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Human Rights Council
Expert Mechanism on the Rights of Indigenous Peoples
Third session
12 – 16 July 2010

Agenda item 4: United Nations Declaration on the Rights of Indigenous Peoples

JOINT INTERVENTION OF AOTEAROA INDIGENOUS RIGHTS TRUST AND TE RUNANGA O TE RARAWA

1. This agenda item touches upon a critical component of the work of the EMRIP. A general discussion on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is both an important opportunity to report on developments in the last year as well as a time to reflect on further work.

2. We are pleased to report that the New Zealand government took the significant step of endorsing the UNDRIP in May of this year. This marks a complete change from its previous position of rejection of the UNDRIP and is a welcome development for Maori and all Indigenous Peoples.

3. With such a significant policy change of "officially" adopting the DRIP "without caveat",[1] it would be expected that moves to change policy at the national level would be inevitable. Unfortunately this is not the case, as NZ has stated that it will implement the DRIP "within the *current* legal and constitutional frameworks of New Zealand",[2] meaning that for the government it would seem that it is "business as usual". Since May (for example), a number of issues affecting Maori have been dealt with by the government without consideration of the rights articulated in the UNDRIP and the Treaty of Waitangi.

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[1] Hone Harawira (Member of Parliament for Te Tai Tokerau) stated "Today I stand with pride to congratulate the Māori Party co-leader Dr Pita Sharples and his staff on the months of negotiation in the lead-up to yesterday's announcement that New Zealand would be supporting, without caveat, the Declaration on the Rights of Indigenous Peoples at the opening session of the Permanent Forum on Indigenous Issues in New York." http://www.parliament.nz/en-NZ/PB/Debates/Debates/3/9/9/49HansD_20100421_00000738-General-Debate.htm

[2] "This Government has reviewed New Zealand's position on the Declaration. The statement of support acknowledges these areas are difficult and challenging but notes the aspirational spirit of the Declaration and affirms to continually progress these, alongside Maori, *within the current legal and constitutional frameworks of New Zealand.*" (my emphasis). See "National Govt to support UN rights declaration" http://www.beehive.govt.nz/release/national+govt+support+un+rights+declaration .

4. The rejection of the Royal Commission on Auckland Governance recommendation to set aside seats for Maori in the new local government structure for Auckland, the unilateral decision by the Prime Minister to remove the Urewera National Park as part of the Treaty settlement for the tribe of Tuhoe and the recent granting of off shore mining permits for the East Coast of the North Island to Brazilian company Petrobras without Maori knowledge or consultation are just three examples of decisions that have been made by the government since May which effect Maori rights. These three examples relate to articles 5, 18 and 19 of the UNDRIP which focus on decision making, articles 27 and 28 which relate to redress and article 32 which relates to natural resources. These issues were missed opportunities for the New Zealand government to apply the UNDRIP.

FORESHORE AND SEABED

5. Māori also have concerns regarding the Government's approach to the review of its Foreshore Seabed Act 2004 (F&S Act). The F&S Act has been internationally criticised as discriminatory, and a Ministerial Review Panel appointed to review the F&S Act recommended its repeal and replacement with new legislation.[3]

6. The Government released for public consultation its proposals for change to the F&S Act. It's preferred option included to repeal the Act, and recognise customary Māori title of foreshore and seabed areas *conditional on* Māori claimants satisfying Government-presecribed legislative tests. However, those tests are based on restrictive Canadian common law, when there are in fact less restrictive Canadian case law available that could be used. This seems to contradict the statement made earlier this week by NZ at this EMRIP's Third Session, that "*New Zealand has developed, and will continue to rely upon, its distinct processes and institutions that afford opportunities for Māori to participate in decision making.*" The stringent tests also appear to facilitate a Government policy objective of minimizing the incidences of customary title that could accrue to Māori.

7. An approach more consistent with Articles 27, 28 and 32 of the DRIP would be that the NZ Courts (while informed by relevant common law from other countries) develop its *own* jurisprudence to fit the unique circumstances and situation of our country.

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[3] During its current term, the Government initiated a review of the F&S Act by appointing a Ministerial Review Panel (the Panel) which released its Report on 30 June 2009.

8. The New Zealand government made a conscious decision to change their position on the UNDRIP. They should also make the conscious decision to amend their methodologies, policies and law in light of the rights set out in the UNDRIP. The continual breaches of good faith by the government and the lack of political will exacerbate the serious problems that exist between Maori and the government.

9. We have two recommendations. The first is that the EMRIP encourage states that have adopted or endorsed the UNDRIP to review and amend their national laws, policies and practices in light of the rights enshrined in the UNDRIP. This review should be undertaken with the free, prior and informed consent of indigenous peoples.

10. Secondly we recommend to the EMRIP to highlight in their report to the Human Rights Council the change in New Zealand`s position to the UNDRIP coupled with the concerns raised by Maori as to the absence of changes in New Zealand policy and law in light of New Zealand`s position to endorse the UNDRIP.

11. Thank you Mr Chair.