HUMAN RIGHTS COUNCIL

EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES

FIFTH SESSION, JULY 9 – 13, 2012, GENEVA

Kei te mihi atu ki a koutou katoa. [*translation: Greetings to everyone]*

Thank you Mr Chairperson for this opportunity to speak again as the Commissioner representative of the New Zealand Human Rights Commission.

**IMPLEMENTATION OF THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

Two years have passed since Aotearoa New Zealand formally supported the UN Declaration on the Rights of Indigenous Peoples.

Increasingly, the Declaration is being understood as the international expression of the Treaty of Waitangi, the founding document of our nation. Still, progress is sluggish and there is concern about our Government’s level of commitment to implementing the Declaration.

However, the Government is now undertaking a constitutional review. This is an important opportunity for Maori, as the position of the Treaty of Waitangi in our constitutional arrangements is vulnerable. Although the Treaty is commonly recognised to be part of the constitution, it is not supreme law, and it is only enforceable as far as it is incorporated into specific legislation. The references to the Treaty that have been incorporated are not entrenched, so are subject to the same process of revision or deletion as any other part of a statute.

This tenuous position was evident in February this year when the Government announced its intention to remove four state-owned energy companies from the State-Owned Enterprises (SOE) Act, and to prepare new legislation allowing for partial asset sales.The SOE Act contains provisions to protect the rights and interests of Māori.

Some Maori were concerned that the sale of these companies and their removal from the SOE Act with its Section 9 protection, would threaten potential Maori rights and interests in the resources that these companies use to generate energy. The New Zealand Human Rights Commission submitted to the Government in support of the retention of Section 9. Although the Commission welcomed the Crown’s consultation with Maori prior to the bill being introduced, it also raised concerns about the short consultation period that did not allow for the time required for Maori decision making processes. The consultation process fell short of the minimum standards contained within articles 18 and 19 of the Declaration. The legislation removing the companies from the SOE Act has now passed and the Government has retained the protection of Section 9. It has also given assurances that the partial sale of these assets will not impact on possible recognition of Maori rights and interests in energy resources.

As with Section 9 of the SOE Act, the provisions for guaranteed seats to represent Māori who choose to register on the Māori roll at national parliament level, are also subject to deletion from statute as they are not entrenched even though they are considered to be a distinctive part of New Zealand’s constitutional arrangements. The provisions for dedicated Māori seats at national level are included in the constitutional review.

However, the provisions for representation for Māori in local government are quite different. Māori are under-represented at this level of government and there are no guaranteed local government seats for Māori. Although since 2002, councils have had the option of establishing Māori seats, only two councils have exercised that option.

In order for the Treaty of Waitangi and Articles such as 4 and 18 of UNDRIP to be realised, there must be a willingness from local government to share power. Given the experience at local government level so far, there is unlikely to be consensus in favour of guaranteed local Māori representation. This points to a need for national government to show leadership and to legislate for guaranteed Māori representation at local level.

The New Zealand Human Rights Commission has prioritised advocacy for, and discussion on, Māori seats in local government as part of its constitutional review work programme.

Parallel to the government process, a Working Group on Constitutional Transformation was brought together in 2011 by Maori leaders. The group’s purpose is to engage with Māori and to work on developing a model constitution for Aotearoa New Zealand based on the Māori world view.

The processes for constitutional review and constitutional transformation have potential for the realisation of both the Treaty promises, and the minimum standards of the UNDRIP. For this to happen, power must be shared, and consideration must be made for Māori systems and laws and how these might take a place in the constitutional arrangements of our nation.

The role of the New Zealand Human Rights Commission in the constitutional review arises from its mandate to strengthen human rights and increase respect and understanding for the Treaty of Waitangi and its international expression, the UNDRIP.

Two important programmes of the NZHRC promote the Declaration and the human rights dimensions of the Treaty of Waitangi. Te Mana i Waitangi focuses on delivering workshops to a wide range of community and Government audiences on the Treaty and the Declaration. Tuhonohono focuses on Maori and is the only bi-lingual human rights community development programme developing human rights leaders within Maori communities. The key focus is to build understanding of and capacity to realise human rights based on the Treaty and on the international human rights standards contained in the Declaration.

Finally, and jointly with the Aboriginal and Torres Strait Islander Social Justice Commissioner of Australia, we recommend that the Expert Mechanism on the Rights of Indigenous Peoples encourage the Human Rights Council to include a specific requirement to report on the implementation of the Declaration on the Rights of Indigenous Peoples during the Universal Periodic Review process.

Thank you for your attention, sisters and brothers.

No reira, tena koutou katoa [*And finally*, *greetings to you all]*

Commissioner Karen Johansen,

New Zealand Human Rights Commission

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