

Human Rights Council
Expert Mechanism on the Rights of Indigenous Peoples
Sixth session
8 – 12 July 2013

Agenda item 5: Study on access to justice in the promotion and protection
of the rights of indigenous peoples

Delivered by: Tracey Castro Whare, Aotearoa Indigenous Rights Trust

Firstly, I would like to commend the EMRIP on their study in particular their working method which is transparent, inclusive and completed over a reasonable period of time. Whilst the experts of the EMRIP draw upon their own experiences and views in formulating their reports, they are also guided by and rely upon input by Indigenous Peoples. This is a key component in providing legitimacy to their research and is a working method that ensures the active engagement of Indigenous Peoples. It is also pleasing to hear that the EMRIP continues to engage with the Treaty monitoring bodies and that their research and advice provide a firm basis upon which to interact with these bodies.

Three comments to make on the report.

Firstly, under the heading of non discrimination on page 7 of the English report, I wish to highlight structural discrimination and note that some States do not accept such discrimination exists and therefore are not prepared to address it. I refer specifically to the government of NZ. During NZ's periodic reporting to the CERD in February of this year NZ did not accept that structural discrimination existed within the criminal justice system despite the alarmingly high numbers of Maori incarcerated in prisons and particularly Maori women. The CERD¹ recommended "that the State party intensify its efforts to improve the outcomes of Maori in the fields of employment, health and in the administration of criminal justice by, *inter alia*, addressing the existing **structural discrimination** in the State party."

I would therefore recommend to the EMRIP that they also include as one of the remedies in this portion of their report that States acknowledge systemic discrimination exists and formulate policy to address this.

Secondly, I want to address truth and reconciliation processes on page 19 of the report. NZ has referred to the Waitangi Tribunal which is a Commission of Inquiry that allows Maori to make claims in relation to government acts, regulations, policies or practices that breach the Treaty of Waitangi. The Waitangi Tribunal's recommendations are not binding on government, and are frequently ignored by NZ. The courts have refused to review the fairness of Treaty settlements between Maori

¹ CERD/C/NZL/CO/18-20

and the government on the basis that they are political matters, and the processes and substance of Treaty settlements, policy and processes cannot be legally challenged. There is therefore room to strengthen the Waitangi Tribunal and I would encourage the EMRIP to not only recognize such mechanisms as the Waitangi Tribunal but also to recommend how they can be strengthened. I draw your attention to the Concluding observations of CERD in relation to NZ whereby they recommended “that the State party consider adopting the recommendation by the Special Rapporteur on Indigenous Peoples that any departure from the decisions of the Waitangi Tribunal should be accompanied by a written justification by the government”. The adoption of this recommendation would provide transparency to Maori as to government decision making and make such decisions subject to judicial review which would be a useful tool for Maori to hold the government to account and ensure access to justice.

Thirdly I would like to comment on access to justice under international law, page 4 of the report. While NZ is generally cooperative with international human rights mechanisms, to the extent that it engages in regular reporting to the Treaty monitoring bodies and is open to Human Rights Council Special Procedures, there is rarely discussion of the recommendations of such bodies in Parliament, there is no coherent approach to implementing those recommendations, and it is often difficult for Maori to ascertain which government department is responsible for the rights elaborated in any particular human rights instrument. I would therefore recommend to the EMRIP that their report elaborate upon the importance of the international oversight of international Treaty bodies and that EMRIP include as a remedy that States ensure reports from all international human rights bodies and mechanisms, and government responses to them, are discussed in Parliament or the State’s highest decision making body and establish a clear governmental mechanism for monitoring protection and implementation of the human rights elaborated in the international instruments it is a state party to.

Thank you Mr Chair.