



TE RUNANGA O TE RARAWA
28 South Rd, P.O. Box 361, Kaitaia, Aotearoa, New Zealand

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(Check Against Delivery)

Permanent Forum on Indigenous Issues

Fifth Session

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Item 4(e)

Ongoing Priorities and themes: Free Prior and Informed Consent

Madam Chair,

The 2005 New Zealand Mission report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples states that “*Governments cannot unilaterally extinguish indigenous rights...through any means without the free, prior and informed consent of the concerned indigenous peoples.*”¹

This principle is already well-known to the New Zealand Government. It is enshrined in the nation’s founding document, the Treaty of Waitangi, which obliges the Crown to protect Māori lands, estates, forests, fisheries and other treasures so long as Māori desire to retain them. The Government’s own Minister of Māori Affairs said of the then proposed Foreshore and Seabed Bill that “*The land wars are over, so the consent of the [indigenous peoples] is required before customary title can be extinguished.*”²

And as the distinguished Forum member, Michael Dodson, noted yesterday, this same principle is already recognized in Australia – for example in relation to the Kakadu Park model.

Yet the words “disappointing”, “unbalanced” and “narrow”³ are just some used by Government to describe the Special Rapporteur’s country report. To demonstrate legitimacy of its criticisms of the report, New Zealand relied on its “exemplary” record before United Nations human rights treaty bodies. However, in doing so the Government failed to mention the finding of the Committee on the Elimination of Racial Discrimination (CERD) that the Foreshore and Seabed Act contained discriminatory aspects against Māori⁴ – a disturbingly revealing exposé which saw the Government retaliate with criticism that the CERD decision could simply be ignored, as the CERD was on the fringes of the UN system.

Māori have increasingly lost faith in the so called democracy underpinning New Zealand’s ‘special mechanisms’ and reconciliation processes which the Government holds so dear. The ongoing absence of free, prior and informed consent in regards to the expropriation of Māori

¹ E/CN.4/2006/78/Add.3, para 16, page 7.

² Parekura Horomia, Min Maori Affairs, 25 June 2003.

³ Hon Dr Michael Cullen, Deputy Prime Minister, “Response to UN Special Rapporteur report”, 4 April 2006 Media Statement.

⁴ CERD/C/DEC/NZL/1, para 6).

rights and the use and control over our lands and natural resources will continue to send Māori on a downward trajectory in terms of all indicators of wellbeing - mainstream socio-economic, or indigenous.

Recommendation

Therefore Madam Chair, we look forward to the Permanent Forum identifying a streamlined process and methods by which implementation of its recommendations can be monitored, and:

1. Ask that The Office of the High Commissioner for Human Rights encourage and assist the New Zealand Government, with the real and effective involvement of Māori, to implement the Special Rapporteur's recommendations.

Thank you Madam Chair.

Intervention by Ms Catherine Davis

Te Rūnanga o Te Rarawa (Authority for the Māori peoples of Te Rarawa, Aotearoa).