

**New Zealand State Report to the Committee on the Elimination of Racial
Discrimination, July 2007**

Committee Members' Questions to New Zealand

31 July 2007

Report by Aotearoa Indigenous Rights Trust

INTRODUCTION

This paper briefly summarises the questions focusing on Maori issues posed by the United Nations Committee on the Elimination of Racial Discrimination (CERD Committee) on New Zealand's State Report on 31 July 2007.

With the exception of the country rapporteur on New Zealand, Mr Sicilianos, the Committee members are not named and the questions are only repeated once although different Committee Members asked the same question.

NEW ZEALAND BRIEFING

In relation to Maori issues the New Zealand Government focused on Te Reo Maori, the implementation of the Foreshore and Seabed Act 2004, including negotiations on territorial customary rights orders and test cases on customary rights orders, and on-going dialogue on the entrenchment of the Treaty of Waitangi.

QUESTIONS AND COMMENTS

Country Rapporteur

- Noted that New Zealand is one of the few countries not to entrench human rights.
- Requested information about why New Zealand had not made a declaration under article 14 of the International Convention on the Elimination of Racial Discrimination to allow individual communications to the CERD Committee.
- Noted the complaint that the Treaty of Waitangi has a vulnerable status in domestic law meaning Maori rights are legally and politically fragile.
- Noted the Treaty of Waitangi Deletion Bill, which, because the Treaty of Waitangi is unenforceable, would remove the narrow jurisdiction the courts have over the Treaty of Waitangi.
- Noted that the draft Education Curriculum removed references to the Treaty of Waitangi.
- Noted that the Waitangi Tribunal only has recommendatory powers and that reports have been rejected. As the Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People noted, it should perhaps have binding powers and the government should devote more resources to it.
- Noted that some elected representatives have called for the abolition of Te Puni Kokori because it is a race-based institution and asked for further information.
- Concern was expressed about the Government's interpretation of special measures in its report because the report includes measures to recognise Maori rights as special measures. Restorative measures and indigenous peoples' rights, unlike special

measures, should not be categorised as temporary in nature. Further, special measures are not discriminatory as they aim to secure de facto equality.

- Noted the disparities between Maori and non-Maori on distributive justice indicia such as health and rates of incarceration stating that these would be key challenges for the future of race relations.
- Requested any additional information that could be provided on the foreshore and seabed.

Other CERD Committee Members

- The Treaty of Waitangi settlements process comes across as very one-sided, which raises the question whether they will achieve the Government's objectives of final settlement and removing the sense of grievance.
- Questions whether it would not be better to establish an independent tribunal to monitor treaty settlements.
- Requests for information about the status of the Treaty of Waitangi: international? Constitutional? Binding?
- What level of acceptance of the Treaty of Waitangi is there within society?
- Can Te Puni Kokiri act as a governmental and Maori institution?
- Does Te Puni Kokiri recognise individuals only?
- What was the impact of colonisation on Maori?
- Given the Prime Minister's statement that the CERD Committee is on the periphery of the United Nations, what action has the Government taken to support the CERD Committee?
- What initiatives has the Government undertaken to address the disparities between Maori and non-Maori?
- It is "dramatic" that Maori represent only 14% of the population but make up half of the prison population.
- Noted the evidence that Maori are apprehended more, incarcerated more, receive longer sentences etc.
- Measures such as the Foreshore and Seabed Act 2004, Maori language and Maori fisheries cannot be seen as "special measures" that are only temporary. Instead they are measures to put the Convention into practice.
- Indigenous and minority rights issues are not "special measures".
- The Treaty of Waitangi cannot be phased out.
- Instruments under international law such as the Declaration on the Rights of Indigenous Peoples build on previous instruments, which include protections of non-indigenous peoples' rights. The Declaration is consistent with existing international law. Why, in that light, is New Zealand opposing the Declaration?
- Language rights are very important but are not the only means to provide necessary protections of culture.
- Unlike the Prime Minister, the CERD Committee would have thought that the Convention on the Elimination of All Forms of Racial Discrimination is a central international instrument.
- Conflict and tensions might arise if Maori issues are not adequately addressed.
- If Maori are considered to be indigenous, how does the state accommodate their self-determination?
- Do Maori consider themselves represented by the New Zealand government?

- Does the “Crown” stand for the “white” people?
- Factors leading to disproportionate Maori incarceration include poverty.
- It may be that New Zealand needs to do more to adequately address Maori issues.