

Papatuanuku Nahi

on behalf of

Awa Associates & Te Kopu Pacific Indigenous and Local Knowledge Centre of Distinction

UN CERD 93rd Session

Supplementary Information on the CERD List of Themes

14th August 2017

Tēnā koutou katoa. Thank you Madam Chair and thank you committee for hearing my statement today. I pay respects also to the previous speakers.

My name is Papatuanuku Nahi (Ngapuhi nui tonu) of Aotearoa New Zealand. I ask that, in the year that marks ten years of the Declaration on the Rights of Indigenous People, you take the concerns of indigenous peoples, including Māori of Aotearoa New Zealand, seriously.

Time permitting, I will provide short statements on the following six items from the CERD list of themes:

- 1. Item 19: UNDRIP**
 - 2. Item 16: Free, prior and informed consent and Item 17: Freshwater and geothermal resources**
 - 3. Item 10: Marine and Coastal Area (Takutai Moana) Act 2011**
 - 4. Item 12: Housing, health, employment, structural discrimination**
 - 5. Item 15: Preserving languages**
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1. Item 19: UNDRIP

Recommendation: Committee to urge the state to move from words to implementation of the Declaration on the Rights of Indigenous Peoples including the development of action plans as stipulated by the indigenous rights mechanisms- EMRIP (proposal 7 of the annual report of EMRIP adopted at the tenth session), UNPFII and UN Special Rapporteur on the Rights of Indigenous Peoples.

We acknowledge the various mechanisms that allow an indigenous voice within the United Nations. These are key instruments upholding indigenous rights, protecting us from discrimination and highlighting the need for implementation of the Declaration on the Rights of Indigenous Peoples (the Declaration) at the state level. We ask that you take heed of recommendations put forward at the EMRIP 10th Session, the recommendations of the UNPFII 16th Session and the official forum addresses of the UN Special Rapporteur on Indigenous Issues Victoria Tauli-Corpuz. In proposal 7 of the annual report of EMRIP¹ adopted at the tenth session they propose the Human Rights Council remind States of the commitment to cooperate with indigenous people to develop and implement national action plans and it proposes, “that these action plans be used as a tool to implement the recommendations of international human rights mechanisms, including the universal periodic review, treaty bodies and special procedures, and that States consider seeking the collaboration and support of their National Human Rights Institutions and the EMRIP in the elaboration of these action plans”.

¹Annual Report of the Expert Mechanism on the Rights of Indigenous Peoples adopted at its tenth session, advance unedited version, 2017. <https://drive.google.com/file/d/OB6cLQcwE4n3fQmdYdUYwSXC0dDg/view>

Just five days ago, these three mechanisms urged action by states on the vast challenges that remain despite ten years of the Declaration². They noted that, in too many cases, indigenous peoples are now facing even greater struggles and rights violations than they did when the Declaration was first ratified.

If we take Aotearoa New Zealand as an example, Māori continue to face disproportionately higher levels of poverty, worse educational outcomes and higher rates of recidivism than the general population³ and the situation has not improved since the establishment of the Declaration, nor has it improved since the report to the UN after the Special Rapporteur visit in 2011⁴.

Clearly, we still have a long way to go before Māori have full enjoyment of our human rights as expressed in the Declaration. We echo the sentiments of the UN Special Rapporteur, the UNPFII and UNEMRIP and urge the state to close the gap between words and action, and to act now to deliver equality and full rights for Māori.

We note that the State party, in their report to you for this 93rd Session, has made reference to the UNDRIP independent monitoring mechanism we have here in Aotearoa New Zealand⁵. They have referenced the mechanism however they make no commitment to prioritising the work of the mechanism nor do they endorse the work of the mechanism for example its call for urgent action to address the persistent and severe inequalities experienced by Māori⁶.

2. Item 16: Free, prior and informed consent and Item 17: Freshwater and geothermal resources

Recommendation: We urge you Committee to ensure the State applies the concept of free, prior and informed consent with Māori in accordance with the Declaration on the Rights of Indigenous Peoples article 19 and General Recommendation 23 of UN CERD⁷ as well as ensure it is aligned with traditional Māori decision-making procedures.

In the 2013 UN CERD Concluding Observations you stated:

“The Committee is concerned by reports by representatives of Māori communities regarding the inadequacy of the consultations conducted by the State party before awarding deep-sea oil seismic, drilling and hydraulic fracturing contracts to commercial companies, under circumstances that may threaten these communities’ enjoyment of their rights to land and resources traditionally owned or used

2UNOHCHR, 2017. ‘World still lagging on indigenous rights 10 years after historic declaration, UN experts warn. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21944&LangID=E>

3See the additional statistical information provided to UN CERD by the State party http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NZL/INT_CERD_AIS_NZL_28494_E.pdf

4Report of the Special Rapporteur on the rights of indigenous people, James Anaya. Addendum. The situation of Maori people in New Zealand. 2011. A/HRC/18/XX/Add.Y

5New Zealand report to the Committee on the Elimination of Racial Discrimination. 2016. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fNZL%2f21-22&Lang=en

6Shortland, Tui, 2017. Statement on Behalf of Te Kopu and Independent Monitoring Mechanism to Expert Mechanism on the Rights of Indigenous Peoples 10th Session.

7Committee on the Elimination of Racial Discrimination, General Recommendation 23, Rights of indigenous peoples (Fifty-first session, 1997), U.N. Doc. A/52/18, annex V at 122 (1997), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.6 at 212 (2003).

Despite this, we continue to struggle at the hands of the state to protect our lands and waters and to have our kaitiaki interests recognised. We consider this a breach of the Declaration on the Rights of Indigenous Peoples articles (8.2 & 19) and UN CERD General Recommendations 23 Rights of Indigenous Peoples⁸.

Waipao/Porotī Springs Case

The granting of consent by Whangarei District Council to Zodiac Holdings Ltd of water take from Porotī Springs and the building of a water bottling plant is just one example.

Porotī Springs emerge from the ground at Whatitiri, the site of longstanding settlement by the people of Whatitiri (Te Urioroī, Te Parawhau, and Te Māhurehure). The springs have spiritual and physical significance and water from the spring is used in many rituals of the local people. The significance of the Porotī Springs is expressed in the tribes Pepeha or tribal identifier that members declare when they stand to speak. The ancestral meeting house for the sub-tribe is 100 metres from the spring.

“The people of Whatitiri have a clear kaitiakitanga or guardianship relationship with these waters” [Wai1040 AO55].

In 2012 the Waitangi Tribunal found in favour of the claims of Porotī Māori and other freshwater claimants that the Māori proprietary right in water guaranteed by the treaty was ‘the exclusive right to control access to and use of the water while it was in their rohe’.

The people of Whatitiri have consistently opposed the granting of consent to third parties as stated in their submission of 2016⁹.

Despite this, Zodiac Holdings have been granted consent by Whangarei Council to take water from Porotī Springs and to develop a water bottling plant there.

Te Urioroī, Te Parawhau, and Te Māhurehure were told that their cultural values and relationship with the resource would not be affected by consent given to Zodiac Holdings Ltd.

This is a breach of the Declaration on the Rights of Indigenous Peoples particularly article 19 “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them” and

Article 8.2.B “States shall provide effective mechanisms for prevention of, and redress for: (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources”¹⁰, and UN CERD General Recommendations 23 Rights of Indigenous People Paragraph 5.

⁸Committee on the Elimination of Racial Discrimination, General Recommendation 23, Rights of indigenous peoples (Fifty-first session, 1997), U.N. Doc. A/52/18, annex V at 122 (1997), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.6 at 212 (2003).

⁹2016 Submission by Whatitiri Maori Reserves Board

<https://www.mfe.govt.nz/sites/default/files/media/NextStepsforWater%20-%20IwiMaori%20-%20Whatitiri%20Maori%20Reserves%20Trust.pdf>

¹⁰United Nations, 2007. United Nations Declaration on the Rights of Indigenous Peoples.

This is but one example of the disregard paid to the Declaration and other international principles, and disregard of the relationship that Māori have with our land and our resources¹¹.

3. Item 10: Marine and Coastal Area (Takutai Moana) Act 2011

The State's actions for the takutai moana remain inconsistent with its obligations under international laws and principles.

In the 2013 UN CERD Concluding Observations you stated:

“the Committee remains concerned that the Marine and Coastal Areas (Takutai Moana) Act of 2011 contains provisions that, in their operation, may restrict the full enjoyment by Māori communities of their rights under the Treaty of Waitangi, such as the provision requiring proof of exclusive use and occupation of marine and coastal areas without interruption since 1840 (arts. 2 and 5)¹².

And you urged the State party to continue to review the Marine and Coastal Area (Takutai Moana) Act of 2011 with a view to facilitating the full enjoyment of the rights by Māori communities regarding the land and resources in particular their access to places of cultural and traditional significance¹³.

We offer the following as one of many examples where the CERD recommendations have not been heeded by the State party.

Ngati Ruanui Case

Despite staunch opposition from the local tribe Ngati Ruanui, consent has been awarded to TransTasman Resources mining company by the Environmental Protection Authority to dredge 50 million tonnes of iron sand a year from the South Taranaki Bight.

The state in this instance, is not applying free, prior and informed consent of the Declaration (8.2 & article 19), is not recognising customary marine title of the Marine and Coastal Area Act 2011 and is dismissing Māori kaitiaki interests in favour of industry.

4. Item 12: Housing, health, employment, structural discrimination

Recommendation: We reiterate our call for State implementation of the Declaration on the Rights of Indigenous Peoples and monitoring of state progress by Māori.

In 2011, the UN Special Rapporteur on the Rights of Indigenous People noted and I quote, “the extreme disadvantage on the social and economic conditions of Māori people in comparison to the

¹¹2016 Submission by Whatitiri Maori Reserves Board

<https://www.mfe.govt.nz/sites/default/files/media/NextStepsforWater%20-%20IwiMaori%20-%20Whatitiri%20Maori%20Reserves%20Trust.pdf>

Porotī Springs and the Resource Management Act

https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_104351342/Wai%201040%2C%20A055.pdf

¹²Committee on the Elimination of Racial Discrimination, 2013. Concluding observations on the eighteenth to the twentieth periodic reports of New Zealand, adopted by the Committee at its eighty-second session (11 February–1 March 2013)

¹³Committee on the Elimination of Racial Discrimination, 2013. Concluding observations on the eighteenth to the twentieth periodic reports of New Zealand, adopted by the Committee at its eighty-second session (11 February–1 March 2013).

rest of New Zealand”¹⁴. If we look at the statistics put forward by the State in their 2016 report to you¹⁵, it clearly shows this has not improved since 2011. This is contrary to the UN Declaration of the Rights of Indigenous People and Te Tiriti o Waitangi.

5. Item 15: Preserving languages

Recommendation: Urge State to make te reo Māori a core curriculum subject by the year 2020

With a range of initiatives in place, some progress has been made with use of te reo Māori (the Māori language) within the community. Despite small gains, regular use of te reo Māori remains extremely low and the situation has been described as critical. Only 3.7% of the New Zealand population speak te reo Māori¹⁶. The report commissioned by Te Taura Whiri I te Reo Māori (Māori Language Commission) recommended increasing the use of te reo Māori by making it a core curriculum subject by the year 2020 until it is included in all levels from year one to year 13¹⁷.

6. Incarceration

Recommendation: We echo the Human Rights Commission calls to urge the Government to commit to addressing the disproportionate representation of Māori in the criminal justice system by: (a) Ensuring actions are based on the Treaty of Waitangi and the Declaration, and are informed by the Waitangi Tribunal findings and EMRIP study; (b) Stepping up its efforts to address the root causes which lead to disproportionate incarceration rates of Māori; and (c) Ensuring that justice, social sector, treatment & rehabilitation, and care & protection initiatives for Māori are linked up, appropriately resourced, have transparent governance frameworks, and are based on partnerships with, and inclusion of, Iwi.

In 2011 the United Nations Special Rapporteur on the Rights of Indigenous People noted as cause for concern the high rate of incarceration among Māori and urged government to address this¹⁸.

In your concluding observations from 2013 to the State¹⁹, you expressed continued concern at the disproportionately high rates of incarceration and the overrepresentation of members of the Māori and Pasifika communities at every stage of the criminal justice system (arts. 2, 4, 5 and 6) and you urged the State party to intensify its efforts to address this overrepresentation at every stage of the

¹⁴Report of the Special Rapporteur on the rights of indigenous people, James Anaya. Addendum. The situation of Maori people in New Zealand. 2011. A/HRC/18/XX/Add.Y

¹⁵See the additional statistical information provided to UN CERD by the State party http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NZL/INT_CERD_AIS_NZL_28494_E.pdf

¹⁶Statistics New Zealand, 2017. Maori Language Speakers. http://www.stats.govt.nz/browse_for_stats/snapshots-of-nz/nz-social-indicators/Home/Culture%20and%20identity.aspx

¹⁷New Zealand Council for Educational Research, 2017. Te Ahu o te Reo: Te Reo Maori in Homes and Communities. Overview Report, He Tirohanga Whanui.

¹⁸Report of the Special Rapporteur on the rights of indigenous people, James Anaya. Addendum. The situation of Maori people in New Zealand. 2011. A/HRC/18/XX/Add.Y

¹⁹Committee on the Elimination of Racial Discrimination, 2013. Concluding observations on the eighteenth to the twentieth periodic reports of New Zealand, adopted by the Committee at its eighty-second session (11 February–1 March 2013)

criminal justice system and to provide comprehensive data in its next periodic report on progress made to address this phenomenon.

Since then, these statistics not improved. We demand urgent action to address this. The Human Rights Commission noted the EMRIP study where it highlighted the interrelatedness of access to justice with the realisation of other rights including self-determination and collective rights; and affirmed that the Declaration must be the basis of all actions. It recommended recognition and support of traditional justice systems and the need to address the underlying issues which prevent indigenous peoples enjoying their human rights to justice.

7. Indigenous Commissioner at the Human Rights Commission

We note the statutory roles accorded the disability commissioner, equal employment commissioner and race relations commissioner roles. Since 2011 a human rights commissioner has been designated with responsibility for indigenous rights however there is no statutory requirement for this role and, it remains “on hold”.

Recommendation: We urge you to align the status of the indigenous commissioner role in statute alongside the other commissioner roles.

Thank you for this opportunity to talk to you today. Tēnā rā tātou katoa.