know whether the police complaints authority had investigated any complaints of misconduct since its establishment and, if so, with what results; whether there were any concrete plans for abolishing corporal punishment in schools through the amendment of section 59 of the Crimes Act 1961; whether complaints had been made or disciplinary action taken against teachers who used corporal punishment; what the actual experience, if any, had been in respect of allowing greater contact between prison inmates of different sexes and permitting female inmates to be under the charge of male prison officers; whether there was any difference in the treatment of prisoners on the basis of their ethnic or racial background; what the average period of pre-trial detention was; how quickly after an arrest a person's family was informed; how soon after arrest a person could contact a lawyer; what the actual experience had been with the application of sentences involving community care; and what percentage of criminal offenders was Maori. Members also wished to know the extent to which regulation 167 of the Penal Institution Regulations was consistent with article 10, paragraph 2, of the Covenant and, in particular, what specific criteria were used by the Secretary of State to determine that it would be in the best interests of prisoners under 20 years of age to mix with prisoners over that age;

whether the parents of the juvenile prisoners involved were so informed; and whether the decisions of the Secretary of State in that regard could be reviewed by the courts.

382. Further information was also requested concerning the minimum age for criminal responsibility; the practice relating to the remand in custody of persons between 17 and 20 years of age; the reasons for extension of the 7-year requirement for eligibility for parole to 10 years; and the current status of the Mental Health Bill.

383. In his reply, the representative of the State party stated that the police complaints authority had come into existence on 1 April 1989. The justification for the use of force by teachers, contained in the Crimes Act of 1961, would be eliminated by the proposed new crime bill. No complaints regarding corporal punishment by teachers had been received by the Human Rights Commission, the Ombudsman or the Department of Education. Regarding contact between prison inmates of different sexes, the representative explained that the different needs of female inmates and the gender imbalance in the overall prison population made such a mixing unfeasible for the time being. However, the employment of officers of the opposite sex was considered valuable in redressing the social balance in prisons. New Zealand had reserved the right not to apply article 10, paragraph 2(b), of the Covenant in circumstances where the shortage of suitable facilities made the mixing of juvenile and adults unavoidable. Where only minimal security was required, older and younger inmates were mixed, since it was felt that the former had a stabilizing and beneficial influence on the latter. Although there was no statutory limit on pre-trial detention under the Crimes Act of 1961, the detainee had to be brought before a court as soon as possible. The average period being spent in custody after arrest was less than two weeks. Immediately after arrest, a lawyer or family member could usually be contacted and a person in custody had the right to communicate with his solicitor as soon as practicable after being brought to a police station. Community care sentences - under which the offender had to spend periods of up to 12 months in programmes that included placement with appropriate religious or ethnic groups or individuals - remained infrequent because they required funding from community sponsors. It had been resorted to in only 1.2 per cent of the 50,000 cases handled between October 1985 and March 1986.

384. Responding to other questions, the representative stated that the Mental Health Bill was currently before the Social Services Committee in Parliament. Persons between 17 and 20 years of age could be released on bail under some arrangement that seemed appropriate, but they could also be detained in prison or remanded in the custody of the Director General for Social Welfare if there were no other desirable alternatives. The introduction of tougher legislation regarding eligibility for parole had been deemed necessary in view of the rapid increase in violent crimes of all sorts, especially sexual offences. The proportion of Maoris in the prison population was 18.8 per cent. Much thought was being given to ways to reduce that number and to finding solutions other than imprisonment to the crime problem involving Maoris, since prison often led to recidivism.

Right to a fair trial

385. With regard to that issue, members of the Committee wished to receive additional information on article 14 in the light of the Committee's general comment No. 3 (21) and inquired as to the current status of the Legal Services Bill. It was also asked whether the constitutional provisions concerning the security of tenure of Supreme Court judges applied to other judges.

386. Responding to questions raised by members of the Committee, the representative of the State party said that equal access to the courts was fundamental to the New Zealand system. High Court judges, who were appointed by the Governor General, could serve until the age of 72 and had their salaries paid by permanent appropriation. Similar provisions existed for district courts. Both constitutional and parliamentary practice protected the impartiality of justice and, under the Crimes Act, a judicial officer acting or failing to act on the basis of a bribe was liable to 14 years' imprisonment. An interpreter was always available when needed. The rights of detainees were set out in writing in police stations in eight languages. Accused persons who could not afford a legal defence were eligible for legal aid. A preliminary draft of the Legal Services Act was due to be introduced in Parliament in 1989.

#### Freedom of Movement and expulsion of aliens

387. With reference to that issue, members of the Committee wished to receive information on the position of aliens, pursuant to the Committee's general comment No. 15 (27). Members also inquired whether all appeals against removal or deportation orders had suspensive effect; whether any persons had been deported from New Zealand pursuant to orders issued under section 72 of the Immigration Act 1987; and whether there was any jurisprudence regarding appeals on humanitarian grounds.

388. Responding to the questions raised in connection with the position of aliens, the representative of the State party explained that under New Zealand law no distinction was made between citizens and non-citizens as regarded access to the courts. One of the safeguards contained in the Immigration Act 1987 against arbitrary and abusive action in immigration decisions affecting aliens was the provision that any arrested alien had to be brought before a judge within 48 hours to determine whether his detention was lawful and necessary. All appeals against removal or deportation had suspensive effect under the Immigration Act and no person thus far had been deported pursuant to an order under section 72 of that Act. An advisory panel on humanitarian appeals had been set up within the Ministry of Immigration. New Zealand was a party to the Convention on the Status of Refugees, which provided that persons who did not fall precisely within the definition of a refugee could nevertheless be permitted to remain in the country.

#### Right to privacy

389. In connection with that issue, members of the Committee wished to receive information on article 17 of the Covenant, in the light of the Committee's general comment No. 16 (32). They also wished to know the implications for the protection of privacy of the revocation of the provisions of the Food Act 1981 and the Medicines Act 1981, which had made it an offence for officers to divulge information obtained in the course of their duties; what the current situation was in respect of the enactment of

legislative reforms in the area of data privacy; and how a person's rights under article 17 in that regard were guaranteed pending the enactment of new legislation. Regarding data privacy, it was further asked whether there had been any reports from private citizens of abuses relating to personal data stored in private data banks; whether there had been any requests from persons interested in gaining access to data bases or correcting data and, if so, how such requests had been handled; whether any reference had been made in the pending legislation on privacy to the obligation of correcting erroneous data; what function was to be played by the Wanganui Computer Centre; and under what circumstances access to personal information in cases of public interest would be authorized under the planned legislation. Members also requested further information concerning the interception of private communications and about legal provisions relating to homosexuality.

390. Responding to questions raised by members, the representative of the State party said that the Government proposed to introduce a Data Privacy Bill in 1989 that envisaged the appointment of a commissioner whose functions would include monitoring and auditing personal data bases for compliance with data principles; dealing with disputes by mediation or determination; enforcing rights of access to and correction of data; making recommendations; developing specific codes for particular industries, such as credit reference agencies; studying the impact of future technology; examining proposed legislation; and encouraging self-regulation and co-operation. The Minister of Justice had endorsed the suggestion that the commissioner should be a part of the Human Rights Commission. Although New Zealand did not yet have specific data protection legislation, there were provisions in various instruments, such as the Social Security Act of 1964, for example, which protected personal information. There were also civil remedies such as those relating to defamation and negligence. In addition, the Department of Justice was currently considering with a view to future action, the 1988 final report of the Search and Warrants Committee. Both the Human Rights Commission and the Ombudsman could monitor the protection of the right to privacy in their respective jurisdictions. The Office of the Commissioner of Security Appeals, established under the New Zealand Security Intelligence Act of 1969, could inquire into complaints against the Service and, with rare exceptions, individuals were entitled to request authorization to copy personal information stored at the Government Information Centre. In proposing to expand some clauses of the Official Information Act of 1982, the Information Authority had recommended that it should be stipulated that, subject to the consideration of relevant factors, the public interest in the disclosure of information could outweigh the interests of privacy. The revocation of the Food Act and the Medicines Act had not given rise to any problems, since complaints of alleged improper disclosure of information could be directed to the Ombudsman or the Department concerned. The earlier law relating to homosexuality had not expressly condemn homosexual conduct between women. The Homosexual Law Reform Act had eliminated the discrimination in that respect against men.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

391. With regard to those issues, members of the Committee wished to receive

information on the role and function of the Information Authority established under the Official Information Act of 1982, in particular whether the Official Information Amendment Act of 1987 had extended the life of the Authority beyond June 1988 and, if not, whether any other arrangements had been made for the continued discharge of the relevant functions. Additionally, it was asked how many complaints had been received in connection with the implementation of the Act since its promulgation, and whether it provided adequate protection against undue public exposure of working documents and information. Additional information was also requested on the implementation of article 20 of the Covenant. Members also wished to know whether there had been any monopolistic tendencies in respect of the print and electronic media; whether the Prime Minister could prevent the mass media from publishing any information that in his opinion might be connected with terrorism; whether blasphemy was defined as a criminal offence in the Crimes Act 1961; whether natural and legal persons received the same treatment under the defamation laws; and what authority was responsible for censoring television programmes.

392. In his reply to questions raised in connection with the Official Information Act, the representative of the State party explained that the Act did not provide for the right of access to information as such but only for a gradual increase in the availability of information. Thus, a person who had been denied access to information could not request the courts to order such access. The Official Information Act was widely used and government departments were inundated with requests for information. Following the entry into force of the Official Information Amendment Act of 1987, the Government had decided to transfer the functions of the Information Authority to the department of Justice. In response to criticisms that the earlier Act had allowed some departments to delay responding to requests for information and had given individual Ministers the power to veto an Ombudsman's decision to release information, the Amendment Act of 1987 had established time-limits for responding to requests for information and provided that the approval of the entire Cabinet was required to override an Ombudsman's recommendation. The Act also established certain grounds for withholding information and contained provisions for protecting the political neutrality and freedom of expression of Ministers, officials and employees, and for protecting them from undue pressures.

393. Responding to other questions, the representative stated that there was indeed a trend in New Zealand towards concentration of ownership of the press and other information media and that had led to wide public debate. The International Terrorism Act conferred broad powers on the Prime Minister to prevent the publication of information in emergency situations, but he had subsequently to provide information regarding the exercise of such powers. As a result of the comments made by members of the Committee at the time of the presentation of New Zealand's initial report (CCPR/C/10/Add.6), the crime of blasphemous libel would be eliminated under the new Crimes Act. Natural persons were able, in practice, to seek remedies under the Blasphemy Law when they deemed themselves to have been injured. Under the Race Relations Act, incitement to social discord was defined as a crime, and the Race Relations Conciliator received a large number of complaints each year, most of them filed by white New Zealanders. Regarding New Zealand's reservation on article 20 of the Covenant, the representative explained that freedom of expression had always been one



of the rights most assiduously protected by New Zealanders and the Government had determined that, unless there was an obvious need to adopt a law restricting that freedom, it would refrain from doing so. Additionally, the need for a legal prohibition of propaganda for war had never been clear.

#### Freedom of assembly and association

294. With reference to that issue, members of the Committee wished to know whether any persons had been tried and convicted of the offence of “riot” as reformulated by the Crimes Amendment Act of 1987. In addition, members raised a series of detailed questions relating to the Labour Relations Act and the relationship of that Act to article 22 of the Covenant, on which New Zealand had made a reservation. They wished to know, in particular, whether membership was obligatory in some unions; whether there were alternative unions to which workers could belong; whether workers belonging to unrecognized unions could nevertheless invoke labour laws or accede to other remedies to improve their working conditions; why trade unions had to have a minimum of 1,000 members in order to be registered; and what was being done to protect specialized workers who were not numerous enough to qualify for union status. Members also sought further information as to the meaning of the term “public order” used in connection with restrictions on freedom of association under the Labour Relations Act.

395. In his reply, the representative said that there had been 41 prosecutions during 1988 under the new section 87 of the Crimes Act. Referring to the other questions raised by members of the Committee, he stated that, owing to the complexity of New Zealand’s Labour Relations Act, it would be necessary to provide written answers at a later date.

#### Protection of family and children

396. With regard to that issue, members of the Committee wished to receive information regarding the equality of spouses in Niue as to marriage, during marriage and at its dissolution; the law and practice relating to the employment of children; differences, if any, existing under the laws and practice of Niue and Tokelau in the status and rights of children born in and out of wedlock. Members also wished to know whether there was any intention to amend section 59 of the Crimes Act to provide children with additional protection from corporal punishment by their parents.

397. Replying to questions raised by members of the Committee, the representative of the State party noted that either husband or wife could file proceedings for divorce on any of the grounds specified by law. A husband was bound to provide maintenance of an indigent wife even if he could prove that he lacked sufficient means, whereas a wife was not bound to maintain an indigent husband if she could show reasonable cause for not doing so. In Niue, there were no specific provisions regarding the rights of divorced couples over real property, but it was assumed that the courts would always seek an equitable solution. The parties to a dissolved marriage had equal rights to the custody of the children, although the interests of the child were always taken into account. The employment of children under a certain age was restricted under the law and various kinds of establishments were inspected to verify their compliance with the Factories and

Commercial Premises Act. Under the Niue Act of 1966, all persons were born legitimate. In practice, children born out of wedlock formed part of the communal network in the same way as children born in wedlock. While there were no current plans to amend the Crimes Act, the question of child abuse in general had recently received considerable attention in New Zealand.

#### Right to participate in the conduct of public affairs

398. With regard to that issue, members of the Committee wished to receive further information on current trends regarding the participation of Maoris in public affairs and on the actual enjoyment by Maoris and other minorities of equal rights and opportunities for access to the New Zealand public service, as well as concerning actual or planned measures, if any, to improve such access.

399. In his reply, the representative of the State party explained that the Government's policy proposals, published in 1988, were designed to highlight the partnership between the Maori people and the Crown under the Treaty of Waitangi. The new Ministry of Maori Affairs would have a similar status to that of the Treasury and State Services Commission and would be responsible for ensuring that all government agencies were aware that policy proposals should be consistent with the Treaty of Waitangi. Under the State Sector Act of 1988, all appointments to the public service were made on the basis of merit.

The Act also required that the equal opportunity programmes of the government departments should concentrate on Maori people and on other ethnic or minority groups.

There were also various practical programmes to recruit Maoris and Pacific Islanders to the public service, although the aim of improving the representation of those groups at senior levels of responsibility had not yet been achieved. In 1988, a Pacific Island Management Development Package had been launched by the Ministry of Pacific Islands Affairs and the State Services Commission for the purpose of promoting the appointment of Pacific Islanders to management positions and offering them education and training. The package also provided 10 scholarships annually for university studies.

#### Rights of minorities

400. With reference to that issue, members of the Committee wished to receive information on the main difficulties being encountered in implementing, in respect of the Maoris, the provisions of article 27 of the Covenant, in particular as regards the return of sizeable pieces of land in the context of the enjoyment of Maori culture. It was also asked whether the Treaty of Waitangi Tribunal had jurisdiction over the return of State and private lands and whether the representatives of ethnic minorities had participated in the drafting of New Zealand's report and would have access to the opinions expressed by members of the Committee.

401. In his reply, the representative of the State party said that there were no barriers to the expression of Maori culture and no difficulties regarding the implementation in New Zealand of article 27 of the Covenant with respect to culture and religion. With regard to language, the establishment of a Maori Language Commission in 1987 had been viewed as a positive move towards extending the use of the Maori Language. The programme

of “language nests” had attempted to fill the gaps at secondary and higher institutions and had been very successful in encouraging more widespread use of the Maori language. The Treaty of Waitangi had not been incorporated into domestic law, but in recent years a more positive attitude had emerged towards the Treaty, as exemplified by the establishment of the Treaty of Waitangi Tribunal, which had prevented the Crown from acting inconsistently with the principles of the Treaty. A recent case handled by the Tribunal concerning Maori fishing rights had led to the submission to Parliament of a Maori Fisheries Bill and provided a good demonstration of the willingness of the Government to be reasonable in settling such disputes. The resolution of Maori land grievances would clearly have a significant bearing on the successful implementation of the concept of partnership under the Treaty of Waitangi, and the Tribunal had in fact heard a substantial number of land-related claims. The Tribunal had sought in every case, before making its recommendations to the Government, to find a basis of conciliation or compromise, enabling the situation to be rectified with a maximum of goodwill and a minimum of economic or other dislocation. The Maoris had been consulted in the preparation of the sections of the report relating to them the Committee’s reactions would be publicized among them.

### General observations

402. Members of the Committee expressed their appreciation and satisfaction to the State party for submitting a thorough and most informative report, and commended the delegation for its co-operation and high competence in replying to the Committee’s questions. Members noted with particular satisfaction that certain legislative changes had been made following the consideration by the Committee of New Zealand’s initial report and that other positive changes, such as the enactment of new criminal laws and of a bill of rights, were being planned. They also welcomed the State party’s intention to ratify the Optional Protocol and the Convention against Torture. Appreciation was also expressed for the Government’s attitude toward criminality among the Maoris and for its search for ways of dealing with it other than merely by imprisonment. It was noted, however, that some of the concerns expressed by members of the Committee had not been fully alleviated, particularly in respect of the scope of the International Terrorism (Emergency Powers) Act of 1987 and certain problems relating to labour legislation and to the Maoris.

403. The representative of the State party said that the experience of preparing and presenting the report and participating in the dialogue had been both challenging and rewarding for his delegation, which had taken carefully note of the areas in which questions had been raised or criticisms made.

404. In concluding the consideration of the second periodic report of New Zealand, the Chairman said that the Committee had greatly valued the efforts of the New Zealand delegation, which had made possible a fruitful dialogue.

## **CCPR A/50/40 (1995)**

166. The Committee considered the third periodic report of New Zealand (CCPR/C/64/Add.10 and HRI/CORE/1/Add.33) at its 1393rd to 1395th meetings, on 23 and 24 March 1995, and adopted 14/ the following final comments:

### 1. Introduction

167. The Committee expresses its appreciation to the State party for its excellent report, which contains detailed information on law and practice relating to the implementation of the Covenant and is in full conformity with the Committee's guidelines. The Committee appreciates the fact that the report shows continuous development in the protection of rights and allows the dialogue with the Committee to take place as an unbroken continuation of the examination of the initial and second reports. The Committee is also grateful for the oral responses provided by the competent delegation and considers that the dialogue with the State party has been most fruitful and constructive.

168. The Committee commends the State party for the core document (HRI/CORE/1/Add.33), which has been drawn up in accordance with the consolidated guidelines for the initial part of reports to be submitted by States parties under the various international human rights instruments (HRI/1991/1).

### 2. Factors and difficulties affecting the implementation of the Covenant

169. The Committee finds that there are no important difficulties which may affect the implementation of the Covenant in New Zealand.

### 3. Positive aspects

170. The Committee notes with appreciation the level of achievement in respect of human rights in New Zealand. It particularly welcomes the positive developments that have been realized following recommendations of the Committee at the end of the consideration of the second periodic report of New Zealand. Among these developments, the Committee notes the accession to the First Optional Protocol to the Covenant and the ratification of the Second Optional Protocol to the Covenant following the adoption of the Abolition of the Death Penalty Act, 1989.

171. The Committee considers the adoption and entry into force on 25 September 1990 of the Bill of Rights Act, which expressly affirms New Zealand's commitment to the Covenant and which provides a statutory basis for the protection of human rights and fundamental freedoms in New Zealand, as an important step towards the full protection of the rights set forth in the Covenant. The Committee also welcomes the passage into law of the Privacy Act 1993, which promotes and protects individual privacy, and of the Human Rights Act, which entered into force on 1 February 1994. The latter Act further enhances protection of article 2, paragraph 1, of the Covenant by

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14/ At its 1411th meeting (fifty-third session), held on 5 April 1995.

extending the grounds on which discrimination is prohibited. The Act also expands the role of the Human Rights Commission and enables it to inquire into any matter where it appears that human rights have been infringed.

172. The Committee welcomes widely based legislation to provide protection against domestic violence. The Committee is also pleased to note the provision of appeals procedures for refugees and that applicants for refugee status are entitled to work pending a decision on their status. Planned improvements of prison conditions are also welcome.

173. The Committee welcomes the important developments that have occurred in relation to the interests of the Maori. Among these developments, the Committee notes the increasing importance of the work of the Treaty of Waitangi Tribunal in dealing with Maori claims against the Crown. The Committee also appreciates the fact that New Zealand has dedicated the first year of the International Decade of the World's Indigenous People to the Maori language. In this connection, the Committee takes note with satisfaction of the adoption of a language nest programme whereby Maori language, customs and values are taught to pre-school children, as well as other programmes set up to promote Maori language, art and culture.

174. The Committee also welcomes the changes introduced in the electoral law which may provide greater opportunities for the representation of minority groups, Maori and women.

175. With regard to the right of self-determination, the Committee welcomes the development of local institutions of government in Tokelau and the gradual delegation of powers to Tokelauan authorities, which corresponds to the desire of the people of Tokelau to be self-reliant to the greatest extent possible.

#### 4. Principal subjects of concern

176. The Committee regrets that the provisions of the Covenant have not been fully incorporated into domestic law and given an overriding status in the legal system. Article 2, paragraph 2, of the Covenant requires States parties to take such legislative or other measures which may be necessary to give effect to the rights recognized in the Covenant. In this regard the Committee regrets that certain rights guaranteed under the Covenant are not reflected in the Bill of Rights, and that it does not repeal earlier inconsistent legislation and has no higher status than ordinary legislation. The Committee notes that it is expressly possible, under the terms of the Bill of Rights, to enact legislation contrary to its provisions and regrets that this appears to have been done in a few cases.

177. The Committee expresses concern about the absence of express provision for remedies for all those whose rights under the Covenant or the Bill of Rights have been violated.

178. The Committee regrets that the operation of the new prohibited grounds of discrimination, contained in section 21 of the Human Rights Act 1993, is postponed until the year 2000. It also notes with concern that the prohibited grounds of discrimination do not include all the grounds in the Covenant and, in particular, that language is not mentioned as a prohibited ground of discrimination.

179. The Committee is concerned about provisions in the Criminal Justice Amendment Act which

provide for a sentence of indeterminate detention for offenders convicted of serious crimes who are likely to repeat such crimes. The imposition of punishment in respect of possible future offences is inconsistent with articles 9 and 14 of the Covenant.

180. In relation to the right of freedom of expression, the Committee expresses its concern over the vagueness of the term "objectionable publication" and the fact that section 121 of the Films, Videos and Publications Classification Act makes the "possession of any objectionable publication" a criminal offence, even if the person concerned has no knowledge or no reasonable cause to believe that the publication is considered to be objectionable.

181. The Committee is concerned about the fact that, while the Human Rights Act contains a provision corresponding to article 20, paragraph 2, of the Covenant, this provision does not include a prohibition of advocacy of religious hatred.

182. The Committee regrets that despite improvements, Maori still experience disadvantages in access to health care, education and employment. The Committee is also concerned that the proportion of Maori in Parliament and other high public offices, liberal professions and in the senior rank of civil service remains low.

183. The Committee also regrets the delay in the submission of reports under the Covenant by the Tokelau and the Cook Islands Governments and reminds the Government of New Zealand of its obligations under the Covenant in this regard.

##### 5. Suggestions and recommendations

184. The Committee recommends that the State party take appropriate measures to incorporate all the provisions of the Covenant into domestic law and to provide remedies for all persons whose rights under the Covenant have been violated.

185. The Committee recommends that the Bill of Rights be revised in order to bring it into full consistency with the provisions of the Covenant and to give the courts power as soon as possible to strike down or decline to give effect to legislation on the ground of inconsistency with Covenant rights and freedoms as affirmed in the Bill of Rights.

186. The Committee recommends that the State party revise the provisions relating to "indeterminate sentence of preventive detention" contained in the Criminal Justice Amendment Act in order to bring the Act into full consistency with articles 9 and 14 of the Covenant.

187. The Committee equally recommends amendment of the Films, Videos and Publications Classification Act by a more specific definition of "objectionable publication" or by removing criminal liability for possession without knowledge of or reasonable cause to believe in the objectionability of material.

188. The Committee expresses the hope that any decisions to be taken about future limitations to the entitlement of Maori to advance claims before the Waitangi Tribunal will take full account of Maori interests under the Treaty of Waitangi.

189. The Committee recommends that the State party include information in its next report on the procedures established to ensure compliance with the views and recommendations adopted by the Committee under the First Optional Protocol, also bearing in mind its obligations under article 2 of the Covenant.

190. The Committee recommends that the State party review its reservations relating to articles 10 and 22 of the Covenant with a view to withdrawing them.

191. The Committee would appreciate receiving in the next periodic report information on the experience gained in applying the new Electoral Act and about the Equal Employment Opportunity provisions and their effects on women's entitlement to equal pay and equal employment opportunity. The Committee would also like to be informed on further activities of the National Human Rights Commission and the Treaty of Waitangi Tribunal, and about progress in prison reform.

## CCPR A/57/40 vol. I (2002)

### (81) New Zealand

(1) The Committee considered the fourth periodic report of New Zealand (CCPR/C/NZL/2001/4 and HRI/CORE/1/Add.33) at its 2015th and 2016th meetings, held on 9 and 10 July 2001 (see CCPR/C/SR.2015 and 2016) and adopted the following concluding observations at its 2026th meeting (CCPR/C/SR.2026), on 17 July 2002.

#### Introduction

(2) The Committee expresses its appreciation to the State party for its excellent report, which contains detailed information on the law and practice relating to the implementation of the Covenant and is in accordance with the Committee's guidelines. However, it regrets the delay in submitting the report.

(3) The Committee notes with appreciation that the report contains useful information on developments since the consideration of the third periodic report, as well as responses to the concerns expressed by the Committee in its concluding observations on the previous report. The Committee also welcomes the written responses given to the Committee's written list of questions.

#### Positive aspects

(4) The Committee welcomes the *Consistency 2000* exercise - the examination by the New Zealand Human Rights Commission of all acts, regulations, government policies and administrative practices with a view to determining whether they are consistent with the anti-discrimination provisions of the Human Rights Act. It further welcomes the audit process undertaken by the Government to identify and resolve the inconsistencies between the Human Rights Act and legislation, regulations, government policies and practices, known as *Compliance 2001*.

(5) The Committee notes with satisfaction that in the determination of cases the New Zealand courts take account and are aware of the obligations undertaken by the State party under the Covenant and of the Committee's general comments.

(6) The Committee welcomes the enactment of:

(a) The Parental Leave and Employment Protection (Paid Parental leave) Amendment Act 2002;

(b) The Human Rights Amendment Act 2001;

(c) The Employment Relations Act 2000; and

(d) The Domestic Violence Act 1995.



(7) The Committee welcomes the further progress made in the protection and promotion of the rights of Maori under the Covenant, in particular the amendments introduced by the Maori Reserved Land Amendment Act which came into force in 1998. In this respect, the Committee notes with satisfaction that the Act provides for compensation to be paid to lessors for delays in carrying out rent reviews and to ensure fair annual rents, and providing for compensation to be paid to (largely non-Maori) lessees under certain circumstances. The approach of providing compensation from public funds helps to avoid tensions that might otherwise hamper the recognition of indigenous land and resource rights.

#### Principal subjects of concern and recommendations

(8) Article 2, paragraph 2, of the Covenant requires States parties to take such legislative or other measures which may be necessary to give effect to the rights recognized in the Covenant. In this regard the Committee regrets that certain rights guaranteed under the Covenant are not reflected in the Bill of Rights, and that it has no higher status than ordinary legislation. The Committee notes with concern that it is possible, under the terms of the Bill of Rights, to enact legislation that is incompatible with the provisions of the Covenant and regrets that this appears to have been done in a few cases, thereby depriving victims of any remedy under domestic law.

The State party should take appropriate measures to implement all the Covenant rights in domestic law and to ensure that every victim of a violation of Covenant rights has a remedy in accordance with article 2 of the Covenant.

(9) The Committee regrets that the State party does not consider it necessary to include in the prohibited grounds of discrimination all the grounds stated in the Covenant, in particular, language, although in New Zealand language has been interpreted as an aspect of race.

The State party should revise its domestic law in order to bring it into full conformity with the provisions of articles 2 and 26 of the Covenant.

(10) With regard to the possible impact of the punishment of preventive detention upon article 15 rights in conjunction with other articles of the Covenant, the Committee has received a written answer from the State party after the close of the dialogue. However, the Committee still has some concerns and looks forward to pursuing its dialogue with the State party further on this issue.

The State party should deal fully with this issue in its next periodic report and should inform the Committee of any relevant further developments.

(11) The Committee recognizes that the security requirements relating to the events of 11 September 2001 have given rise to efforts by New Zealand to take legislative and other measures to implement Security Council resolution 1373 (2001). The Committee, however, expresses its concern that the impact of such measures or changes in policy on New Zealand's obligations under the Covenant may not have been fully considered. The Committee is concerned about possible negative effects of the new legislation and practices on asylum-seekers, including by "removing the immigration risk offshore" and in the absence of monitoring mechanisms with regard to the expulsion of those suspected of terrorism to their countries of origin which, despite assurances that

their human rights would be respected, could pose risks to the personal safety and lives of the persons expelled (articles 6 and 7 of the Covenant).

The State party is under an obligation to ensure that measures taken to implement Security Council resolution 1373 (2001) are in full conformity with the Covenant. The State party is requested to ensure that the definition of terrorism does not lead to abuse and is in conformity with the Covenant. In addition, the State party should maintain its practice of strictly observing the principle of non-refoulement.

(12) The Committee is concerned at information that permanent residents of New Zealand and, under certain conditions, even some citizens need a return visa to re-enter New Zealand, as this may raise issues under article 12, paragraph 4, of the Covenant.

The State party should review its legislation to ensure compliance with article 12, paragraph 4, of the Covenant.

(13) The Committee notes with concern that the management of one prison and prison escort services have been contracted to a private company. While welcoming the information that the State party has decided that all prisons will be publicly managed after the expiry of the current contract in July 2005 and that the contractors are expected to respect the United Nations Minimum Standards for the Treatment of Prisoners, it nevertheless remains concerned about whether the practice of privatization, in an area where the State is responsible for protecting the rights of persons whom it has deprived of their liberty, effectively meets the obligations of the State party under the Covenant and its own accountability for any violations. The Committee further notes that there does not appear to be any effective mechanism of day-to-day monitoring to ensure that prisoners are treated with humanity and with respect for the inherent dignity of the human person and further benefit from treatment, the essential aim of which is directed to their reformation and social rehabilitation.

The State party should ensure that all persons deprived of their liberty are not deprived of the various rights guaranteed under article 10 of the Covenant.

(14) While recognizing the positive measures taken by the State party with regard to the Maori, including the implementation of their rights to land and resources, the Committee continues to be concerned that they remain a disadvantaged group in New Zealand society with respect to the enjoyment of their Covenant rights in all areas of their everyday life.

The State party should continue to reinforce its efforts to ensure the full enjoyment of the Covenant rights by the Maori people.

(15) The State party should finalize its review of its reservations relating to article 10 of the Covenant with a view to withdrawing them at the earliest possible date.

(16) The State party should disseminate widely the text of its fourth periodic report, the written replies it provided to the list of issues drawn up by the Committee and, in particular, the present concluding observations.

(17) The Committee draws the attention of the State party to the guidelines of the Committee on the preparation of reports (CCPR/C/66/GUI/Rev.1). The fifth periodic report should be prepared in accordance with those guidelines, with particular attention paid to the implementation of rights in practice. It should indicate the measures taken to give effect to these concluding observations. The fifth periodic report should be submitted by 1 August 2007.