

Agenda item 8: UN Declaration on the Rights of Indigenous Peoples

*Delivered by: Tracey Whare, Monitoring Mechanism
of the Iwi Chairs Forum, Aotearoa/New Zealand*

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1. Thank you Mr/Madam Chair for the opportunity to address this agenda item.
 2. The Monitoring Mechanism, a working group created by the National Iwi Chairs Forum, is pleased to submit its 2nd annual report to EMRIP. We wish to thank the Secretariat of EMRIP for arranging for the report to be made available as conference room paper 4 for this session.
 3. In preparing this 2nd annual report, the Monitoring Mechanism sought to engage with the New Zealand government. Despite numerous attempts to arrange face to face meetings, neither government civil servants nor Ministers were prepared to engage with the Monitoring Mechanism.
 4. The Monitoring Mechanism makes the following three recommendations:
 - **firstly**, that EMRIP note the second report of the Monitoring Mechanism;
 - **secondly**, that EMRIP note that the New Zealand government has yet to develop and implement a national plan of action for the implementation of the Declaration; and;
 - **thirdly**, that EMRIP recommend to the Human Rights Council that the mandate of EMRIP be modified and improved so that it can more effectively promote respect for the Declaration by receiving monitoring reports from Indigenous Peoples and States, evaluating States' compliance with the Declaration and providing advice and recommendations on States' initiatives to implement the Declaration.
 5. Our report focuses on three case studies and the right to participate in decision making. For the sake of timeliness, I will highlight only two case studies.
 6. The **second** case study of the report focuses on the Treaty settlement process. This is a process created by government to settle historical claims relating to the Treaty of Waitangi. The Treaty settlement process is not grounded in a Treaty of Waitangi framework or indeed a human rights framework but is determined by factors such as fiscal and economic realities and the ability of the government to pay compensation. Perhaps this focus should not be surprising given the Attorney-General has advised Māori in writing that "The Crown's position [is] that the Declaration on the Rights of Indigenous Peoples will not be referred to in Treaty settlement

documents”¹ with the nonsensical reasoning being “reference to the Declaration in settlement documents is unnecessary because Treaty settlements are the means by which the Government engages with the principles of the Declaration.”

7. Failures of the Treaty settlement process have been addressed by UN Treaty monitoring bodies including the Human Rights Committee and the Committee on Economic, Social and Cultural Rights. The two previous Special Rapporteurs on the Rights of Indigenous Peoples have also issued recommendations that the government reach agreement with Māori on a fairer process for the settlement of Treaty claims that complies with international human rights standards.
8. Our **final** case study focuses on the recently signed Trans-Pacific Partnership Agreement. Māori raised concerns: that negotiation of the Agreement had not been informed by, or undertaken in accordance with the Declaration and Treaty obligations; with the lack of engagement with Māori; with the failure to implement Waitangi Tribunal recommendations concerning government obligations when negotiating international instruments; and deficiencies in the ‘Treaty exception’ provision in the Agreement which is limited in scope and relies on the goodwill of the government to act upon it.
9. In order to address these concerns, Māori made urgent applications to the Waitangi Tribunal. The government refused to wait for the Waitangi Tribunal’s report to be issued. It also refused to release draft texts of the Agreement to the Waitangi Tribunal prior to the conclusion of negotiations, or even allow confidential briefings on the Treaty clause, which was at issue. Furthermore, once the Agreement was signed, the government compressed the Parliamentary examination process to only 5 days, compared to the standard period of 20 working days.
10. The UN Human Rights Committee recently addressed this issue noting “the State party’s insufficient engagement with indigenous communities prior to the signing in February 2016 of the Trans-Pacific Partnership Agreement, which includes provisions that may have a negative effect on the rights of indigenous peoples, in particular with regard to their free, prior and informed consent in the implementation of the Agreement, and to an effective remedy.”
11. The Monitoring Mechanism’s report illustrates that consultation or participation processes in Aotearoa/New Zealand generally fall short of the minimum standards set out in the UN Declaration on the Rights of Indigenous Peoples: they do not reflect or promote Māori self-determination, the right of free, prior and informed consent or enable Māori to substantially influence the outcome of decision-making.
12. Despite these negative examples, Māori remain undeterred in their drive to realise self-determination and to proactively participate in decisions affecting them. In February the Iwi Chairs Forum released the report *Matike Mai Aotearoa*. The report followed 5 years of engagement with Māori communities and provides proposed models for constitutional change

¹ Letter of the Attorney General to the four iwi of Te Hiku Forum dated 11 August 2011.

that have a focus on improved relationships that reflect self-determination, partnership and equality.

13. Finally, it is incumbent upon the New Zealand government to critically analyse how it engages with Māori and that it begin to take its decision to endorse the Declaration seriously. Failure to do so will result in new grievances and diminish the already fragile relationship between the government and Māori.

14. Thank you Mr/Madam Chair.