

NEW ZEALAND

CERD 29TH No. 18 (A/9618) (1974)

99. The initial report of New Zealand was welcomed by the Committee for its comprehensiveness, for the thoroughness of the information it contained, and for its conformance with the guidelines laid down by the Committee. The praise received by the report on account of its form was equalled by the praise given to it for its substance; the Government was congratulated not only on its report but also on the policies it had adopted. It was noted that the Government took a thoroughly realistic view of the situation in the country and was prepared to deal with racial problems in a manner that was in conformity with the standards proclaimed in the Convention; that no attempt was made to hide the fact that racial discrimination existed but that, on the contrary, the Government was aware of the situation and was making commendable efforts to set it right; and that a wide range of legislative, administrative and other measures had been adopted to combat racial discrimination. It was noted that the Government had carefully reviewed existing laws and practices in the field of race relations before ratifying the Convention and that special legislation was enacted, in consequence of that review, to implement the Convention. It was also noted that the Government, while enacting necessary laws, paid careful attention to the effectiveness with which such laws were applied; and that a great number of educational, social and economic measures had been taken to further the integration of the community. Of special interest to the Committee were the measures adopted for the purpose of enabling the Maori and other Polynesian communities to enjoy equality of rights with the rest of the population. The Government of New Zealand was conscious that there were occasions when differences in law remaining between different ethnic groups might serve to prevent discrimination rather than to provide a basis for it, and the Committee - mindful of the permissive provisions of article 1, paragraph 4, and the mandatory provisions of article 2, paragraph 2, of the Convention - concurred that that Government would be acting wholly within the terms of the Convention if it retained the differences in law remaining between Maoris and non-Maoris in respect of Maori land. Finally, the Committee noted with appreciation the information to the effect that a proposed tour by the South Africa Springbok Rugby Team in 1973 had been called off - an action indicating the existence of an enlightened public opinion in New Zealand.

100. It was regretted that section 25 of the Race Relations Act does not declare racist organizations illegal, as required by the Convention in article 4, paragraph (b). The Committee observed that the statement made by the representative of New Zealand in the Third Committee of the General Assembly at the 1318th meeting of that Committee on 25 October 1965 did not have the force of a reservation; and an inconsistency was noted between the implementation of paragraph (a) and that of paragraph (b) of article 4 of the Convention, which appeared to imply that freedom of assembly and association was considered more sacred than freedom of thought and expression.

101. Inquiries were made about the ethnic composition of the population and about the immigration policies of the reporting State. While replying to the former inquiry and to some other specific questions raised during the discussion, the representative of the Government of New Zealand stated that he would try to obtain information on immigration for the Committee.

CERD A/31/18 + Corr. 1 (1976)

111. The Committee noted with appreciation that the second periodic report of New Zealand and its annexes, supplemented by the introductory statement made by the representative of the Government of the reporting State, provided ample new information as well as the texts of relevant provisions and that the information was organized in accordance with the guidelines laid down by the Committee at its first session. It also noted that the report covered to some extent the obligations of New Zealand under all the relevant articles of the Convention, provided the information envisaged in general recommendations III and IV and responded to virtually all the comments and inquiries made by members of the Committee during the consideration of the initial report of New Zealand.

112. Members of the Committee took note with satisfaction of some of the new material before them, in particular: (a) the legislation adopted in 1975, confirming the principles of the Treaty of Waitangi and ensuring its observance by establishing a special tribunal - which was deemed to be in compliance with the obligations of the reporting State under article 2, paragraph 2, of the Convention; (b) the appointment of a full-time race relations conciliator, in further implementation of the provisions of article 6 of the Convention; and (c) the information that "New Zealand's immigration policy has been altered ... in favour of a wider range of cultural and ethnic backgrounds".

113. Members of the Committee discussed in a critical vein two areas of New Zealand's policy described in the report:

(a) Some members were of the view that the policy of the new Government of New Zealand in relation to participation by New Zealand sports organizations in sporting events in South Africa was a retrogression. Both the previous and the present Governments had recognized that decisions whether or not to take part in sporting events with other countries rested with the sports organizations concerned, but, whereas the previous Government had undertaken to try to persuade New Zealand sports organizations to face up to their obligations to their own country and to humanity, the present Government maintained that it "should not seek to impose its views". It was pointed out that, in recent years, sports had become one of the chief instruments used by the international community to combat apartheid. The steps taken in that connection had not been unsuccessful and it was hoped that the New Zealand Government would reconsider its present position in that respect in particular, and its policy towards South Africa in general;

(b) Noting that article 81 of the New Zealand Crimes Act of 1908 declared it "an offence for any person(s) or group(s) to excite hostility or ill-will between different classes or groups which may endanger the public safety", several members pointed out that article 4, paragraph (b), of the Convention required that racist organizations should also be "declare(d) illegal and prohibited". At present, the relevant penal law of the reporting State fell short of the requirements of article 4, paragraph (b), of the Convention in two respects: it covered only cases where "public safety" was endangered and it declared illegal and prohibited certain activities of groups but not the offending groups themselves. Furthermore, there appeared to be a confusion between two types of groups: monoracial groups and groups engaged in racist activities. Members of the Committee were of the opinion that article 4, paragraph (b), of the Convention referred to all groups - whether monoracial

or multiracial - which promoted and incited racial discrimination.

114. Members of the Committee inquired about: (a) the results obtained through the change in policy regarding immigration; (b) the settlement of some 80 complaints - filed in the two years covered by the report under consideration - which fell under section 25 of the Race Relations Act and belonged in the domain of the police and the courts rather than in that of the conciliator; (c) the number and proportion of Maoris in Parliament and in the Cabinet; (d) the basis of the distinction made in the Maori Affairs Amendment Act of 1974 between "Maori land" and "European land"; (e) the applicability of the Race Relations Act to the activities of New Zealand companies directing the activities of subsidiaries operating in southern Africa; (f) the orientation of a study of the theory and practice of apartheid, now included in the school certificate history syllabus; and (g) the appropriateness of the expression "Syrian, Lebanese and Arab", used in the report to describe a population group.

115. The representative of the Government of New Zealand commented on the observations made (see para. 113 above): (a) Regarding sporting contacts with southern Africa, he confirmed that, with the change of Government at the end of 1975, there had been a change of policy in that regard; he emphasized, however, that the new policy in no way implied any change in New Zealand's traditional attitude of abhorrence towards apartheid, that the policy towards Rhodesia remained unchanged and sanctions would continue to be applied; (b) Regarding organizations which promoted and incited racial discrimination, he stated that, once an organization manifested overt racist tendencies, its members would run the risk of prosecution either under section 25 of the Race Relations Act or under section 81 of the Crimes Act and that, while that might seem inadequate to the Committee, it was as far as the New Zealand Government felt it could go at the present stage.

116. The representative of the Government of New Zealand made the following statements in reply to the questions enumerated in paragraph 114: (a) New Zealand society, which was essentially European and Polynesian in origin, was in fact tending to become more diversified; it already included, for instance, Chinese and Indians; (b) No information was furnished; (c) There were 87 seats in the New Zealand Parliament, of which four were reserved for Maori constituencies; there were currently six Maori members of Parliament, two of whom represented European constituencies, but there were as yet no Maori ministers in the Cabinet; (d) The term "European land" referred to land purchased by the Crown which, under the Treaty of Waitangi, had the exclusive right to purchase land, but it was possible for Maoris to acquire such land. Land which remained in Maori ownership was called "Maori land"; (e) He believed that the Race Relations Act covered only actions that took place inside New Zealand, but he would take up that question with his Government; (f) The study of apartheid mentioned in the report emphasized the pernicious nature of the system; and (g) Another expression might more appropriately have been used in the report, instead of the expression "Syrian, Lebanese and Arab".

CERD A/34/18 (1979)

115. The third periodic report of New Zealand (CERD/C/37), which was introduced by the representative of New Zealand, consisted of two parts: the first part dealing with New Zealand and the second with the Cook Islands, Niue and the Tokelau Islands to which the obligations accepted by New Zealand under the Convention extend. The report devoted considerable attention to the substantial amendments made to the Race Relations Act as a consequence of the adoption of the Human Rights Commission Act, in order to strengthen the legislative provisions guaranteeing observance of the Convention. In particular, the amendments to the Act would impose stricter penalties on employers for decisions of a discriminatory nature and consider incitement to racial discrimination as unlawful as well as a criminal offence.

116. Several members of the Committee noted with appreciation the frankness of the excellent report which drew attention to instances of racial disharmony where they existed and also showed that the Government was making every effort steadily to strengthen its legislation to eradicate all forms of racial discrimination and thus to give effect to the provisions of the Convention. A member particularly appreciated the measures taken to assist the Maori and Polynesian groups to improve their socio-economic position and to develop their culture and languages. In that respect, the action to encourage non-Maoris to acquire a knowledge of the Maori language and an understanding of its culture was noted with interest.

117. The progressive changes made in New Zealand's immigration policy were noted by some members who pointed out, however, that while understanding the humanitarian grounds of the policy, the granting of entry to New Zealand for family reunification reasons was bound to favor British immigrants, the majority of the New Zealand population being of British descent, and thus that provision would not greatly change the situation. With respect to another condition for entry that applicants should possess skills which were in demand in New Zealand, it was considered that such a condition in fact constituted discrimination since it contributed to the problem of "brain drain" suffered by the developing countries.

118. As regards the implementation of article 3 of the Convention, the New Zealand Government's policy towards the racist régimes of southern Africa appeared to be in line with many of the requirements of the United Nations decisions. Hope was expressed that the Government would eventually sever all contacts with the régimes of southern Africa. However, concern was expressed by some members who noted, from paragraph 10 of the report, that the New Zealand Government took a selective approach to United Nations decisions concerning apartheid and urged the adoption of a much more decisive attitude. Another member hoped that the representative of New Zealand would give the Committee any details available to him on the results of the Government's examination of Security Council resolution 418 (1977) referred to in paragraph 15 of the report. And with reference to the statement cited in paragraph 12 of the report, according to which some New Zealand sportsmen had accepted invitations to South Africa, a question was asked as to whether action was being taken to ensure that no New Zealand citizen ever had sporting contacts with South Africa.

119. The Committee noted with satisfaction the reform of the Race Relations Act which had increased the Conciliator's powers and introduced stricter measures to suppress discrimination and incitement to racial disharmony and to promote harmony among New Zealanders of different racial groups. It was understood that action was not restricted to legislation but included the work of the Race Relations Conciliator, the Equal Opportunities Tribunal and the Human Rights Commission. The conciliation procedure followed in New Zealand made it possible that minor offenders might be educated to change their attitudes. That would be a considerable achievement.

120. With reference to article 4 of the Convention, a member wondered why criminal proceedings had not been instituted with regard to the 57 complaints recorded officially during 1976-1977 which had concerned incitement to racial disharmony. Another member considered it encouraging that for the first time a sentence had been passed under section 25 of the Race Relations Act in respect of two leaders of the New Zealand National Socialist Party, who had engaged in the dissemination of ideas based on racial superiority or hatred. It was stated, however, that the New Zealand National Socialist Party was still in existence and might well be continuing its racist activities and that the Government would be obliged to declare it illegal and prohibit its activities in accordance with article 4 (b) of the Convention. Another member found the sentence given to the leaders of the National Socialist Party exceedingly mild in view of the serious nature of the offence. The conviction should have been followed by the banning of the organization. The Committee asked for detailed information on the measures taken against organizations such as those referred to in article 4 (b) of the Convention.

121. In connection with article 6 of the Convention, it was noted that, in cases where conciliation was unsuccessful, the Conciliator could himself institute proceedings before the Equal Opportunities Tribunal. A member pointed out in this connection that, according to section 41 of the Human Rights Commission Act, monetary limits were set to the remedies which the Tribunal might grant. Should the damage exceed those limits, the member wondered what action the Tribunal could take. Some other members inquired about the remedies available, both under the procedures envisaged in the Race Relations Act and in the context of normal legal institutions, to persons whose complaints to the Conciliator were declared "not justified". It was stated in this connection that, in the absence of any possibility of appealing such decisions, the Act would not fully meet the requirements of article 6 of the Convention. Another member asked whether the Conciliator in New Zealand was elected or appointed and how his independence and impartiality were guaranteed.

122. As regards article 7 of the Convention, the Committee welcomed the positive measures taken in New Zealand to create a "multicultural" society, in which the traditions of ethnic minorities would be respected and preserved. The educational measures described in the report were most important in that respect. A member expressed the hope that such measures would be further expanded in the future, while another member was of the view that the implementation of article 7 required stronger measures and that more positive effort was needed to combat racial prejudice.

123. The representative of New Zealand replied to a number of questions raised by the members of the Committee. The fears expressed that the changes in the immigration policy of New Zealand could favour British immigrants were not well founded. British citizens of European origin now comprised a decreasing proportion of the migrant flow and it was expected that that proportion would decrease further in future. New Zealand's contacts with South Africa were minimal. The sportsmen who had

accepted individual invitations to go to South Africa had acted against the advice of the New Zealand Government which made every effort to fulfil the Gleneagels Agreement. Such things as exit visas did not exist in New Zealand. The representative stated that the Conciliator was appointed by the Minister of Justice. He himself considered his position very much as an independent one. An individual was not obliged to accept the Conciliator's decision but was entitled to bring an action for defamation or to apply to the Equal Opportunities Tribunal. The text of the amended versions of the Race Relations Act and the Human Rights Commission Act would be made available to members of the Committee. It should be borne in mind that many cases of discrimination arose not from malice but from ignorance or misinformation. The majority of the complaints made to the Conciliator concerned fringe benefits and transfers. In the area of the implementation of article 7 of the Convention and the suggestion that New Zealand might be more forceful in combating racial prejudice, he stated that in New Zealand guerrilla warfare had been found to be more effective than frontal attack. The representative stated that he would refer more technical points to his Government for clarification in the next periodic report.

CERD A/36/18 (1981)

355. The fourth periodic report of New Zealand (CERD/C/48/Add.10) was introduced by the representative of the reporting State who pointed out that the report described the progress made in his country since the entry into force in September 1978 of the Human Rights Commission Act of 1977 and of the amendments to the 1971 Race Relations Act. The report also covered some developments in the work of the Race Relations Conciliator and of the Maori Affairs Department; it provided examples of measures taken in the fields of employment, education and culture to promote racial harmony, it set out some of the activities undertaken in the general work of conciliation and the investigation lodged under the Race Relations Act and it endeavoured to answer questions raised by members of the Committee during the consideration of the third periodic report of New Zealand. The representative also pointed out that the question of sporting contacts with South Africa was, at that very moment, arousing vigorous controversy in his country owing to the mistaken persistence of one sports body acting against the wishes of the Parliament, the Government and the majority of the New Zealand people, which should not be allowed to obscure the remarkable record of the country. Until those events occurred, there were no significant sporting contacts between New Zealand and South Africa and contacts in general between the two countries were minimal. In addition, the representative recalled that New Zealand was already observing a voluntary arms embargo when the United Nations applied sanctions on arms sales to South Africa in 1977.

356. The Committee commended the Government of New Zealand on its extremely frank and impartial report which showed, like the previous reports, that that Government was determined to overcome problems relating to racial discrimination and that the measures it had taken to this effect reflected its policy of total opposition to all forms of racial discrimination and were in accordance with the spirit and philosophy of the Convention.

357. Commenting on the information provided by New Zealand with regard to the implementation of article 2 of the Convention, some members of the Committee wished to know whether the people listed in the report as members of the minority groups lived together in particular areas of the country or were scattered throughout the land; whether the housing policy for Maori families might not result in racial discrimination; whether integration was possible for those who sought better housing and equal opportunities, and whether there were any specific programs such as university education or in-service training, to help Maori people to obtain higher positions. More specific figures were requested on the drop-out rate among Maori and Pacific Islands students and it was asked to what extent the ILO Convention on child labour was applied to such students who dropped out early. Furthermore, information was requested on any special measures taken by New Zealand under article 2, paragraph 2, of the Convention in areas other than education, vocational training and housing and on developments in all the various facets of life which would ensure that the Maoris and other minority groups could take their proper place in the society.

358. In connection with article 3 of the Convention, some members of the Committee referred to the recent visit of a South African Rugby team to New Zealand and observed that it was difficult to understand what had prevented the New Zealand Government from officially banning the entry of the South African team, especially in view of its active support for United Nations anti-apartheid

resolutions. The question was raised as to whether the situation had changed in respect to sporting contacts between New Zealand and South Africa.

359. As regards article 4 of the Convention, one member noted from the 1979 report of the Human Rights Commission that the Government of New Zealand had reserved the right not to apply or implement further legislation on incitement to discrimination, hostility or violence, while it had not made such reservation in signing or ratifying the Convention, and he requested an explanation of the Government's statement and its position with regard to its obligations as a State party to the Convention. With reference, in particular, to the provisions contained in article 4, paragraph (a), of the Convention, it was pointed out that section 25 of the Race Relations Act of New Zealand corresponded only to the first element of those provisions, while section 9 A of the Human Rights Commission Act 1977 did not consider the incitement to hostility or ill-will a criminal offence, but a civil liability under the jurisdiction of the Race Relations Conciliator. As those legislative provisions did not seem to be in conformity with the requirements of the provisions of article 4 (a), it was asked whether the Government of New Zealand intended to enact legislation to comply fully with the provisions of article 4, paragraph (a), of the Convention. Another member requested additional information about the precise scope of the word "ethnic" contained in section 25 (1) of the Race Relations Act. With reference to article 4 (b) of the Convention, members of the Committee noted that the Government of New Zealand considered that the most appropriate means of controlling organizations which promoted racial disharmony was to declare their activities illegal, rather than the organization themselves and asked why only illegal activities were sanctioned and not the sources of such activities. It could appear that the New Zealand Government placed a higher premium on the freedom of association than on the freedom of speech; however, to penalize the members of a racist organization for their activities while allowing the organization itself to continue in existence seemed to be an inadequate form of control and the Government should make provisions for the dissolution of such organizations, in full compliance with article 4, paragraph (b) of the Convention.

360. In connection with article 5 of the Convention, information was requested about the number of refugees living in New Zealand, on the Government's resettlement policy, on any racial disharmony resulting from their presence and on action taken to defuse such potential disharmony. Furthermore, it was observed that, although the report of the Race Relations Conciliator for the year ending 31 March 1978 admitted that there were difficulties in New Zealand in eliminating discrimination in the field of employment, the fourth periodic report of New Zealand did not contain any information on measures taken to prevent discrimination in that field. It was also noted that New Zealand had reserved its right not to put into effect the provisions of the International Covenants on human rights dealing with the freedom of association in trade unions, and it was asked whether those reservations were not incompatible with New Zealand's obligations under article 5 (e) (ii) of the Convention in respect of which no reservations had been made.

361. With regard to article 6 of the Convention, it was asked whether the New Zealand Government, in addition to providing statistics on the number of cases involving alleged racial discrimination brought to the courts, would supply synopses of the case material so that the Committee could see how the authorities dealt with everyday incidences of discrimination. Reference was made, in particular, to 57 complaints received in New Zealand by the competent authorities in 1976-1977 in connection with article 4 of the Convention for which no criminal proceedings had been instituted,

and relevant information was requested in this regard. It was also noted that, in accordance with the information given in the reports of the Race Relations Conciliator, several complaints had been lodged in 1978-1979 under section 25 of the Race Relations Act and information was requested on what action had been taken in regard to those complaints and which complaints had been found justified and remedied. Nevertheless, members of the Committee highly commended the conciliation procedures.

362. In reply to questions raised by members of the Committee, the representative of New Zealand, referring to measures taken by his Government under article 2 of the Convention, stated that there was no question of confining Maoris or Pacific Islanders to certain regions against their wish. In New Zealand there were no reservations and some 72 per cent of Maoris lived in urban areas. However, like the Pakeha population, more Maoris lived in the warmer North Island which also provided more job opportunities than the South Island. As far as schooling was concerned, education was compulsory up to the age of 15 for all New Zealanders and the decision whether to seek employment or to pursue further training after compulsory education was an individual one and the problem was not dealt with in racial terms. Thanks to the special efforts that had been made to encourage young Maoris to take full advantage of further training opportunities, the drop-out rate had steadily declined, and the Department of Maori Affairs had recently embarked on a 10-year programme by which parents and the local communities would be more closely identified with the schooling of Maori children throughout their school lives. In terms of economic policies, the Government's approach was directed towards the development of the country as a whole, rather than to that of any particular group. However, the Department of Maori Affairs was vigorously encouraging Maori development projects such as farmer development schemes and Maori enterprise programmes, which were meeting with considerable success.

363. With regard to article 3 of the Convention, the representative stated that the ill-advised decision of the New Zealand Rugby Union to go ahead with the current Springbok tour, which included a South African team, was a setback, but in no way altered the fundamental position of his Government with respect to apartheid which had not been changed.

364. In respect to article 4 of the Convention, he stated that section 25 of the Race Relations Act fulfilled the clear intention of the Convention in that no racist organization could operate because it could not expound its views, but the fact remained that under New Zealand's legal system, a person could not be declared a criminal unless guilty of some wrongdoing. New Zealand legislation did not prohibit financial contributions to any organizations, but if a donation were made with the intention of promoting or facilitating the commission of an offence, such as incitement to racial hatred, it would be prohibited under the Crimes Act, 1961.

365. As regards article 5 of the Convention, he explained that discrimination in employment was specifically prohibited under section 5 of the Race Relations Act and if cases of discrimination did arise from time to time, it was probably as a result of insensitivity or thoughtlessness. Employers were constantly reminded of their obligations by the Race Relations Conciliator.

366. In connection with article 6 of the Convention, he explained that the failure to institute criminal proceedings with regard to the complaints lodged under section 25 of the Race Relations Act was

a result of the impossibility of proving intent. However, it was important to remember that the aim was to promote racial harmony and, if possible, to find a satisfactory settlement without having to apply the full scope of the Act. Under the new provision, the Conciliator could take action to get a settlement without the need for criminal proceedings, but that did not mean that section 25 had been made weaker.

CERD A/39/18 (1984)

76. The fifth and sixth periodic reports (CERD/C/75/Add.14 and CERD/C/106/Add.10) of New Zealand were introduced by the representative of the reporting State who pointed out that the constructive dialogue New Zealand had maintained with the Committee had helped his Government to review the functioning of its own legislation and practice in the field of race relations. He provided further clarifications to relevant parts of both reports and informed the Committee about new legislation which had entered into force on 1 February 1984 broadening the scope of the Race Relations Act.

77. The Committee commended the reports of New Zealand. Both reports, it said, were comprehensive and informative and adhered fully to the Committee's guidelines. It expressed satisfaction at the broad spirit of co-operation established between the Committee and the Government of New Zealand. It emphasized particularly New Zealand's frankness in recognizing the existing problems caused by racial discrimination and its sincere and consistent efforts to cope with them and to implement the provisions of the Convention.

78. Much of the discussion revolved around issues relating to the Maori people. The Committee welcomed the "one Nation: two peoples" approach adopted by the Government in order to preserve the identity of the Maori. Such an approach was within the context of article 2 and the Committee's policy on minorities. Concern was expressed, however, regarding the present situation of the Maori people. Noting that 72 per cent of them lived in urban centres, members asked why that was the case, whether they lived in segregated areas and whether the Maori community living in urban centers was at risk of losing its identity. With regard to their employment situation, members observed that Maoris continued to be employed in unskilled occupations. That, it was pointed out, could be attributed to their inadequate educational attainment and members asked what special measures were contemplated to accelerate progress towards equality in education. Questions were also asked concerning the appointment of Maoris to high-level posts in the Government and public services. It would be useful to know how many Maoris and Polynesians had obtained a university degree and professional training during 30-year period in which efforts had been made to improve their situation; what steps had been taken to prevent discrimination against Maori students with regard to university entrance and school certificate, as well as the per capita expenditure in education and training for Maoris and non-Maoris. The Committee found it encouraging that interest in the Maori culture continued to grow. It would like to know what specific measures were being taken to preserve and revive the Maori language, in particular what funds were allocated to developing the Maori community. Members were also interested to know whether Maori might be recognized as an official language, how much time was devoted to broadcasts in Maori, whether publications were issued in Maori and important documents translated into that language, whether Maori people were encouraged to read and write their own language and whether Maori was taught in secondary schools. Clarifications were requested regarding Maori descendants, whether they were considered as a separate group and whether Maori population was increasing or declining. It was pointed out that no action seemed to have been taken yet concerning the paper presented by the Maori Council, to the Minister of Maori Affairs in February 1983, setting forth its position on the issue of Maori land. Members asked whether Maori lands had been appropriated for mining activities.

79. Turning to the implementation of article 3 and the visit of a South African rugby team, members of the Committee noted the opinion expressed by the Human Rights Commission of New Zealand itself, in 1981, that a failure on the part of the Government to prevent such contacts would amount to a policy which had the effect of supporting, sustaining or encouraging the racist régime of South Africa. It was to be hoped that the Government would reconsider its position and would come around to the view expressed by its own Human Rights Commission. Members also asked whether there were any air or maritime links between New Zealand and South Africa and what specific steps had been taken to implement article 3 in the fields of education, information and culture.

80. During the discussion of article 4, one member of the Committee asked whether the Government's position with regard to the implementation of that article was that no additional legislation was needed. Another member observed that the Committee could not make any judgement about the adequacy of the penal provisions without taking into account the conciliation procedure established under section 9A of the Race Relations Act. He added that declaring incitement to racial discrimination to be an offence punishable by law was only one of the means which could be used to eradicate that phenomenon, but a country could also think that racial discrimination would be more efficiently eradicated by conciliation than punishment. In his view, New Zealand's existing provisions seemed to meet fully the requirements of article 4.

81. The Race Relations Act and the conciliation procedure was also discussed under article 6. It was noted that in many instances the Government sought to solve racial problems without bringing individuals before judicial organs and that many cases had been dealt with by the Race Relations Conciliator. In this context, it was asked how the conciliation procedure fitted in with other available legal remedies. Additional information was requested concerning the conciliation procedure provided for in section 9A as well as sections 3 to 6 of the Race Relations Act which could be incorporated in the body of New Zealand's next periodic report. Questions were also asked about the ethnic origin of the Race Relations Conciliator.

82. In reply to questions posed by members of the Committee in relation to the Maoris, the representative of New Zealand said that intermarriage between Maoris and non-Maoris was very common. The problem which undoubtedly existed in New Zealand had to a large extent come about because of progress made in racial integration, so that the Maoris were now affirming their right to develop in accordance with their own values and aspirations. By enacting the Race Relations Act and appointing a Race Relations Conciliator, who was Maori, the Government was speeding up the changes which were already taking place in New Zealand society. The Maori population, defined as those persons of half or more Maori descent, had shown a steady increase throughout the twentieth century. In the period 1951-1981 alone, the Maori population had increased from 6 per cent to 8.8 per cent, and now numbered 279,255 persons (11 per cent of the total population). The upward trend was likely to continue, since 40 per cent of the Maori population was under 15 years of age while only 25 per cent of the non-Maori population was under the age of 15. Most of the laws still in force which applied specifically to Maoris were designed to protect their right to retain possession of their ancestral lands. Any changes in those special legal provisions could be contemplated only after consultation with the Maori community, a process described in the sixth periodic report, the results of which were currently being studied by the Government. The influx of a large number of Maoris to urban centres was not caused by the expropriation of Maori land for the exploitation of

mineral resources. In fact, an increasing number of Maoris were returning to the countryside because more employment opportunities were available there. The existence of segregated areas was totally alien to New Zealand Society. In 1983, the Department of Maori Affairs had built or acquired 582 houses and had spent nearly \$20 million on housing. The participation of Maoris, though not great, was significant not only in the Government, but also in the teaching profession, the church and the army, where a Maori had been chief of staff. The State Services Commission was taking measures to ensure the recruitment and rapid promotion of Maoris and other Polynesians. Since 1980, 200 places had been reserved for Maoris and Pacific islanders in the annual intake into the public service and courses were given in order to familiarize non-Maori public officials with the Maori culture. The greatest and most sustained effort by the Government to improve the situation of the Maori had been in education. In 1961 the Government had set up the Maori Education Foundation. In 1982 the Foundation had awarded nearly 2,000 grants to secondary students and 400 grants to students in higher education at a cost of almost \$1 million. Apart from those who received grants from the Foundation, most Maori students attended ordinary public schools. Furthermore, an effort was being made to increase the number of Maori teachers in primary and secondary schools and a quota had been introduced in order to ensure that at least 10 per cent of those selected for teacher training each year were Maoris or Pacific islanders. An effort was also being made to make all New Zealand students aware of their Maori heritage. New Zealanders were encouraged to learn Maori both in school and through radio and television programmes.

83. In relation to article 3, he reiterated that bilateral relations between New Zealand and South Africa were minimal and that there was no direct air service or regular service by national shipping lines between the two countries. The New Zealand Government firmly opposed both apartheid in itself and apartheid in sport; it dissuaded sportsmen from having sporting contacts with South Africa; that policy could include the withdrawal of financial support, the withholding of official recognition from sportsmen and the denial of special leave to public servants. The final decision on sports contacts with other countries was the responsibility of the sportsmen and sports organizations themselves; in accordance with the law and practice, the Government did not intervene in cases involving requests for passports and visas by sportsmen. With the expectation of the 1981 rugby tour, that policy had had considerable success and there had been no significant sporting contacts between New Zealand and South Africa since 1977.

84. Turning to the questions raised in connection with article 6 and the Race Relations Act, he said that sections 3 to 7 of the Act and section 9A declared various activities unlawful, and that the Race Relations Conciliator was empowered to investigate, either on the basis of a complaint or on his own initiative, any action which appeared to violate any section of the Act. The persons affected could appeal to the Conciliator or lodge a complaint with the police, in which case the matter would be dealt with through the courts. The Conciliator could bring the case before the Equal Opportunities Tribunal, which was administrative in nature and had the authority to make judicial rulings including payment for damages.

CERD A/42/18 (1987)

567. The seventh periodic report of New Zealand (CERD/C/131/Add.9) was considered by the Committee at its 788th, 789th and 791st meetings on 10 and 11 March 1987 (CERD/C/SR.788, SR.789 and SR.791).

568. The report was introduced by the representative of New Zealand, who highlighted relevant parts thereof, particularly the ethnic composition of the population and the system of conciliation under the Race Relations Act 1971 and the Human Rights Commission Act 1977. He informed the Committee of the establishment of a Ministry of Pacific Island Affairs to advance the position of minority ethnic groups in New Zealand. He also referred to the amendment to the treaty of Waitangi Act, passed by Parliament, which extended the temporal jurisdiction of the Waitangi Tribunal back to 1840 and provided that Maoris might submit claims arising from the prejudicial consequences of any legislation, policy or action of the Crown since that date. With regard to South Africa, he reaffirmed his Government's resolute opposition to apartheid and stated that New Zealand had implemented the measures agreed on by Commonwealth Heads of Government in 1985 and most of those recommended by the Commonwealth mini-summit of August 1986.

569. Members of the Committee paid tribute to the Government of New Zealand for the high quality of the report, which was in compliance with the Committee's guidelines (CERD/C/70/Rev.1) and for the additional information provided in the introductory statement. They congratulated the Government for its genuine efforts to promote racial tolerance and combat racial discrimination under the Convention. They also welcomed the detailed statistics provided in the report and its annexes. Members pointed out that New Zealand was pursuing its policy on racial discrimination in a very progressive manner.

570. Clarification was sought regarding the criteria used in determining permanent and long-term migrants by nationality and the way in which persons were given one or the other status. Additional information was requested on the Government's immigration policy. It was also asked whether some of the larger groups of migrants included minorities that were too small to list separately. An explanation was requested of the two categories under which Maoris had been grouped in the statistical table of the report.

571. In relation to the implementation of article 2 of the Convention taken in conjunction with article 5, members of the Committee wished to know what action had been taken on the paper on Maori land presented by the New Zealand Maori Council to the Minister of Maori Affairs, whether Maori lands had been appropriated for mining activities and, if so, on what conditions, whether the trading profits referred to in the report related to trading in land or in land products, and how the increase in interest rates had affected the ability of the Maori to obtain land.

572. Additional information was requested regarding measures to expand teaching in the Maori language and to open up educational training for disadvantaged groups, such as Maoris and Pacific Islanders, the percentage of Maoris who had completed primary, secondary and university education, the percentage of Maoris in the public service and their employment rate. Members of the Committee

asked when the bill to make Maori an official language was expected to be introduced and whether any literature was published in Maori and, if so, how much.

573. It was asked whether the measures adopted at the Maori Economic Development Conference had brought about any improvement in the social and economic conditions of the Maoris. Additional information was also requested regarding the problem faced by the Indo-Chinese community.

574. With regard to article 3 of the Convention, members of the Committee congratulated the Government on its excellent record, its exemplary policy *vis-à-vis* apartheid and its relations with South Africa. They noted that trade with South Africa had been drastically reduced and that it represented less than 0.5 per cent of total trade. They asked what the prospects were of ending that trade and suggested that severing even the minimum remaining trade links with South Africa could have an important psychological impact. Total isolation of South Africa was now the only available means of dismantling apartheid through non-violent action. It was asked whether there were any diplomatic relations between New Zealand and South Africa.

575. Concerning the implementation of article 4 of the Convention, members of the Committee sought clarification concerning a case mentioned in the report in which racist material had been seized, but, since no offence had been committed, no criminal proceedings had been brought and the material had been returned to those responsible on condition that they distributed it only to persons who expressly requested it.

576. Regarding the implementation of article 6 of the Convention, members of the Committee expressed appreciation for the range of procedures available to individuals, in particular the conciliation procedure. They requested information about the Race Relations Conciliator and his functions, and asked how and by whom he was appointed and how he maintained his independence; they also asked about the Equal Opportunities Tribunal, i.e., its membership, whether it was part of a judicial body, its activities and sphere of competence and the procedure for submitting cases to it. They wished to know what matters arising under the Race Relations Act could be taken before the Equal Opportunities Tribunal and whether they were confined to the field of employment. It was also asked what the term of reference of the Pacific Island Affairs Advisory Council were.

577. Members of the Committee requested further information on the treaty of Waitangi Act and its amendment, as well as on the Waitangi Tribunal, which had recently heard submissions concerning the Maori language.

578. As to article 7 of the Convention, members expressed satisfaction at the way in which New Zealand was implementing it. Additional information was requested regarding programmes aimed at combating prejudice and promoting understanding, tolerance and friendship among ethnic groups, particularly in view of the large number of complaints that had been lodged relating to incitement to racial disharmony. It was also asked whether the Conciliator was the same person as in 1985 or, if not, whether his successor was also Maori. Further information was requested regarding the establishment of an ethnic council.

579. Replying to questions raised and observations made by the members of the Committee, the

representative of the reporting State informed the Committee that New Zealand's immigration policy had been reviewed completely in 1986, together with the introduction of new draft legislation on immigration. The Government had abolished the "traditional source" preference and applicants were now assessed solely on personal qualities, skills, qualifications, potential contribution to the New Zealand economy and society, and capacity to settle well in the country. The distinction between permanent and long-term migrants depended on how long the migrant wished to stay.

580. Regarding issues of concern to the Maori people, the representative of New Zealand referred to some relevant cases which had come before the Waitangi Tribunal, in particular to four of the reports which the Tribunal had presented on those cases over the past 10 years and which were considered to be of particular significance. Those reports were at various stages of consideration or implementation by the authorities concerned. Since the adoption of the amendment to the Treaty of Waitangi Act in 1985, the Tribunal had been very active. It had 75 claims at various stages of consideration, one quarter of which related to the pollution of fishing grounds and traditional shellfish beds by domestic and industrial waste. The principles of the paper on Maori land presented by the New Zealand Maori Council to the Minister of Maori Affairs in 1983 had been incorporated into draft legislation on Maori affairs, which was due to be introduced in Parliament in 1987.

581. The total amount of land occupied by Maori farmers or economic authorities had increased to 670,000 hectares by 1984. Some Maori land, but a declining amount, was also leased to non-Maoris for farming purposes. There was no survey of the amount of Maori land applied to, or under licence for, mining activities. However, the general principle was that no Maori land could be mined without the written consent of the owner. High interest rates had no bearing on the traditional ownership of Maori land. A number of socio-economic measures had flowed from, or had been influenced by, the Maori Economic Development Conference. The specific goals of the Pacific Island Affairs Advisory Council were to help accelerate the closure of gaps in various fields and to foster the transmission of the cultural values deemed important to the identity of the various Pacific Island peoples and to the identity of New Zealand as a whole.

582. With regard to article 3 of the Convention, the representative stated that New Zealand's trade with South Africa, which was totally insignificant, had fallen still further in 1985. A ban on imports of uranium, coal, iron and steel would be put into effect very shortly, along with an extension of the arms embargo regulations to include a ban on exports of electronic and telecommunication equipment, as recommended by Security Council Resolution 591 (1986) of 28 November 1986.

583. Concerning the implementation of article 4 and the case of racial disharmony referred to in the report, he informed the Committee that under the Race Relations Act a prosecution relating to written material could be brought if the material was published or distributed. Since the report had been issued, the Race Relations Conciliator had taken the matter of publication of the leaflet referred to in the report to the Equal Opportunities Tribunal. A decision was still awaited.

584. With regard to the implementation of article 6 of the Convention, the representative of New Zealand said that the Race Relations Conciliator could be considered as a sort of ombudsman in the race relation area. He was appointed for a three-year term by the Governor-General on the recommendation of the Minister of Justice. He referred to the Act, which prescribed his duties,

powers and functions. The latest report of the Race Relations Conciliator, i.e., for the year ending 31 March 1986, contained ample material on ethnic councils, including the possible establishment of further councils in other towns. The former Race Relations Conciliator, who had retired in March 1983, was a Maori; the present one was not, although some of his staff were Maoris.

585. The Equal Opportunities Tribunal was one of the administrative tribunals of the High Court of New Zealand with a judicial function. It had power to adjudicate with regard to people's rights, and to enforce its decisions. The matters that could be brought before the Tribunal were set out in both the Human Rights Commission Act and the Race Relations Act. Where a settlement could not be achieved by the Commission or the Conciliator following a complaint of a violation of the prohibitions set out in the two Acts, or where the complaint remained aggrieved, a case could be brought before the Tribunal. The Tribunal was chaired by a barrister or solicitor of not less seven years' standing and two other persons appointed by the Chairman for each hearing from a panel of 12 names maintained by the Minister of Justice. The persons currently on the panel were of diverse backgrounds, comprising both Maori and European men and women. The draft bill of rights would be a major piece of constitutional legislation entrenched in New Zealand law and would provide statutory protection for the whole range of civil and political rights. In view of its importance, it was still very much under discussion in New Zealand and he was therefore unable to say when it would be enacted. In response to other questions asked by the members of the Committee, the representative of New Zealand made available copies of the Treaty of Waitangi, a statistical report on New Zealand Maoridom from 1961 to 1986 covering a range of social and economic areas, and a further breakdown of other nationalities included in the table in the report on permanent and long-term migrants.

CERD A/45/18 (1990)

236. The eight and ninth periodic reports of New Zealand, submitted in one consolidated document (CERD/C/184/Add.5), were considered by the Committee at its 877th and 878th meetings, held on 15 and 16 August 1990 (CERD/C/SR.877-878).

237. The reports were introduced by the representative of the reporting State, who referred, in particular, to the creation in 1989 of the Ministry of Maori Affairs and of the Iwi Transition Agency, which aimed to strengthen the operational base of the indigenous groups. On the occasion of the celebration, in 1990, of the one hundred fiftieth anniversary of the signing of the Treaty of Waitangi, a set of five principles, "The Principles for Crown Action on the Treaty of Waitangi", had been promulgated, making clear the Government's responsibilities and obligations in respect of the Treaty. Steps had recently been taken to accelerate the activities of the Waitangi Tribunal, which considered alleged breaches of the Treaty. Public service recruitment policies also took that Treaty into account and government departments had adopted a bicultural approach. Equal opportunities for recruitment to the public service of Maori people and other ethnic minorities were also provided under the State Sector Act.

238. Maoris now constituted over 12 per cent of the population, and people of Pacific Island Polynesian descent made up about 4 per cent. Racial equality was a fundamental principle of society and New Zealand was committed to a partnership between different races and sought to draw on its diverse heritage to enrich the lives of the people and strengthen their sense of nationhood. Clearly, further imaginative measures would be needed, however, to achieve the goal of racial equality.

239. With respect to the implementation of article 3 of the Convention, the representative said that New Zealand had implemented all the measures recommended by the Commonwealth, as well as the sanctions recommended by the United Nations Security Council. His Government was prepared to comply with any further measures to be adopted by those two bodies.

240. Members of the Committee congratulated the Government of New Zealand on its detailed and factual reports, which had been prepared in accordance with the Committee's guidelines, and thanked the representative for his introduction. They commended the Government of New Zealand for the comprehensive information it provided and its honest, objective assessment of the prevailing situation.

241. Referring to the demographic composition of the New Zealand population, members of the Committee asked what the reason was for the rapid increase of the Maori and Pacific Island Polynesian populations and what the corresponding figure was for the population of European descent; whether it was true that New Zealanders had started to emigrate from the country, and whether that emigration had affected the country's demographic composition; whether there had been any significant immigration of Indians from Fiji; how an individual came to be classified as being of Maori descent; and under what rules an individual was assigned to a particular iwi (tribe). Noting that the report justifiably placed emphasis on the situation of the Maori people, members drew attention to the fact that, in doing so, the situation of other groups, such as Asian and other immigrants, as well as the Pakeha or Europeans, should not be neglected.

242. With reference to article 2 of the Convention, members of the Committee sought further information on the actual status of the Treaty of Waitangi in the national legal system. They wished to know whether the Waitangi Iwi were the only ones to benefit under that Treaty or whether it had been extended to cover all tribes and, if so, on what authority; how conflicting claims between different iwi were resolved and how harmonious inter-tribal relations were. With reference to the “additional obligations” of the partners concerned by the Treaty, members requested clarification of the requirement of loyalty by Maori, to the Queen and her Government, which seem to imply that there was a lack of loyalty. With regard to the “Principles for Crown Action on the Treaty of Waitangi”, members wished to know why it had been thought necessary to elaborate such principles and whether they had been worked out in consultation with the Maori.

243. With reference to the new Bill of Rights, members wished to know how it differed from its predecessor; how it would relate to such international human rights instruments as the two covenants, and whether it contained a provision on the prevention of discrimination. Referring to the Waitangi Tribunal, members wished to know the reasons for the removal, in the 1988 Amendment Act, of the requirement that a majority of its members should come from the Maori community; what was the current ethnic composition of the Tribunal; how judges were selected and whether they were fully independent; what was the exact legal standing of the Tribunal; how many cases it had actually studied in its 15 years of existence; and what the factors were upon which it based its recommendations. Regarding the Maori Land Court, members wished to know about its membership, its functions, and how it fitted into the New Zealand court system as a whole. In addition, members sought further information concerning the penal system as it affected the Maori, especially on the Maatua Whangai Programme; the functions of the Ministry of Pacific Island Affairs; the administration of the Department of Maori Affairs; the activities undertaken under service programmes for refugees and Pacific Islands people; the meaning of a “tightening up” of the legal and investigative procedures of the Race Relations Office. The Committee took note of the high level of unemployment in the Maori population, and asked about the reasons for such a development and the measures taken to alleviate that situation. Information was also sought on the number of Maori and Pacific Islanders holding senior posts in the civil service and industry, and on measures to improve their housing situation.

244. With reference to electoral practices, members inquired about the present representation of Maoris in Parliament, and the guaranteed seats granted to them; they wondered why the New Zealand Government had not pursued the idea of introducing a proportional voting system, which would ensure more adequate Maori participation in Parliament, and requested clarification of the term “unregistered persons”.

245. With regard to the implementation of article 3 of the Convention, members congratulated the New Zealand Government on its firm commitment to maintaining sanctions against South Africa until substantial and irreversible political progress had been made in that country.

246. In connection with article 5 of the Convention, members noted with satisfaction that country quotas had been abandoned in New Zealand’s refugee programme and that this change in policy would lead to an improved situation that was more closely in line with provisions of the Convention. Recalling that in recent years there had been complaints of ill-treatment from Maori who had been

placed under the “young Maori at risk” programme, members wondered whether the human rights standards applied to them had been the same as those applied to other citizens. Concerning the Government’s decision to encourage Maori development by creating specifically Maori companies, members asked the representative to comment on the view that, logically, under article 5 of the Convention, no one ethnic or racial group should be singled out for favoured treatment. With reference to orphan children, clarification was sought of the term “responsible care”. With regard to the protection of Maori culture, members wished to know whether measures had been taken to prevent the export of Maori artifacts and works of art.

247. In connection with article 7 of the Convention, members noted the efforts that had been made to accommodate the rights of the Maori in the educational system. They agreed that it would be contrary to the spirit of the Convention if such special treatment for one group led to discrimination against other ethnic groups. It was also noted that the reports were very much concerned with relations between the Government and the Maori. Little was said about the changing attitudes of the Pakeha (or non-Maori) population or about the developing nature of multiculturalism.

248. The representative of the State party, replying to the questions raised and comments made by the Committee’s members, explained that this significant increase in the Maori population was due to a combination of such factors as a higher fertility rate, a more youthful age structure, and a longer life expectancy than in the past. The same factors applied, as well as immigration, in respect of the Pacific Island Polynesian population. In so far as recent emigration from New Zealand was concerned, he said that there was a strong inclination for young New Zealanders, including Maori, to leave the country to seek better economic opportunities elsewhere. The method used to determine whether a person was of Maori descent or belonged to a particular tribe was based on self-identification. Maori land courts had competence to determine who was or was not a Maori. It was not possible for a Maori not to belong to any tribe, but it was quite common for Maori to have links with several tribes.

249. In connection with the questions raised on article 2 of the Convention, the representative of the reporting State indicated that the Treaty of Waitangi had never been formally incorporated in New Zealand law and that, consequently, a number of earlier court decisions had failed to give effect to its principles. The situation was entirely different at the present time and the Treaty was even regarded by some as having a higher status in the courts than an Act of Parliament. The Treaty was applied to all New Zealanders, including recent immigrants, and there was no question of Maori tribes being excluded from its provisions.

250. There was no hostility between the various New Zealand Maori tribes at the present time. This harmonious and constructive relationship was exemplified by a recent important development within Maori society - the holding of a National Maori Congress made up of representatives from each iwi. The need to increase the Waitangi Tribunal membership had resulted from its heavy case-load. At the present time, the Tribunal had eight Maori members and eight European members. As the chief judge was a Maori, there was a majority of Maori on the Tribunal. All New Zealanders had equal access to the courts and the decisions of the High court of Appeal were binding on the Maori Land Court.

251. The Government rejected the concept of a dual criminal justice system, and had decided to set

up a single criminal justice system and to make it as culturally sensitive as possible. The Ministry for Pacific Island Affairs was concerned with Pacific Islanders and people of Pacific Island descent living in New Zealand. The Ministry of Maori Affairs had Maori officers, including the head of the Department, but the staff was not exclusively Maori. To make New Zealand's economy internationally competitive, it had been necessary to restructure the country's economy. While that had affected all sectors of the New Zealand economy, the industries were singled out in the report were those in which the Maori people, whose communities had been particularly impacted, were highly represented. The vocational training and employment programmes that had been established by the Government for the Maori were intended to offset that negative impact.

252. With reference to article 5 of the Convention, the representative indicated that four seats in Parliament were held by Maori; and that there were also people elected on the general roll who claimed Maori descent. According to the 1986 census, unemployment rates were 13.9 per cent for Maori, 11.7 percent for Pacific Island Polynesians, and 5.6 per cent for Europeans and other members of the population. The Government was seeking to increase the representation of Maori and Pacific Island Polynesians at all senior levels of responsibility, but that goal was being realized only gradually. The preservation of Maori art objects was a matter of concern to the Government and legislation had been adopted to prevent the illegal export of Maori cultural artifacts. Finally, the representative noted that the Government was currently reviewing its policy in the cultural field.

253. As for article 7 of the Convention, the representative explained that the impetus for the Te Kohonga Reo programme and other similar Maori language programmes had come from Maori themselves and was based on the value they attached to the culture and language. The program did not conflict with the Government's policy of promoting biculturalism. The Government was strongly committed to the creation of a multicultural society in which all New Zealanders were valued members and in which racism had no place.

CERD A/50/18 (1995)

399. The Committee considered the tenth and eleventh periodic reports of New Zealand, submitted in a single document (CERD/C/239/Add.3 and HRI/CORE/1/Add.33) at its 1106th and 1107th meetings, held on 3 and 4 August 1995 (see CERD/C/SR.1106 and 1107).

400. The representative of the State party made an introductory statement highlighting the main points contained in the reports. Major legislative changes mentioned included the adoption of the New Zealand Bill of Rights Act 1990, the Treaty of Waitangi (Fisheries Settlement) Act 1992, the Te Ture Whenua Maori (Maori Land) Act 1993, the Human Rights Act 1993 and the Electoral Act 1993. Other developments included the restructuring of Maori affairs administration, through the establishment of the Ministry of Maori Development, Te Puni Kokiri, in 1991. The representative explained that the focus of that Ministry was to develop an environment of opportunity and choice for the Maori by improving Maori performance in areas of education, employment, business development and health. The initiatives taken to strengthen the Ministry of Pacific and Island Affairs and to establish the Ethnic Affairs Service within the Ministry of Internal Affairs were also mentioned. In addition, the representative informed the Committee of the revision of New Zealand's immigration and refugee policy which allowed entry to New Zealand of migrants from non-traditional sources.

401. As regards the developments which had taken place since the preparation of the reports, the representative stated that a key area of government attention continued to be the promotion of the settlement of historical Maori grievances and claims under the Treaty of Waitangi. This had led to the appointment of a Minister of Treaty of Waitangi Negotiations and the setting up of an Office of Treaty Settlements. The main responsibilities of that Office were outlined. Basically, they were concerned with the development of policies for the Crown with regard to the settlement of Treaty claims and assisting the Minister in negotiating and implementing the settlement of those claims. Additionally, the representative informed the Committee about the Government's proposed policies to settle Treaty of Waitangi-based land claims through the allocation of \$NZ 1 billion which has become known as the "Settlement Envelope" or "Fiscal Envelope". It was explained that while claimants do not have to agree to the specific amount contained in that "Envelope", as a precondition for negotiation, the setting of an amount would be beneficial for the assessment of the fairness of claimants' settlements. The representative stated that the process of consultation with Maori had revealed a widespread concern about the proposals in their current form.

402. Further information on the settlement of claims either through direct negotiation with the Crown or through the Waitangi Tribunal process was provided by the representative of the State party. In this connection, mention was made of the settlement of a historic grievance with the Waikato-Tainui tribe and that 460 claims were registered with the Waitangi Tribunal of which 10 were under active consideration. Moreover, it was indicated that solutions for resolving land grievances were also available through the Maori reserved land lease reform and by Order in Council.

403. Additionally, the representative of the State party provided details of several administrative and policy measures taken to address Maori concerns, including in the areas of education, employment, health and social welfare. In this regard, it was indicated, *inter alia*, that since 1993 there had been

an expansion of Maori education initiatives particularly with respect to early childhood and bilingual education. Despite the successes evidenced in the last 10 years on account of the increase in Maori enrolment in childhood education and tertiary education and the advances made in school retention rates, it was explained that improvements had also been witnessed for non-Maori students and so a sizeable gap between the two groups remained.

404. Information was also provided on the changes occurring in the immigration population in view of the growing number of recently accepted immigrants coming from countries in the Asian region. Details were also given of the quota permitting the entry of refugees under New Zealand's immigration policy. Additionally, a brief description of recent events in Tokelau was provided with respect to Tokelau's consideration of constitutional changes and of an act of self-determination.

405. By way of conclusion, the representative stated that the period under review had been characterized by significant developments particularly with respect to the development of a dialogue and of consultation with the Maori and to promote the economic and social advancement of all groups within the society.

406. The members of the Committee expressed their appreciation to the State party for its comprehensive, detailed and honest report as well as for its informative and frank introductory statement. They noted with satisfaction the seriousness with which New Zealand fulfilled its reporting obligations, particularly as the State party had made considerable efforts in responding to requests for information made during the previous dialogue with the Committee. It was also noted that the Government had undertaken various measures with respect to the implementation of the provisions under the Convention, particularly in light of its recognition of the need to address the disparities existing between different ethnic groups in the country with respect to educational, health and other matters. Moreover, the members of the Committee noted New Zealand's efforts in the past to prepare Niue and the Cook Islands for self-government and its efforts to assist in introducing constitutional change in Tokelau as well as its commitment to continuing to provide assistance to those countries in the future which had chosen free association with New Zealand.

407. With reference to article 2 of the Convention, members of the Committee noted that a plethora of human rights mechanisms existed in New Zealand and in this connection they wished to know how the State party ensured that the problems of duplication of work and overlapping of mandates did not arise. They also wished to receive further details of the provisions of the new Human Rights Act 1993 with respect to the implementation of the rights provided for in the Convention.

408. Clarification was requested as regards the status of the Treaty of Waitangi and whether it had validity under international law. Further information was also requested with respect to the activities of the Waitangi Tribunal, its composition and whether its recommendations were implemented. In addition, information was requested as regards the concerns raised by Maori with respect to the settlement of claims, the basis of arriving at the amount of money contained in the "Fiscal Envelope" and whether that figure was negotiable. Clarification was also requested as regards the effect of the "Fiscal Envelope" on the economic situation of Maori.

409. Questions were raised by members of the Committee about the nature of the concerns expressed

by Maori over the adoption of the Treaty of Waitangi (Fisheries Settlement) Act 1992 and with regard to the results of the court proceedings instituted against the Crown over the settlement as well as the means employed for the identification of those claiming settlement under the Treaty. In addition, members of the Committee expressed interest in receiving further information about the communication before the Human Rights Committee in relation to the Treaty of Waitangi (Fisheries Settlement) Act 1992.

410. Members of the Committee requested clarification as to the effect of the Waitangi Tribunal Amendment Act 1993 with respect to the Crown's return to Maori of private land for the settlement of claims. In this regard, the Committee noted that from information contained in the State party report it appeared that the Maori's share of the land was not commensurate with the size of its population and that much of the land was owned by the Crown or in private, non-Maori hands. The Committee observed that the Treaty of Waitangi Amendment Act was an area of concern in so far as it appeared to discount claims to land that had been confiscated by private parties, possibly by unlawful seizure in a previous period.

411. Members of the Committee wished to know more about the provisions and implementation of the Te Ture Whenua Maori (Maori Land) Act 1993, especially with respect to those provisions of the Act requiring the strict application of rules for the transfer of ownership of Maori land.

412. With respect to article 4 of the Convention, members of the Committee emphasized the importance of the provisions of part (b) of that article, particularly as a means to prevent racial discrimination.

413. In connection with article 5 of the Convention, members requested further information on the impact of economic restructuring on the situation of different population groups, particularly with respect to housing and employment conditions and the development of Maori education. Members of the Committee also wished to know more about the electoral reform and its effect on Maori representation in Parliament as well as about the new immigration policy instituted in New Zealand and its possible impact on racial harmony.

414. Concerning article 6 of the Convention, members wished to know more about the number of complaints and whether there had been a noticeable improvement in the protection of the rights provided for in the Convention since the adoption of the New Human Rights Act. Further information was requested on the racial discrimination complaints procedures and the personal grievance procedures under the Employment Contracts Act.

415. In relation to article 7 of the Convention, members of the Committee requested information concerning the investigation of reported cases of ill-treatment in prisons and of the measures taken to address such situations, including the setting up of an independent prison complaints authority and the introduction of human rights education for prison staff. They also asked for more information about the proportion of offences committed by Maori and whether appropriate psychological counselling was available to Maori in prison.

416. With respect to article 14 of the Convention, members of the Committee expressed the hope

that New Zealand would consider making the declaration under this article so that grievances relating to racial discrimination could be brought to the Committee.

417. In reply to the questions raised in relation to article 2 of the Convention, the representative agreed that there were a variety of organizations responsible for the promotion and protection of human rights, including the Human Rights Commission, the Office of the Race Relations Conciliator, the Office of the Privacy Commissioner, the Children's Commissioner, the Ombudsman and the Retirement Commissioner. There was not considered to be any overlapping or competition between the different areas of responsibility of these mechanisms. However, he noted that there could be initial confusion about the responsibilities of the Race Relations Conciliator, the Waitangi Tribunal, Te Puri Kokiri and the Human Rights Commission.

418. The representative of the State party also stated that section 5 of the Human Rights Act had enhanced the functions and powers of the Human Rights Commission and the Race Relations Conciliator. In this case, the Race Relations Conciliator had been given a wider jurisdiction to inquire into or make statements about race matters that did not fall within the Conciliator's unlawful discrimination jurisdiction. Section 73 of the 1993 Human Rights Act provided for affirmative action policies consistent with article 2 of the Convention. Indirect discrimination was covered by section 65 of the Human Rights Act, while sections 61 and 131 of the Act provided for penalties for racially offensive expressions. In this regard, he explained that while section 61.2 of the Human Rights Act provided a defence for a publisher or broadcaster if the report accurately conveyed the intention of the publisher or broadcaster, there was no similar defence under section 131 of the Act which carried a criminal penalty with respect to the intent to excite hostility or ill-will or to bring into contempt or ridicule.

419. Concerning the status of the Treaty of Waitangi, the representative explained that it had been recognized as a founding domestic constitutional document which had been concluded between the British Sovereign and the Maori Chiefs of New Zealand in 1840. There had never been a need for a judicial ruling on the question of whether the Treaty of Waitangi had any validity under international law. With respect to the Waitangi Tribunal it was indicated that it was a quasi-judicial body which had statutory authority. The Tribunal was composed of 16 members, 6 of whom were Maori. The Government maintained the ability to accept or reject the Tribunal's recommendations. Those recommendations may be made in general terms or may indicate in specific terms the action which, in the opinion of the Tribunal, the Crown should take. It was further explained that while not all recommendations made by the Tribunal were implemented, the Government was committed to maintaining the reputation of the Tribunal as an effective mechanism for solving Treaty grievances.

420. The Committee was informed that the "Fiscal Envelope" was based on the notion that redress might consist of assets, money and rights. The Government recognized that monetary settlements were preferable since they enabled claimants to repurchase lands or assets themselves. In that connection, the Government had set up two different mechanisms. The first was the Crown protection mechanism, under which surplus land belonging to the Crown was held pending the settlement of claims and surplus land could be used in partial settlement and second priority was given to claims submitted by persons residing in "confiscated lands". It was further explained that the amount of money offered in the "Fiscal Envelope" was arrived at following a political decision and

was not open to discussion. In arriving at that sum the Government had carefully balanced the objective of providing durable settlements and removing the claimants' sense of grievance concerning the affordability of the sum and its acceptability to the wider community. The representative also informed the Committee that while there was considerable support among Maori for the settlement of Treaty claims, there was general dissatisfaction within the Maori community over the progress of individual Treaty claim settlement and that this had been exacerbated by Maori concern about the sale of Crown-owned assets. In view of that concern, the Government had recently decided to put a hold on sales of all surplus Crown land located within the major areas in which land confiscation had occurred in the last century. That decision had met with strong support by claimants who viewed the Crown's action as a demonstration of its good faith and commitment to settling land confiscation claims. As an example of the achievements possible in the settlement of claims through the ongoing goodwill of both the Crown and Maori, mention was made of the recent settlement of the Waikato-Tainui land confiscation claim. Moreover, the representative informed the Committee that the settlement of historical grievances would not abrogate government policies to improve the social and economic position of the Maori. He clarified the Government's position with respect to the fact that nothing in the settlements would remove, restrict or replace Maori rights under article III of the Treaty of Waitangi, including Maori access to mainstream government policies.

421. Replying to the questions raised concerning the Treaty of Waitangi (Fisheries Settlement) Act 1992, the representative explained that the reservations expressed by Maori members of Parliament during the passage of the Act included concern about the provisions of the Act that declared the Settlement to finally settle all claims, both current and future, by Maori in respect of commercial fishing. He further indicated that court proceedings were instituted by representatives of iwi opposed to the settlement and its recognition in legislation. Those proceedings were dismissed by the Court of Appeal in *Te Runanga o Wharekauri v. Attorney-General* (1993) on the basis of the established principle of non-interference by the courts in parliamentary proceedings. It was further stated that many of the issues raised in opposition to the settlement were incorporated into the communication lodged with the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights.

422. In reply to a question on the role of the Waitangi Fisheries Commission in identifying fisheries settlement beneficiaries, the representative pointed out that settlements under the Waitangi Treaty were not negotiated directly with the Maori population. The Crown needed assurance that the settlement was being made with the right tribe or sub-tribe grouping so as to ensure a final settlement and avoid further grievances. It was also important to note that all persons entitled to benefits by virtue of their tribal membership were identified and had the opportunity to participate in decisions affecting the distribution of benefits.

423. Concerning the Waitangi Tribunal Amendment Act 1993, the representative explained that the amendment to section 6 of the Treaty of Waitangi Act 1975 arose following the Te Rora report of April 1992 when a division of the Tribunal recommended that the Crown purchase certain private lands involved in that claim. He further stated that a fundamental principle of the Treaty claims settlement process was that one injustice could not be addressed by creating another and that a recommendation to the Crown to take certain action in relation to privately owned land was not consistent with the Crown's duty to protect private citizens' rights. Thus, the amendment was

necessary to protect the status of the Tribunal and its acceptance by the people of New Zealand as a whole.

424. The representative explained that under the provisions of the Te Ture Whenua Maori (Maori Land) Act all land in New Zealand had been classified into a number of different categories. In particular, the Act made an important distinction with regard to the requirements for the alienation of Maori freehold land. He explained that the rules regarding alienation of Maori land applied to the transfer of land between Maori as well as to non-Maori and that the Act was designed to promote the retention of Maori land in the hands of whanau and hapu descendants of the person transferring the land. The general theme of the Act was the retention of Maori land within the traditional descent group associated with the relevant land. Thus, the Act was designed to address the concern of Maori at the gradual loss of Maori freehold land and also to establish structures for the more effective use, management and development of multiple-owned Maori land.

425. With regard to the concerns expressed that New Zealand's legislative provisions did not fulfil the requirements of article 4 (b) of the Convention, the representative explained that although the Human Rights Act did not prohibit the establishment of racist organizations *per se*, its sections 61 and 63 made it unlawful for any organization to publish or distribute racist material and to engage in racial discrimination while its section 131 covered the offence of inciting racial disharmony. Therefore, the extent to which organizations with racist aims could promote them was clearly restricted.

426. With reference to article 5 of the Convention, and in connection with the subject of economic restructuring and its impact on employment and welfare, the representative explained that the New Zealand Employment Service did not use ethnicity as a criterion of eligibility for its services which were targeted at the most disadvantaged groups, including the long-term unemployed. However, as Maori and Pacific Islanders were substantially over-represented among the latter group, they were in effect receiving targeted assistance. In addition, there were two specific employment programmes for Maori and the Government had allocated \$NZ 2.4 million to the Ministry of Pacific Island Affairs to deliver employment services. Moreover, in the context of the Government's reconsideration of policies to counter the effects of restructuring on vulnerable groups, changes had been introduced in December 1994 to increase the level of payments to purchase food in cases of emergency and hardship, to increase the level of grants for school uniforms and to provide grants to meet costs associated with the transition from receipt of benefit to resumption of employment. Further adjustments and supplementary benefits which had been incorporated in the most recent budget were also outlined.

427. In reply to questions raised in relation to education, the representative stated that significant advances in the educational attainments of Maoris had been observed in the last five years which provided grounds for optimism about the future position of Maori in education. In addition, the positive outcomes expected from Maori-medium education initiatives should in turn lead to more favourable opportunities for Maori in the labour market. Moreover, the active promotion of the Maori language as a national language of New Zealand had inspired many New Zealanders to study it. A small number of non-Maori adults were studying the language at tertiary institutions or in community education or work-based programmes. Two Maori tertiary institutions already existed and a third was expected to be functioning by the end of 1995.

428. As regards the housing situation of Maori, the Committee was informed that 49 per cent of Maori were accommodated in rental housing as compared with 24 per cent of the New Zealand population as a whole. The 1992 census had showed that renters tended to have lower incomes and to be young. There was also a strong link to unemployment and a higher proportion of Maori were unemployed.

429. With regard to the recently introduced electoral reform and its impact on Maori representation, the representative explained that the number of guaranteed Maori seats in Parliament under the new system had been increased from four to five and that the number of Maori seats would rise or fall depending on the number of Maori opting for enrolment in the Maori roll at the end of the Maori option period. He indicated that the new mixed-member proportional system also provided additional opportunities for Maori representation, where parties felt compelled to select Maori candidates for both "list" and "constituency" seats. Equally, the new system would provide an opportunity for a party representing Maori interests to become established and win list seats in its own right. Such opportunities, including for increased representation, also applied to other ethnic groups.

430. With respect to matters relating to immigration, the representative indicated that the Government was aware that there were some Maori concerns about immigration policies. Improvements were being made to the collection of data to ensure the availability of more comprehensive information regarding the impact of immigration and to facilitate an informed public dialogue. The Government was confident that its immigration policy was consistent with its obligations under the Treaty of Waitangi and that Maori opinion had been fully taken into account when the new immigration policy had been developed. The criteria for accepting immigrants were transparent and applied to all immigrants; the points system had been designed to establish an objective measure of the merits of all applicants.

431. In connection with article 6 of the Convention, the representative informed the Committee that anyone could lodge a complaint about alleged racial discrimination against himself or herself. A complaint might also be made by one person on behalf of another as long as he was a relative or associate of the complainant. There was no specific provision in the Human Rights Act for complainants representing group interests. Moreover, by amendment to section 39 of the Employment Contracts Act, a complainant could choose the Act under which he wished to pursue a complaint. However, a complaint could not be pursued under both the Employment Contracts Act and the Human Rights Act. The personal grievance procedure provided for under the Employment Contracts Act was designed to encourage parties to resolve the complaint amongst themselves and the burden of proof in such cases depended on the nature of the claim. For example, in cases of discrimination, where there could be no justification for an employer's conduct, it was the employee who must satisfy the Employment Tribunal or Employment Court that discrimination had occurred.

432. Additionally, the representative indicated that progress was also being made in the protection and promotion of the rights of ethnic minorities, particularly those of Maori and Pacific Island peoples, as well as in the recognition and prevention of harassment, especially of a racial nature. Between 1 July 1994 and 30 June 1995 a total of 587 complaints had been received by the Race Relations Office. Of those 40 per cent related to section 61 of the Human Rights Act. In 1994/1995 there had been 94 mediated settlements. There had been one prosecution by the police under section

25 of the Race Relations Act 1971 in December 1993. The police had decided in that case to prosecute under the Race Relations Act in order to demonstrate that they were prepared to take action on incitement to racial disharmony. The Department of Justice took the view that the small number of prosecutions under what had become section 131 of the Human Rights Act was partly due to the fact that the police had other legislation under which they could deal with the relevant criminal activities, for example criminal damage or offensive behaviour.

433. Concerning article 7 of the Convention and matters raised with respect to the cases of ill-treatment in prisons, the representative indicated that he would provide information on the incidents at the Mount Crawford prison in the future. However, with regard to the situation at the Mongora prison, he reported that the Ministry of Justice had held an independent inquiry into the management of the prison. A report had been published, containing 60 recommendations for action, some applying specifically to Mongora while others were of relevance to the prison system as a whole. All the recommendations contained in the report would be implemented by the end of 1995. In addition, disciplinary procedures had been instituted against some prison officers and 17 had been suspended. Inquiries into this incident continued to be pursued by the New Zealand police.

434. Moreover, the representative informed the Committee that while Maori constitute 10.6 per cent of the population aged 15 and over, Maori offenders accounted for just under half (49 per cent) of the cases which resulted in imprisonment in 1994. Thus, there had been little change in recent years with regard to the proportion of offences committed by Maori. He also indicated that although there was no specific focus in the provision of psychological services in prison for the adjustment of Maori as compared to other inmates, the Corrections Psychological Services Division was committed to enhancing its services to Maori generally and had undertaken a number of initiatives to that end. A brief description of those initiatives was provided.

435. Concerning article 14 of the Convention, the Committee was informed that the Government of New Zealand was not considering making a declaration under this article especially as it had accepted a broadly based complaints procedure under the Optional Protocol to the International Covenant on Civil and Political Rights. Nor was it the intention of New Zealand to adhere to ILO Convention No. 169. Consultations held in 1990 had revealed serious reservations about its provisions and resistance to its ratification.

436. Furthermore, the representative informed the Committee that he would submit written replies to the questions on the Treaty of Waitangi Amendment Act and the question relating to the determination of ethnic identity. In addition, he stated that the Committee's comments with respect to articles 4 (b) and 14 had been duly noted.

Concluding observations

437. At its 1123rd meeting, held on 16 August 1995, the Committee adopted the following concluding observations.

(a) Introduction

438. The comprehensive and detailed report prepared by the State party, especially in responding to requests for information raised during the Committee's previous dialogue with New Zealand, is noted with appreciation. The highly informative introductory statement, made by the State party representative, providing detailed coverage of recent developments with regard to the implementation of the Convention is welcomed. The open, constructive and detailed responses of the delegation to the questions raised by the members of the Committee are also commended. The opportunity to continue a constructive and fruitful dialogue with the State party is particularly welcomed.

439. It is noted that the State party has not made the declaration provided for in article 14, of the Convention, and some members requested that the possibility of such a declaration be considered.

(b) Positive factors

440. It is noted that a number of legislative changes had been undertaken during the period under review. Attention is drawn in particular to the adoption of the Human Rights Act 1993 which amalgamated the Race Relations Act and the Human Rights Commission Act.

441. During the reporting period, it is observed that other developments which have taken place include the establishment in 1991 of Te Puni Kokiri (the Ministry of Maori Development) which replaced the IMI Transition Agency and the Ministry of Maori Affairs; the strengthening of the Ministry of Pacific and Island Affairs; the establishment of the Ethnic Affairs Service within the Ministry of Internal Affairs; and the establishment of the Ministry of Cultural Affairs.

442. It is noted with satisfaction that New Zealand has decided to mark the first year of the International Decade of the World's Indigenous People by designating 1995 as the Year of the Maori language. The aim of the year being to encourage Maori and other groups and individuals to make an active commitment to learning and promoting the Maori language.

443. The introduction of new targeted policies and programmes in the fields of education, health, employment and social welfare to address the specific needs of Maori and ethnic minorities is welcomed.

444. In this regard, the Government's stated commitment to continue providing support for the improvement of education results for Maori is acknowledged. The intention of the Government to develop policy to address disparities in the areas of secondary school retention, school truancy, achievement and attainment, participation in core subject areas and progression to further education and training is welcomed.

445. The efforts undertaken by the State party to address the high infant mortality rate in the Maori population are also welcomed. Equally, the adoption of strategies by the Government to enable Maori and Pacific Island people to develop and deliver appropriate social services using traditional cultural approaches is appreciated.

446. It is noted with satisfaction that a Prime Ministerial Taskforce on Employment was established in 1994 and that a multiparty memorandum of understanding was issued in June 1995 in response to

the findings of the Taskforce's report. In this connection, it is noted that a number of programmes have recently been initiated to address the needs of unemployed Maori and a number of recommendations have been made regarding the employment issues affecting Pacific Island people.

447. Note is also taken of the Race Relation Office's recently completed research project undertaken on the subject of positive race relations in the country and the survey conducted to help identify the victims of racially motivated crime.

448. Tokelau's pursuance of the path towards self-government, with the possibility of adopting the status of free association with New Zealand, is noted.

449. Satisfaction is expressed at the practice instituted in the State party of publicizing the presentation of human rights reports. It was further noted that the publications produced contain the report, opening statement, the questions raised and answers provided as well as the concluding observations of the Committee and are widely distributed throughout the country.

(c) Principal subjects of concern

450. The Government acknowledges that there remains widespread concern among the Maori about the present proposals, especially the so-called "fiscal envelope" designed to settle Maori grievances and claims under the Treaty of Waitangi. The Maori concern also extends to the issue of the compatibility of these proposals with the terms of the Treaty. Concern is expressed that this problem remains unsettled.

451. Similar concerns are raised regarding the probable effects of the new immigration policy on racial harmony and the implementation of the Treaty of Waitangi (Fisheries Settlement Act) 1992.

452. While the policy and special programmes to improve the situation of the Maori, Pacific Island and other ethnic minorities are commended, the existing social and economic disparities between the Maori and Pacific Islanders on the one hand and the Pakeha in New Zealand continue to be a matter of concern.

453. Concern is also expressed about the adequacy of the measures to implement article 4 (b) of the Convention.

(d) Suggestions and recommendations

454. The Committee wishes to receive further information on the proposal of the Government to implement changes to the Immigration Service's data collection and evaluation systems, and to make available more comprehensive information on the impacts of immigration and the situation of immigrants so as to further facilitate informed public dialogue with respect to New Zealand's immigration policies.

455. In view of the Government's declared commitment to address what are openly acknowledged to be difficult and challenging historic and contemporary issues, the Committee recommends that the

State party continue to accord careful consideration to the concerns expressed about proposals to settle Maori grievances and land claims, including their compatibility with respect to the provisions of the Treaty of Waitangi.

456. The Committee wishes to receive further information in the next report of the State party on the implementation of the Treaty of Waitangi (Fisheries Settlement) Act 1992, the Te Ture Whenua Maori (Maori Land) Act 1993 and the Electoral Act 1993.

457. It is suggested that the Government consider undertaking further measures with respect to the implementation of article 4 (b) of the Convention which requires States parties to declare illegal and prohibit organizations which promote and incite racial discrimination.

458. In line with the usual practice of the State party, the Committee recommends that the report, the discussion with, and the concluding observations adopted by, the Committee be widely publicized in New Zealand.

459. The Committee recommends that the State party's twelfth periodic report, due on 22 December 1995, be a brief updating report.

CERD A/57/18 (2002)

412. The Committee considered the combined twelfth, thirteenth and fourteenth periodic reports of New Zealand, which were due on 22 December 1995, 1997 and 1999, respectively, submitted as one document (CERD/C/362/Add.10), at its 1539th and 1540th meetings (CERD/C/SR.1539 and 1540), held on 14 and 15 August 2002. At its 1551st meeting (CERD/C/SR.1551), held on 22 August 2002, it adopted the following concluding observations.

A. Introduction

413. The Committee expresses its appreciation to the State party for its detailed report, which contains pertinent information on the law and practice relating to the implementation of the Convention. It further welcomes the supplementary and updated information provided to the Committee, including the detailed answers given by the delegation to the questions posed by members of the Committee.

414. The Committee notes with appreciation that the report contains information on developments, as well as responses to the concerns identified by the Committee in its concluding observations on the previous report.

B. Positive aspects

415. The Committee welcomes the information that the "fiscal envelope" policy, which limited both the total funds available for the settlement of claims with Maori and for the settlement of all historical claims, was abandoned in 1996 in favour of a programme of "fair and equitable" settlements. The Committee is encouraged by the progress that has since been made on the settlement of historical Maori grievances and claims with individual iwi (tribes), including components of financial compensation and formal apology on behalf of the Crown.

416. The Committee welcomes acknowledgement of the disadvantaged position in society of minorities, especially Maori, and accordingly appreciates the large number of initiatives, programmes and projects in the areas of health, education, employment, social welfare, housing, language and culture, and correctional services, which are designed to address the specific needs of Maori, Pacific Island people and persons from other groups such as refugees and ethnic minorities.

417. The Committee welcomes the examination by the New Zealand Human Rights Commission of all domestic acts, regulations, government policies and administrative practices with a view to assessing their consistency with the anti-discrimination provisions of the Human Rights Act, a programme known as Consistency 2000. It further welcomes the comprehensive audit process undertaken by the Government to identify and resolve possible inconsistencies between the Human Rights Act and other legislation and regulations, known as Compliance 2001.

418. The Committee notes with satisfaction the provisions of the Human Rights Amendment Act

2001, which amalgamates the New Zealand Human Rights Commission and the office of the Race Relations Conciliator and provides for a single complaints system for the determination of human rights complaints as well as for the possibility of challenging government action before the Human Rights Review Tribunal and the courts.

419. The Committee welcomes the introduction of amendments to the electoral roll system, in particular the Maori electoral option, which have contributed to an appreciable increase in the representation of Maori in Parliament.

420. The Committee welcomes the State party's policies and initiatives designed to improve the status and use of the Maori language, including the increases supply of services in the Maori language, including in education and State broadcasting.

421. The Committee notes with satisfaction that the Sentencing Act 2002 provides, in section 9 (1) (h), that where an offender commits an offence wholly or partly because of hostility towards a group of persons with common characteristics such as race or colour, this must be taken into account as an aggravating factor by the court in the sentencing process.

C. Concerns and recommendations

422. While noting the programmes and projects initiated by the State party mentioned above, the Committee remains concerned about the continuing disadvantages that Maori, Pacific Island people and other ethnic communities face in the enjoyment of social and economic rights, such as the rights to employment, housing, social welfare and health care. The State party is invited to devote priority attention to this issue and to continue to encourage active and effective participation by Maori in the search for solutions such as the Maori Mental Health Strategic Framework adopted in May 2002, with a view to further reducing these disadvantages.

423. The Committee continues to be concerned at the low representation of Maori women in a number of key sectors and their particular vulnerability to domestic violence. It encourages the State party to work towards reducing existing disparities through appropriate strategies.

424. While noting the measures that have been taken by the State party to reduce the incidence and causes of crime within the Maori and Pacific Island communities, the Committee remains concerned at the disproportionately high representation of Maori and Pacific Islanders in correctional facilities. The State party is invited to ensure appropriate funding for the measures envisaged or already initiated to address the problem.

425. The Committee takes note of the operation of sections 131 and 134 of the Human Rights Act, according to which the institution of criminal proceedings against those accused of incitement to racial hatred is subject to the consent of the Attorney-General. Observing that the institution of such proceedings is rare, the State party is invited to consider ways and means of facilitating the institution of proceedings in this field.

426. The Committee notes that the report provides limited information on compliance with article

4 of the Convention. It invites the State party in its next periodic report to provide more extensive information on measures taken to comply with this article. In particular, the Committee would appreciate additional information concerning the proscription of racist organizations, as well as the modalities for dealing with complaints of discrimination and the remedies granted to victims who have well-founded complaints.

427. The Committee notes with concern that almost all asylum-seekers presenting themselves at the border after the events of 11 September 2001 were initially detained. While it notes that this practice by the New Zealand Immigration Service was successfully challenged in the High Court and the practice of detaining asylum-seekers has been suspended except for a small number of cases, it also notes that the High Court's decision has been appealed by the Immigration Service and that the practice may resume if the appeal is successful.

428. The Committee has noted the recent interpretation of the concepts of "affirmative action" and "equality" by the former Complaints Review Tribunal in relation to section 73 of the Human Rights Act, and by the High Court in relation to section 65 of the Human Rights Act. While it lacks detailed information about the two cases referred to in the report of the State party, it considers that the State party appears to take a narrower view of the scope of special measures than is provided for in articles 1 and 2 of the Convention.

429. The Committee notes that there is limited information in the report on the enjoyment of the rights mentioned in article 5 of the Convention by ethnic minorities other than the Maori. The Committee recommends that further information be submitted in this regard in the next periodic report.

430. The Committee notes the extensive work currently under way to review constitutional arrangements for Tokelau. It encourages the State party to ensure that, while giving due attention to the culture and customs of the people of Tokelau, human rights obligations are woven appropriately into any new constitutional arrangements.

431. It is noted that the State party has not made the optional declaration provided for in article 14 of the Convention, and the Committee recommends that the possibility of doing so be considered.

432. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.

433. The Committee recommends that the State party's reports be made readily available to the public from the time of their submission and public release and that the Committee's concluding observations on these reports be similarly publicized.

434. The Committee recommends that the State party submit jointly its fifteenth, sixteenth and seventeenth periodic reports, due on 22 December 2005, that it be an updating report and that it

address the points raised in the present concluding observations.