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**HUMAN RIGHTS COUNCIL
EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES
SIXTH SESSION, 8-12 JULY 2013, GENEVA**

E ngā mana, e ngā reo, e ngā maunga, e ngā awaawa, e nga pātaka o ngā taonga
tuku iho, tēnā koutou katoa. [Translation: to all expert colleagues, all voices, the
mountains, the rivers, the treasure houses, greetings to all of you.]

Mr. Chairman, thank you for this opportunity to speak on behalf of Commissioner
Karen Johansen of the New Zealand Human Rights Commission. . She sends her
greetings and apologies and is unable to travel at the moment.

Aotearoa New Zealand has the Treaty of Waitangi that frames how “Access to
Justice for Indigenous Peoples” is to be realised. In summary, the 1840 Treaty

1. Gave the Crown an authority to govern based on the obligation of partnership
2. Affirmed self-determination of Māori based on the obligation of Crown
protection
3. Guaranteed equality for Māori based on the obligation of full participation

Colonisation had and continues to have a devastating impact on indigenous people's
access to justice. Article 34 of the UNDRIP provides for indigenous peoples to
develop their own institutions, customs, spirituality, traditions, procedures and judicial
systems in accordance with international human rights standards. Tikanga and kawa
(traditional customs and laws of Māori society) form the foundations of indigenous
law in Aotearoa NZ.

In New Zealand, despite acknowledgement and increasing efforts to address the
issue, Māori remain overrepresented at all stages of the justice system. The current
situation is that:

- Tikanga and kawa are marginalised in New Zealand law and constitution
- Māori have developed and are developing initiatives that give Māori access to
justice based on their tikanga and kawa; and
- Māori, like most other indigenous peoples, suffer significant discrimination at
all levels of the justice system.

Discrimination

Despite comprising 15 percent of the New Zealand population, Māori make up more
than 40 percent of all police apprehensions and more than 50 percent of the prison
population. Young Māori appear in court at a rate more than double the rate for all

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young people.¹ The differences in convictions and sentencing for Māori and non-Māori reveal evidence of structural discrimination within the justice system.

Police raids in the small Māori township of Ruātoki in 2007 (known as Operation 8) are an example of police practice that has further fractured relationships between Police, the justice system and Māori communities. The Independent Police Conduct Authority has since found that many of the Police actions, including road blocks, searches and detentions, were unlawful and unreasonable.

Marginalisation of tikanga and kawa

As well as overt racism and discrimination at a personal and institutional level, there is an overall failure to recognise Māori values, tikanga and kawa in the justice system.

While there is an absence of system-wide recognition of Māori values, initiatives which are largely community-led and which seek to incorporate tikanga, are working well.

Examples include:

- Rangatahi Courts – Currently there are ten, marae-based Rangatahi courts, which incorporate whānau/family and the young person's participation in youth court hearings.
- Mātāriki Court – first used in Kaikohe, which allows the whānau, hapū and iwi of the offender to address the court at sentencing
- There are Māori Focus Units within four prisons that provide cultural programmes for prisoners, and two Whare Oranga Ake reintegration units that provide a Māori environment for prisoners to reconnect with their culture, identity and community.

Some agencies are now recognising the need to work with Māori to address these systemic failings. Iwi and Police are now joining together to implement an innovative strategy aimed at reducing victimisation among Māori.²

Genuine, comprehensive incorporation of Māori and Pacific values is dependent on the justice system engaging with Māori and Pacific people in programme design and implementation. A shift in values is required, to recognise the need for and the

1 Research shows a higher likelihood for Māori offenders to have police contact; be charged; lack legal representation; not be granted bail; plead guilty; be convicted; be sentenced to non-monetary penalties; and be denied release to Home Detention. Department of Corrections, (2007), *Over-representation of Māori in the Criminal Justice System*, Wellington: Department of Corrections.

2 See New Zealand Police (2012), 'The Turning of the Tide - a Whanau Ora Crime and Crash Prevention Strategy' <http://www.police.govt.nz/featured/new-strategy-aims-turn-tide-maori-victimisation-and-offending>

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potential of locally-designed, developed and delivered programmes, such as programmes by Māori for Māori.

Constitutional Advisory Panel

A review of New Zealand's constitutional arrangements offers an opportunity for tikanga Māori, indigenous values and the Treaty of Waitangi to be more adequately reflected in – or in fact, to form the basis of – the national constitution. An independent indigenous working group has been focussing on discussions with Māori communities to this end.³ This is in parallel to the government-appointed Constitutional Advisory Panel that is leading public discussions and is to report to ministers by the end of 2013.

Truth and Reconciliation Processes

Finally, I will turn briefly to truth and reconciliation processes. New Zealand's truth and reconciliation body, the Waitangi Tribunal was established in 1975. The Tribunal is a permanent commission of inquiry charged with making recommendations on claims brought by Maori relating to actions or omissions of the Crown that breach the promises made in the Treaty of Waitangi.

While the Tribunal has produced a number of important reports over the past year, the Tribunal's recommendations remain non-binding on Government and the response is variable.

In its 2011 report *Ko Aotearoa Tēnei*, the Waitangi Tribunal concluded that New Zealand was at a crossroads in terms of the Treaty partnership, and offered a series of recommendations as to how New Zealand could more truly reflect its bicultural origins.⁴ The Tribunal concluded that:

The path that embraces partnership recognises and values Māori culture as one of New Zealand's founding cultures. In so doing, it provides Maori with a positive platform from which they can address social issues and contribute to national prosperity.... It is, the Tribunal says, time to perfect that partnership.

It is this partnership, as required by both the Treaty of Waitangi and the Declaration, which remains lacking, but which is integral to ensuring that indigenous values, tikanga and justice processes are better reflected in national systems. This is integral to improving justice outcomes for indigenous peoples.

3 Aotearoa Matike Mai, Independent Iwi Constitutional Working Group. See:

<http://www.converge.org.nz/pma/iwi.htm>

4 Waitangi Tribunal, (2011). *Ko Aotearoa Tēnei A Report into Claims Concerning New Zealand Laws and Policies Affecting Māori Culture and Identity*. Te Taumata Tuatahi, Available at

<http://www.waitangi-tribunal.govt.nz/scripts/reports/reports/262/52823D9E-6BD4-465E-86EE-8A917BAE12D1.pdf>.

Recommendations

1. The New Zealand Human Rights Commission has urged the New Zealand government to take action across all sectors to address structural discrimination. While some positive initiatives are underway, these efforts must be expanded, sustained and their effectiveness monitored. The Commission has recommended specific timelines and targets, which should be monitored and reported on regularly.
2. At the international level, the Commission supports the recommendations of the Preparatory Meeting for Pacific Indigenous Peoples on the World Conference on Indigenous Peoples 2014. In particular, the Commission supports the need for:
 - A global study to be conducted into the incarceration and overrepresentation of indigenous peoples in justice systems
 - Greater recognition and incorporation of indigenous customary laws and/or justice systems into national systems
 - State support of Indigenous Peoples to develop programs, including programmes specifically for Indigenous men, women, young people and Indigenous communities to collectively improve access to justice.
 - States to take a strategic approach to crime and justice with Indigenous Peoples that is informed by standardised data collection and focused on prevention and diversion as well as protection and rehabilitation
 - Review of national laws to eliminate discriminatory provisions, with the full and effective participation of indigenous experts.

Karen Johansen
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New Zealand Human Rights Commission