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# Submission of the New Zealand Human Rights Commission to inform the Committee’s elaboration of its List of Themes in relation to New Zealand’s 21st and 22nd periodic reports.

The New Zealand Human Rights Commission is an independent Crown entity pursuant to the Crown Entities Act and derives its statutory mandate from the Human Rights Act 1993. The long title to the Human Rights Act states it is intended to provide better protection of human rights in New Zealand in general accordance with United Nations human rights Covenants and Conventions.

1. The New Zealand Human Rights Commission (“Commission”) welcomes the opportunity to make this submission to the Committee on the Elimination of Racial Discrimination (“Committee”) to inform its development of a List of Themes in relation to New Zealand’s 21st and 22nd periodic reports.
2. This submission sets out what the Commission views as key challenges in relation to New Zealand’s implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. Attached at **APPENDIX 1** is a table recording progress in implementing the Committee’s 2013 concluding observations. The information in this table is sourced from the Government’s 21st and 22nd periodic reports to the Committee,[[1]](#footnote-1) New Zealand’s National Action Plan on Human Rights,[[2]](#footnote-2) and the Commission’s ongoing research, advocacy and monitoring.[[3]](#footnote-3) The Commission will file a full shadow report prior to New Zealand’s review. The Commission also remains available to the Secretariat and the Committee for any further information or clarification that they may require.
3. The Commission recommends that the Committee include the following matters in its List of Themes for New Zealand:

## The Convention in domestic law, institutional and policy framework for its implementation (arts 2,4,6 and 7)

1. Information on progress made to incorporate the Treaty of Waitangi into all aspects of the domestic law and policy framework and to ensure its application;
2. Information on progress made to ensure that law and policy respects the rights of Māori as established under the common law, the Treaty of Waitangi and any subsequent settlements, and International human rights law;
3. Information on effective remedies and redress that is available to victims should these rights be infringed;
4. Information on steps taken to implement recommendations of the Waitangi Tribunal -including its Wai 262 decision of 2011;
5. Update on steps taken to develop the technical capacity of Māori to ensure their effective participation in decision-making processes on issues that affect their rights and to fulfil their right to free, prior and informed consent;
6. Update on the measures being taken to ensure that the Waitangi Tribunal is adequately resourced to fully guarantee access to justice and the right to an effective remedy;
7. Update on progress on settlement of Treaty of Waitangi claims including the number of claims;
8. Information on how the Government’s policy to negotiate Treaty of Waitangi Settlement Claims with “large natural groupings” ensures that all *iwi* and *hapu* are included and that settlements do not result in creating further injustices;
9. Update on implementation of the Declaration of the Rights of Indigenous Peoples and steps taken to monitor the same;
10. Update on the National Human Rights Action Plan, with particular regard to how it addresses racial discrimination;
11. Updated data and information on the incidence of racially motivated crime and measures to combat it;
12. Update on the implementation and impact of the framework for addressing the problem of incitement to racial hatred on the internet;
13. Provide information on cases of racial discrimination punished or otherwise sanctioned by public authorities of New Zealand;
14. Noting that the implementation of the SDG Agenda has considerable potential to drive enhanced human rights outcomes, update on the steps taken to incorporate the SDGs into New Zealand’s policy and legislative framework;
15. Update on the steps the Government is taking to develop systems to collect robust disaggregated data to ensure no population group is left behind in meeting the SDGs;

## Situation of ethnic and minority communities (arts. 2- 7)

1. Information on measures taken to address the persistent discrimination against Asian New Zealanders;
2. Update on the measures taken to protect migrant workers against exploitation and their effectiveness;
3. Information on steps taken to eliminate discrimination against, and exploitation of, international students;
4. Provide information on the measures taken to combat existing stereotypes and prejudices against certain ethnic groups;
5. Update on the measures taken to protect migrants, including targeted measures to strengthen equal access to the labour market in order to alleviate the concentration of qualified individuals in low-paying jobs;
6. Provide updated statistical data on Māori and Pasifika communities at all stages of the criminal justice system;
7. Update on the achievements and challenges in reducing discrimination against Māori and Pasifika communities in the criminal justice system;
8. Provide information on what the Government considers are the underlying root causes which lead to the high proportion of Māori and Pasifika communities among accused persons, as well as among victims of crime, and update the Committee on steps taken to address these;
9. Update on the gaps in realization (disaggregated by ethnicity) of the right to adequate housing;
10. Update on concrete actions taken to accelerate the narrowing of the gap in educational outcomes between Māori and Pasifika peoples and other ethnicities;
11. Information on steps taken to improve health outcomes for Māori and Pasifika peoples and update on how progress is measured and monitored;
12. Data on the gaps in health outcomes for Māori ad Pasifika peoples compared with the rest of the population, including data on life expectancy;
13. Updated data on the participation of Māori, Pasifika peoples and other ethnic groups in the labour market;
14. Updated data on wages, unemployment and NEET rates for Māori, Pasifika peoples and other ethnic groups
15. Information on steps taken to increase participation of Māori, Pasifika peoples and other ethnic groups in the labour market;
16. Update on progress made to improve participation of Māori, Pasifika peoples and other ethnic groups in public affairs.

## Discrimination against non- citizens including migrants, refugees and asylum seekers

1. Updated information on the detention of asylum seekers (and undocumented migrants) in correctional facilities (including the number of detainees, the length of detention and the conditions of detention);
2. Updated information on the development and use of alternatives to detention for asylum seekers and undocumented migrants;
3. Updated information on the steps taken to review the availability, accessibility and adequacy of social security benefits, health care, housing, education and employment opportunities for all people from refugee backgrounds – asylum seekers, UNHCR resettled refugees, and family members who come to New Zealand under its refugee family reunification programme;
4. Update on steps taken to ensure that settlement support and other social services are provided to all people from refugee backgrounds without discrimination;

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# Appendix 1: Implementation of 2013 concluding observations

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| **Recommendation** | **Commentary** | **Status** |
| Retain the designation of the Race Relations Commissioner and ensure that the Race Relations Commissioner maintains sufficient independence to undertake its mandate effectively | The Human Rights Amendment Act 2016 was passed. The Act retains provision that dedicated commissioners be appointed to lead work in the priority areas of race relations, equal employment opportunities and disability rights. | Actioned |
| Discuss constitutional status of the Treaty of Waitangi | The Government has not advanced the Constitutional Conversation. | No Action |
| Provide written justifications for any departure from decisions of the Waitangi Tribunal | The Government does not as a matter of course provide written justifications for any departure from decisions of the Waitangi Tribunal.  Decisions of the Tribunal are binding only in some very limited circumstances involving the return of certain categories of property. | No Action |
| Adopt a National Action plan on human rights ensuring that it includes plans to combat racial discrimination in line with the Durban Declaration | The Commission launched New Zealand’s second National Action Plan in June 2015. It is an online tool to monitor the commitments made through its second UPR.  There are a number of actions which address racial discrimination. | Partially actioned |
| Develop a comprehensive legislative framework to address the incitement to racial hatred on the Internet | The Harmful Digital Communications Act was enacted by Parliament in 2015. It addresses harmful digital communications, which include bullying, stalking, harassment, malicious impersonation and serious threats carried out via digital communications. Inciting racial hatred through digital communications is prohibited. | Partially actioned |
| Raise awareness to combat existing stereotypes and prejudices against certain ethnic and religious groups | The Office of Ethnic Communities works to foster connections between New Zealand’s diverse ethnic and religious communities and the wider New Zealand population. This helps to ensure that New Zealanders from ethnic communities/minorities are treated fairly and equally, so they may enjoy life in New Zealand without fear of discrimination or harassment. | Partial action |
| Address overrepresentation of members of the Māori and Pasifika communities at every stage of the criminal justice system | The Government has taken significant steps to address the disproportionate representation of Māori and Pasifika at all stages of the criminal justice. However, more needs to be done and this remains an enduring issue (along with over incarceration generally) for New Zealand. | Partial action |
| Data on cases of racial discrimination | The latest data – as referred to in the State party’s report is from 2012 (general statistics) and 2013 (relating to international students).  Complaints data from the Commission and personal grievance statistics from the Employment relations authority provides a limited snap shot of the situation. | Partial action |
| Review the Marine and Coastal Area (Takutai Moana) Act 2011 |  | No action |
| Implement Wai 262 decision of Waitangi Tribunal | See paragraphs 11 – 14 of the State party’s report.[[4]](#footnote-4) | Partial action |
| Improve outcomes for Māori and Pasifika in employment, health and criminal justice | The Government is committed to addressing enduring inequalities in employment, health and the criminal justice systems. Despite many improvements more needs to be done. | Partial action |
| Increase special measures to increase educational attainment for Māori and Pasifika | Despite improvements in overall achievement of National Standards and National Certificate in Educational Achievement (NCEA), more needs to be done for students from low socio-economic, Māori and Pacific backgrounds. | Partial action |
| Strengthen equal access to the labour market for migrants | The Migrant Settlement and Integration Strategy places value on the long-term integration of migrants as well as successful initial settlement. It identifies five measurable settlement and integration outcome areas — employment, education and training, English language, inclusion, and health and wellbeing. Outcomes will be measured against success indicators using existing data-sets and surveys. | Partial Action |
| Preserve Māori, Pasifika and community languages | The Government is committed to preserving Māori, Pasifika and Community languages. See CERD/C/CO/18-20/ADD.1 – Information received from New Zealand on follow-up to the concluding observations. | Partial action |
| Enhance mechanisms for consultation with indigenous people around all policies affecting their ways of living and resources | There are mechanisms in place for ensuring Māori participation in decision-making processes on issues affecting Māori and their right to free, prior and informed consent. These include Crown-Iwi Accords, Relationship Agreements, Protocols and Memoranda of Understanding between the Crown (through various agencies) and iwi.  However, concerns continue to be raised particularly when Māori rights and interests appear to conflict with other public interests (e.g. Māori asserting interests in freshwater). | Partial action |
| Privatisation of energy companies fully respects the rights of Māori to freshwater and geothermal resources | Differing views continue to exist between Māori and Government on these issues. | No action |
| Ensure Immigration Amendment Act 2012 accords to international standards | The Government considers that the Immigration Amendment Act 2012 complies with international standards. | No action |
| Refrain from sending asylum seekers to Australian off-shore detention facilities. | No asylum seekers have been sent to Australian off-share detention facilities during the reporting period. | Actioned |
| Ratify ILO Convention 169 |  | No action |
| Give effect to the Durban Declaration and Programme of Action | While many aspects of New Zealand’s human rights legal and policy framework reflect the principles of the Durban Declaration and Programme of Action, the Government does not have any designated programme of work to implement the Declaration. It should also be noted that the New Zealand Government has voiced reservations about the process and boycotted the review conference in 2009. | Partial Action |
| Enter declaration in relation to Article 14 |  | No action |

1. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/082/18/PDF/G1608218.pdf?OpenElement> [↑](#footnote-ref-1)
2. <http://npa.hrc.co.nz/#/> [↑](#footnote-ref-2)
3. Note the commentary in the table does not necessarily reflect the Government’s position *vis a vis* implementation of the Concluding Observations. [↑](#footnote-ref-3)
4. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/082/18/PDF/G1608218.pdf?OpenElement> [↑](#footnote-ref-4)