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## **Current Issues in Race Relations**

Address at the Public Law Centre, Victoria University of Wellington, 12:30pm  
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Joris de Bres, Race Relations Commissioner

### **Introduction: The State of the Nation**

In January, UMR Research Limited issued a "State of the Nation Report" based on the results of its omnibus surveys throughout 2003. It revealed that the top issue of concern for New Zealanders last year was "race relations/ Maori issues". This exceeded health care, unemployment and jobs, the economy, crime and violence, and education (in that order) as "the most important problem facing this country today". That statistic is reflected in the news stories that respondents followed most closely. Only the Rugby World Cup and the search for Coral Burrows exceeded public interest in the foreshore and seabed. Other race relations topics ranking highly included the remarks about Kofi Annan and changes to immigration laws.

In a sense it comes as no surprise, therefore, that in the new year race relations should become such a major topic of public debate.

What is obvious from both the UMR survey and the public debate is that New Zealanders are worried about the state of our race relations. Many Maori are angry and frustrated, and many Pakeha are reacting to what they perceive as reverse discrimination. There is a feeling on both sides that somehow people are not getting that most New Zealand of values, a fair go. It would be wrong to conclude that there has been some sort of general public slide into racial prejudice, even if some writers of letters to the editor and callers to talkback radio have used the opportunity to air such views, and Maori in general have regrettably become something of a political football in the debate.

In fact, over the past year, there has been strong evidence that New Zealanders are prepared to speak out strongly against racial discrimination – over the Indian family that was refused accommodation in a Morrinsville motel on the grounds that they might cook curry, the Maori woman who was refused access to a bar in Gisborne because she had a moko, the Gisborne hotel owner who did not want a Maori singer in his cabaret, Paul Holmes' comments about Kofi Annan, and the NZ First pamphlet about immigrants and refugees. There has been growing public concern about the long detention of Algerian refugee Ahmed Zaoui.

Equally, there was a hugely positive public response to the Maori Language Week campaign for spectators to sing the national anthem in both Maori and

English at the Bledisloe and World Cup matches, several hundred thousand of New Zealanders turned out around the country for local Waitangi Day celebrations and commemorations (in marked contrast to the confrontations at Te Tii marae at Waitangi), and public interest has continued to mushroom for the many ethnic and cultural festivals such as Divali, the Chinese New Year, Pasifika and Matariki, as well as the multi-ethnic festivals organised by local authorities and the Federation of Ethnic Councils.

## **Public Perceptions of Discrimination**

In January this year, the Human Rights Commission commissioned UMR Research to repeat its survey of New Zealanders' perceptions of discrimination. The results were as follows:

- Asians continue to be identified as the group of people most likely to be discriminated against in New Zealand.

In unprompted questioning 26% identified Asians, followed by 14% European New Zealanders, 7% Maori, 5% Recent immigrants, 4% Ethnic minorities in general and 2% Pacific peoples, as the groups of people that they think are generally most discriminated against in New Zealand today.

In January 2003 the responses to the same question were: 28% identified Asians, 11% European New Zealanders, 7% Maori, 5% recent immigrants, 4% Pacific peoples and 3% Ethnic minorities in general.

- In prompted questioning, Asians were again the most likely to be identified as being discriminated against of the eleven groups of New Zealanders tested.

78% of New Zealanders surveyed considered that Asians were subject to a great deal or some discrimination. This was similar to January 2003 (79%).

72% thought recent immigrants were subject to a great deal or some discrimination; down from 77% in January 2003 but still higher than in December 2001.

70% thought refugees were subject to a great deal or some discrimination. This was similar to January 2003 (72%).

These perceptions seem to be confirmed by the University Vice Chancellor's Committee's survey of graduates in 2002, released this week, that shows Asians are less likely to find a job after finishing their studies than other ethnic groups.

The survey of all university graduates in 2002 showed that one third of Asian students were still unemployed six months after graduating. They were twice as likely to be jobless as Europeans or Maori.

While I intend today to focus on the most topical current issues relating to the foreshore and seabed, the Treaty of Waitangi, and special measures to achieve equality, it is important to remember that there are also other unresolved current race relations challenges, particularly in relation to Asian New Zealanders, immigrants and refugees.

Positive developments in the past year have included the introduction of the "Language Line" by the Office of Ethnic Affairs, the increased focus on settlement outcomes for migrants by both central and local government, the opening of migrant resource centres in Auckland and elsewhere, refugee and migrant health initiatives, Police programmes directed at improving relationships with migrant communities, and the "poll tax package" to recognise Chinese heritage and culture in New Zealand.

### **The Foreshore and Seabed**

The issue that has most worried New Zealanders over the past year is the foreshore and seabed. This is a complex issue, where conflicting claims and interests need to be harmonised. On the one hand, the Court of Appeal has found that there may be instances where a customary title continues to exist and has not been extinguished by law, and that those who claim to hold such title in relation to particular places have an ability to have their claim heard in the appropriate court. On the other, all New Zealanders assert the right of public access to the foreshore, as another form of customary right. It is clearly within the power of a Government to legislate in response to an issue raised by the Court of Appeal, but in doing so it should seek to balance the various property rights, customary rights and human rights. Also, if any such rights are to be modified or extinguished, the Government should take account of the views and interests of those who hold or may hold them.

There is no simple answer to this complex issue, although in the end the goal should be to balance these rights in a way that makes them compatible, and if possible to do so by negotiation and agreement rather than by imposition.

The recent report of the Waitangi Tribunal sets out the issues which need to be addressed both in terms of the Treaty and in terms of human rights, and in its "final word" the Tribunal identifies a considerable amount of common ground as a starting point for finding an appropriate solution. If the Government proceeds with a legislative proposal in the near future, then the Select Committee may be the place where this can be achieved. It will be important for the Select Committee to take a broad and inclusive approach in considering the matter, allowing a sufficient timeframe and hearings throughout the country, thereby offering a forum for all views, including the report of the Waitangi Tribunal, to be genuinely considered and addressed.

### **Other Issues**

The other major issues in the public debate are the place of the Treaty of Waitangi in contemporary governance mechanisms and legislation, the place of affirmative action programmes and special measures to achieve racial equality, and any perceived difference between “race-based” and “needs-based” programmes.

It is also important to note that there are significant issues which are *not* in contention. These include the continued state funding of Maori education initiatives such as kohanga reo, kura kaupapa and wananga, the continuation of the process to settle historic Treaty grievances, the funding of Maori health providers, and the need to address the continuing socio-economic disparities between different ethnic groups.

### **International Standards for Racial Equality**

Since much of the present debate is focused on “equal rights” it is appropriate to go back to the international standards that have been widely subscribed to by the international community. These are set out succinctly in the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) adopted by the United Nations in 1965. New Zealand ratified the Convention in 1972, and is therefore bound by it in domestic law. The Convention defines racial discrimination as:

*Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.*

It goes on to say:

*Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.*

The Convention also obliges States that are party to it to take such “special and concrete measures”, when the circumstances so warrant.

### **The United Nations Committee on the Elimination of Racial Discrimination**

As a signatory, New Zealand is required to report periodically to the United Nations Committee on the Elimination of Racial Discrimination on progress in

implementing the convention. The most recent report was submitted in 2001, and the Committee released its concluding observations on 1 November 2002.

The Committee welcomed:

- Progress in the settlement of historical Treaty grievances
- The Government's acknowledgment of the disadvantaged position of minorities, particularly Maori, and the large number of initiatives, programmes and projects in the areas of health, education, employment, social welfare, housing, language and culture, and correctional services, designed to address the specific needs of Maori, Pacific Island people and persons from other groups such as refugees and ethnic minorities
- The programme to ensure that all legislation, policy and administrative practices are consistent with the Human Rights Act
- The amalgamation of the Human Rights Commission and the Office of the Race Relations Conciliator
- The introduction of amendments to the electoral roll system, in particular the Maori electoral option, and the consequent appreciable increase in Maori representation in Parliament
- Policies and initiatives designed to improve the status and use of the Maori language, including the increased supply of services in the Maori language, including in education and state broadcasting
- The Sentencing Act 2002 provision 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 by the court in the sentencing process.

The Committee also identified several issues of concern, including:

- The continuing disadvantages that Maori, Pacific Island 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 low representation of Maori women in a number of key sectors and their particular vulnerability to domestic violence
- The disproportionately high representation of Maori and Pacific Islanders in correctional facilities
- The difficulty in instituting criminal proceedings against those accused of incitement to racial hatred

- The detention of asylum seekers
- The narrow interpretation of the provision for special measures (affirmative action programmes)

The Committee asked the Government to take into account relevant parts of the Durban Programme of Action and include information in its next report on action plans and other measures taken to implement the Programme of Action at the national level.

### **The Durban Programme of Action**

The Durban Declaration and Programme of Action to Combat Racism was adopted by the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance in Durban, South Africa in 2001. The programme has 219 separate recommendations, with many of which New Zealand already wholly or largely complies. An analysis and prioritisation of those recommendations most relevant to New Zealand has produced the following ten key areas of action, which New Zealand might be expected to report on in its next appearance before the Committee on the Elimination of Racial Discrimination:

1. The development of the New Zealand Action Plan for Human Rights (NZAPHR), including a Race Relations Action Plan. This plan is currently being developed by the Human Rights Commission.
2. Public understanding of the Treaty, indigenous and human rights of Maori.
3. The promotion of cultural diversity, and the human rights of migrant and ethnic minorities.
4. The treatment of refugees and asylum seekers.
5. Human rights and anti-racism education and training – in educational institutions, public agencies, workplaces, and for the general public.
6. The development of comprehensive data, measures and outcome indicators and a coordinated programme of research to provide an ongoing framework for measuring the state of race relations in New Zealand.
7. Equity in education, health, housing, justice, employment.
8. Effective consultation with and participation in decision making by Maori, Pacific Island and other ethnic groups.

9. Balanced representation of Maori, Pacific Island and other ethnic groups in the media, and effective measures to combat hate speech and racist information on the internet.
10. Advocacy for and participation in international measures in support of the Durban Programme of Action.

Together, these documents and recommendations form a sound basis on which to conduct a public debate on how to achieve racial equality and harmonious race relations in New Zealand.

### **The Treaty of Waitangi**

While international standards (including the developing standards on the rights of indigenous peoples) can assist us with a general debate about race relations and the achievement of racial equality, there is also the Treaty of Waitangi. This is a uniquely New Zealand document, and contains guarantees and commitments that were entered into between Maori and the British Crown. Few now question that there is a need to address past breaches of the Treaty, but there is much less agreement about its relevance to contemporary concerns and relationships between Maori and the Crown. Although no discussion of race relations can ignore the Treaty, it is not in itself a race relations document. It was a treaty signed between two parties, one being the leaders of the people who had inhabited New Zealand for centuries, the other being the British Crown on behalf of the people who began to arrive in New Zealand in the early nineteenth century, predominantly but not exclusively from Britain. The two parties clearly remain in existence today, one represented by the descendants of the original inhabitants, and the other the New Zealand government as successor to the British Crown. Given that both parties are still identifiable, and no party has abrogated the treaty, it seems reasonable to consider that it still has contemporary application.

In recent years, after reference to the Treaty was included in legislation, the courts have had the opportunity to dwell on what the contemporary application of the Treaty might mean. This is not the place to go into all the complexities of that debate. Suffice it to say that the Treaty is clearly seen by the courts as a document of fundamental constitutional importance and as a basis for the ongoing relationship between Maori and the government, which requires that relationship to be of the "utmost good faith". It is the source of the government's obligation both to specifically consult with Maori on any issues affecting them as Maori, and to actively protect their linguistic, cultural and physical inheritance. It does not give Maori a veto over government decisions, but requires a genuine effort by both parties to have regard to the others' interests.

Treaty rights, therefore, are not the rights of a particular race. In fact both Maori and all other New Zealanders of many different races derive rights from the Treaty. The Maori rights derive from their descent from the people who

were an original party to the Treaty: not as people of a particular race, but as people with a particular inheritance or whakapapa.

One can reasonably ask the question whether this constitutional arrangement is in any way at odds with the Convention for the Elimination of Racial Discrimination, which, as noted, is designed to eliminate:

*Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.*

Unless it can be demonstrated that the enjoyment of certain rights by Maori (of consultation, protection or full participation for example) under the Treaty nullify or impair the rights and fundamental freedoms of others on an equal (but not necessarily identical) footing, then there is no conflict between the two, and the Treaty does not therefore constitute racial discrimination. This is equally the case with other specific rights holders, for example, of property rights, which apply to specific properties and do not impinge on other persons' rights to inherit, hold or acquire property of their own.

The debate on the appropriate way to give contemporary effect to the Treaty of Waitangi needs to continue, but it is important in that debate to recognise that it is not a debate about race but about honouring a Treaty between two parties.

The issues of Maori seats in Parliament, Maori wards in local government and specific Maori positions on certain boards are also part of this debate, not the race debate. It should be noted that separate seats or wards do not breach the fundamental principle of one person, one vote, because Maori have to exercise an option to be on one roll or the other, they cannot be on both. Should Maori no longer want to make an option to be on the Maori roll, the Maori seats will simply dwindle away.

The Human Rights Commission's community dialogue project on the Treaty of Waitangi and Human Rights, *Te Mana I Waitangi*, is one avenue through which Maori and other New Zealanders can discuss these issues face to face in a safe and non-judgmental environment. A discussion document on the subject is available on the Commission's website ([www.hrc.co.nz](http://www.hrc.co.nz)), as are details on how to participate in the dialogue project.

Recent proposals for a forum in which all viewpoints on the contemporary place of the Treaty can be examined, whether it be a Commission of Inquiry or a Parliamentary Select Committee or some other process, are worthy of serious consideration.

It is also worth noting that if there had been no Treaty signed between Maori and the British Crown, the New Zealand Government would still be expected to give recognition and protection to Maori under the growing international standards relating to the rights of indigenous peoples.



## **Special Measures**

There has been criticism of special measures such as Maori and Pacific Island quotas for certain educational courses, or the relatively small amount of additional funding made available to schools and health organisations in areas with a high Maori and Pacific Island population. Whether or not such measures are effective in addressing inequalities is a legitimate subject for inquiry, but the fact that they are based on ethnicity does not necessarily mean that they are in conflict with the Convention on the Elimination of Racial Discrimination or constitute racial discrimination, as can be seen from the text of the Convention itself, as quoted above:

*Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.*

Such measures are provided for in the Human Rights Act and the New Zealand Bill of Rights Act. A simple way of resolving the question of whether or not any particular measure is justified is to use the provisions of the Human Rights Act. Anyone who is aggrieved by any such provision can lodge a complaint with the Human Rights Commission, and the Commission will then seek to mediate the issue with the organisation concerned. If mediation does not resolve the issue to the satisfaction of the complainant, they have the option of referring their complaint to the independent Human Rights Tribunal for determination. At least one such special measure has been found by the Tribunal to be unwarranted. Others have been resolved to the satisfaction of the complainant through mediation, once the purpose and the facts have been examined.

It is important to note that such measures are required to be appropriate and temporary, and to remain in place only until their objectives have been achieved. For this purpose, they need to be well founded, well explained, regularly reviewed and evaluated. Both in New Zealand and internationally, there is a shortage of good research and evaluation of such measures. The difficulty is compounded by the fact that some measures will take a long time to have a demonstrable effect, and that specific interventions cannot always be clearly demonstrated to contribute to a general desired outcome.

## **Separate or together?**

A number of the above issues have been presented as examples of a move towards racial separatism, a racially divided state, or special privileges for a

particular race. It is important to put such issues in context, and ask whether the overall trend in New Zealand is towards separatism or its opposite, togetherness - the condition of being together, or a feeling of comfort from being together. Being together, it should be noted, assumes separate identities, not simply being one.

Most of the signs point to our increasing togetherness rather than to our increasing separation. That growing feeling of togetherness and comfort with each other derives from high levels of intermarriage, greater social interaction between different communities, understanding and celebrating more of each other's languages and cultures, growing up together in our increasingly multicultural schools, celebrating our diversity and being proud of both our Maori and our Pakeha heritage and the heritage of all the other cultural communities that today live in New Zealand. It derives from our common commitment to racial equality and the achievement of basic human rights and fundamental freedoms for all. It is demonstrated, despite the persistence of economic and social disparities that must be addressed, in the growing diversity of our artists, our sports people, our leaders in government and the community, and in our public and private institutions. It is also seen in the increasing vigour and capability of the many organisations that represent our different cultural communities.

## **Waitangi Day**

Unfortunately, this sense of togetherness was hardly evident in the media reports of the official Waitangi Day events at Waitangi. Both the Prime Minister and the Leader of the Opposition were physically threatened by a small but angry crowd outside Te Tii marae, where frustrations about the foreshore and seabed and the public debate about race relations translated into ugly and unacceptable behaviour. There have often been demonstrations and confrontations at Waitangi, and the national observance of Waitangi Day there has been regarded as a barometer of relationships between Maori and Pakeha. This is no longer the case. What happened at Waitangi this year was not only deplorable, but it was also in direct contrast to the mood of commemorations and celebrations of the Treaty elsewhere. In the rest of New Zealand, several hundred thousand New Zealanders of all ethnic origins attended ceremonies, commemorations, festivals and other events, hosted by marae, local councils and community organisations. These ranged from community events in small towns such as Patea's *Paepae in the Park*, which attracted 1000 people, to events in major cities such as Manukau, which attracted more than 100,000 people and Porirua, regional events involving whole communities in the Hawkes Bay and elsewhere, and open days on marae from the Far North to the Deep South.

## **The Quality of the Debate**

Sadly, the current debate has included some unnecessary name-calling, labelling and stereotyping, and statements have been made which have provoked or upset people enough to lodge complaints with the Human Rights Commission about causing racial disharmony. Such complaints have to be assessed against the principle of freedom of speech, and while some things have been said that are clearly hurtful to others (either individually or collectively) they are not necessarily illegal for that reason. A number of complaints in the past year (including those concerning high profile public figures such as Winston Peters, Bill English and Paul Holmes) were deemed by the Commission not to be in breach of the Act, even though they were undoubtedly upsetting to complainants. Sometimes, as with the Paul Holmes case, the Commission has been able to provide informal mediation, or point complainants towards other bodies such as the Broadcasting Standards Authority, the Press Council or the Advertising Standards Authority. One can only express the hope that people will address the issues rather than focusing on the people raising them, and that any debate will be well-informed and characterised by mutual respect.

### **The Future of the Debate**

The current debate on race relations and on the Treaty of Waitangi is an important one. New Zealand is highly regarded internationally for its race relations and its respect for the Treaty and indigenous peoples' rights. There continues to be a high level of political consensus on the need to address economic and social disparities, resolve historic treaty claims, and continue to support Maori, Pacific and other ethnic community groups in developing their own capacity to deliver education, health and welfare services. New Zealanders have demonstrated over the past year that they condemn instances of racial discrimination or racial prejudice.

The really contentious issues appear to be not about race as such, but about the contemporary relevance of the Treaty of Waitangi, and what to do about the Court of Appeal's decision on the foreshore and seabed. These are important topics of debate, to which there are no easy answers. However, the debate will only be constructive if we seek to accommodate all parties to the debate, whether it be on the Treaty or on the foreshore.

The real race relations debate should focus on the positive – how we can best achieve harmonious race relations, how we can address the issues raised by the United Nations Committee on the Elimination of Racial Discrimination and how we can implement the recommendations in the Durban Programme of Action. And how we can build further on the positive relationships between different groups that have grown in our local communities and are evident in the way we celebrate our various cultural festivals and Waitangi Day and in our daily interactions with each other in our schools, our workplaces, our local communities, our sports fields and in the arts.

The question we might ask ourselves is what would we like to include in our next report to the United Nations Committee on the Elimination of Racial

Discrimination about the actions we have taken to achieve racial equality when our next report is due in 2005?

### **Race Relations Day**

This Sunday, March 21, is the International Day for the Elimination of Racial Discrimination. Schools, churches, councils, community organisations and news media throughout New Zealand will be looking at race relations issues this week leading up to that day, and there will be many events, including multi-ethnic festivals organised by the Federation of Ethnic Councils. The theme is timely: "Take a Walk in Someone Else's Shoes", or think about how your views might look from the other side of the debate, and inform yourself about their history, culture, circumstances and concerns, whether you are a Pakeha, Maori, Pacific Island, Asian or any other kind of New Zealander. It is an opportunity for all of us to reflect on the issues together, to celebrate our diversity, and to demonstrate our commitment to harmonious race relations along with people in other nations throughout the world.

#### For media enquiries contact:

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#### For further information:

On Race Relations Day 2004, the Human Rights and the Treaty Community Dialogue Project, Human Rights Act complaints procedures, and the New Zealand Action Plan for Human Rights (NZAPHR), visit the Human Rights Commission website, [www.hrc.co.nz](http://www.hrc.co.nz)

On International human rights declarations and conventions, and New Zealand's response to them, refer to the New Zealand Handbook on International Human Rights 2003, published by the Ministry of Foreign Affairs and Trade, [www.mfat.govt.nz](http://www.mfat.govt.nz). There are special sections concerning race relations and indigenous rights. The most recent New Zealand report to the United Nations Committee for the Elimination of Racial Discrimination is also available on the MFAT website. The Committee's concluding observations are included as an appendix to this paper (see below).

The Waitangi Tribunal's report on the Foreshore and Seabed is on the Tribunal's web site at:

<http://www.waitangi-tribunal.govt.nz/reports/generic/wai1071foreshore/>