

Human Rights Council  
Expert Mechanism on the  
Rights of Indigenous Peoples



Human Rights  
Commission  
Te Kāhui Tika Tangata

NINTH SESSION, 11-15 JULY 2016, GENEVA

Agenda item 8: Implementation of the United Nations Declaration on the Rights of Indigenous Peoples

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E ngā mana, e ngā reo, rau rangatira mā, tēnā anō koutou katoa. [*Translation: to all expert colleagues, voices, leaders, greetings again to all of you.*]

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

In Aotearoa New Zealand, alongside the Declaration, the Treaty of Waitangi frames how indigenous rights are to be given effect. In summary, the 1840 Treaty provides for three key obligations of: partnership; rangatiratanga (self-determination); and equality, underpinned by the right to participation.

These key obligations align closely with the key themes and standards of the Declaration. Moreover, they reflect human rights standards that New Zealand has committed to through ratification of other UN human rights instruments.<sup>1</sup>

However, in the absence of an overarching plan or strategy for the Declaration's implementation, progress on fully implementing these standards remains ad hoc.

To take one example, participation in decision-making and the obligation of free, prior and informed consent continue to be problematic. While there are a range of mechanisms for engagement and consultation between Government and Māori, their effectiveness, and compliance with human rights standards including the UNDRIP, can be variable. In particular, the extent to which free, prior and informed consent is reflected, and the degree to which Māori are not only informed or consulted, but are able to help shape outcomes, can be limited.

From time to time the NZHRC is approached by Māori groups who have concerns about the Government process for negotiated settlement of Treaty claims. That process which is known as the Large Natural Grouping policy, focuses on larger groups. This can leave some smaller groups (hapū) with concerns about participation and representation, as well as the impact on the distinct cultural

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<sup>1</sup> For example, ICCPR, articles 1, 2, 25.

identity of those groups and their potential ability to directly access to the practical benefits of the treaty settlement negotiated. In response to one situation, the New Zealand Human Rights Commission has met with the group concerned and with the government agency responsible for negotiations, and has encouraged continued dialogue to seek pragmatic solutions in the interests of achieving fair and lasting settlements.

It often appears that government and Māori have very different perceptions of what effective participation entails. The second report of Aotearoa/New Zealand's independent UNDRIP monitoring mechanism, which is among the conference papers for this session, provides some examples of Māori concerns in this regard. As that report notes, the issue of participation in the development of legislation and in other government decision-making continues to be the subject of claims to the Waitangi Tribunal. It is interesting to compare that report with the government perspective on its engagement with Māori as presented in the most recent state report to the Committee on the Elimination of Racial Discrimination.<sup>2</sup>

The Government approach to Māori participation has raised concerns, over a number of significant issues in recent times. These include for example the decision to establish a marine sanctuary in the Kermadec Islands, which will impact on Māori fishery rights and existing Treaty settlements. Another example relates to the reform of legislation governing Māori land. The extent of government engagement with Māori in those instances has prompted legal action (with regard to the former) and a claim to the Waitangi Tribunal (in relation to the latter).

The Declaration, and the growing body of commentary and jurisprudence on what it requires and how it may be implemented, provide a valuable framework for a shared understanding of what participation requires. It is crucial to ensure that these standards translate into meaningful improvements in the lives of our people. It is important for the Declaration and Treaty to be explicitly and routinely taken into account during the development of new law, policy and practice.

For this to happen, there remains a need for greater awareness of the Declaration. This year, in the lead up to the tenth anniversary of the Declaration's adoption, the NZ Human Rights Commission will be undertaking a programme of activities to encourage public discussion and understanding of the key themes of the Declaration, and its relationship to other international human rights standards and to the Treaty of Waitangi.

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<sup>2</sup> CERD/C/NZL/21-22, *Twenty-first and twenty-second periodic reports of New Zealand*, 15 March 2016.

With respect to monitoring the New Zealand government's implementation of the Declaration, I note again that the NZHRC's National Plan of Action<sup>3</sup>. This is an online tool that monitors implementation of government actions. The Commission is currently developing a Declaration search category which will link the articles of the Declaration with the Treaty of Waitangi, UPR and other Treaty recommendations.

To conclude, the NZHRC considers that:

- The Declaration and the growing body of knowledge around it provides the basis for advancing indigenous rights, developing a shared understanding of what is required to do so, and improving the relationship between indigenous peoples and states
- There remains a need for greater knowledge and awareness of the Declaration
- To be effective, the Declaration must be visible, and should be routinely taken into account, and explicitly referred to
- Progress in implementation needs to be tracked and monitored effectively.

The NZHRC aims to advance these issues in our work programme over the next year.

Nō reira, tēnā koutou, tēnā koutou, tēnā koutou katoa. [*and finally, greetings to you all* ]

Commissioner Karen Johansen,  
New Zealand Human Rights Commission  
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<sup>3</sup> Accessible at: <http://npa.hrc.co.nz/#/>