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NEW ZEALAND

Expert Mechanism on the Rights of Indigenous Peoples
6th Session: Item 5: Study on Access to Justice
Delivered by Alana Messent
9 July 2013

Nga mihi nui ki a koutou katoa
Warm greetings to you all

New Zealand joins with others in expressing our appreciation to the members of the Expert Mechanism for your work on the study on access to justice. As the study identifies, there are some very real and complex challenges relating to access to justice for indigenous peoples, many of which are reflected in New Zealand's own experience of this issue.

Your study highlights the importance of addressing historical grievances and notes the on-going role that such grievances can play in contemporary challenges and disparities. Since 1985, the Crown (the government of New Zealand) has committed to resolving historical grievances of iwi and hapū (tribes and sub tribes), in keeping with the principles of the founding document of our nation, the Treaty of Waitangi, which guaranteed the tribes full protection of their interests and status. This is achieved through the adjudicative role of the Waitangi Tribunal and through the Treaty settlement process, in which the Crown and iwi (Māori tribes) negotiate to settle each tribe's historical Treaty claims. Settlements, which are signed by tribal and government leaders and then enacted as legislation by the New Zealand Parliament, include formal and often detailed acknowledgements of past Crown wrongdoing, Crown apologies and significant cultural, financial and commercial redress.

We acknowledge that the Treaty settlement process, though well-regarded, has also been long and at times frustrating for tribes. However our experience has been that by resolving historical grievances through a process that enhances the Crown's relationship with iwi in a positive, empowering and formal manner, not only does the Crown seek to address historical issues in relation to access to justice, but it also provides iwi with significant asset and economic bases and revitalised cultural, social and political institutions. These economic, cultural and political assets and institutions in turn support and strengthen the recognition of the rights and the social, economic and cultural autonomy of iwi and Māori communities throughout New Zealand generally. This strong platform for development and the relationships established between the government and leadership of tribes through the settlement process provides opportunities for on-going partnerships to address the economic and social disparities and disadvantages faced by Māori that can in turn lead to contemporary issues including those related to access to justice.

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In addition to the negotiation of settlements, New Zealand has also established a process to address past and contemporary Treaty claims through the Waitangi Tribunal. The NZHRC has also outlined the framework of the Waitangi Tribunal so today we would simply like to comment on the nature of its powers. We recognise that concerns have been raised about the Tribunal's redress role is primarily recommendatory, as noted in your study and by the NZHRC. We would like to clarify that the Tribunal does have some binding powers in respect of Crown-owned land, and that the New Zealand Government has regularly considered whether the Waitangi Tribunal should have broader binding powers. The current view is that the present recommendatory system allows a balanced and constructive approach reflective both of the merits of the claims and of the constraints on government in meeting those claims. It also enables the Crown and Māori to negotiate settlements that reflect their aspirations and provides flexibility for settlements to include components that had not been recommended by the Waitangi Tribunal, at the request of the negotiating iwi.

New Zealand agrees that the administration of criminal justice is a key area that needs to be addressed when looking at the question of access to justice for indigenous peoples. New Zealand is a country where the overrepresentation of Māori in the criminal justice system both as offenders and victims is a major concern. We acknowledge the comments made by the NZHRC on this issue, including that more remains to be done. To address this concern, the Government has a particular focus on reducing offending and re-offending and victimisation among Māori people. Our approach involves several of the remedies highlighted by the study including addressing the social, economic and cultural issues that are the underlying causes of these high rates and through programmes and alternative court processes that draw on and reflect Māori cultural values, concepts and justice systems.

Allow me to conclude by thanking the members again for this informative study.

Tena koutou, tena koutou, tena koutou katoa.

I thank you.