

Permanent Forum on Indigenous Issues

Intervention: Māori Caucus

11th Session

New York 7-18 May 2012

Check against delivery

Item 3:

Study on national constitutions and the United Nations Declaration on the Rights of Indigenous Peoples with a view to assessing the nature and extent of the inclusion of indigenous peoples' human rights in national constitutions, with reference to the rights affirmed in the Declaration:

Delivered by Catherine Davis.

Mr Chair,

Honorable indigenous brothers and sisters – and in particular, the indigenous Youth Caucus, and our hosts the Haudenosaunee, and

Other Delegates to the Permanent Forum,

Recommendations

1. The Māori Caucus first wishes to acknowledge the contribution of **Peace Movement Aotearoa**¹ in the drafting of this statement.
2. In regards to the New Zealand Government's constitutional review process, the Māori Caucus makes the following recommendations: That, in recognizing the urgent imperative to remedy the profound prejudice to Māori as a result of the **Doctrine of Discovery**, the Permanent Forum:-
 - a. *reminds* the state party of its obligations under the **Declaration on the Rights of Indigenous Peoples** and the **International Covenant on Economic, Social and Cultural Rights** in particular, to implement legislative and policy measures giving full effect to those obligations;
 - b. *recommends* that the State Party refrains from implementing any findings or recommendations from its constitutional review process until it has obtained the

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¹ www.converge.org.nz/pma

free, prior and informed consent of Māori, and any recommendations put forward by the Māori-led Independent Constitutional Working Group; and

- c. *Calls on* the State Party to fully recognize and enable Māori to gain effective remedies for any breaches of all such aforementioned indigenous rights.

Main Statement

Mr Chair,

3. From our perspective, one of the main challenges to full implementation of our indigenous rights as expressed through the Declaration and other human rights instruments is our critical situation with our New Zealand Constitutional arrangements, which may be summarised in this way:

*“New Zealand’s human rights protections are fragile, in the absence of a comprehensive constitutional document or entrenched legal provisions... The NZBORA and the Human Rights Act 1993 are not enforceable against the legislature meaning parliament can pass discriminatory legislation such as the Foreshore and Seabed Act 2004”.*²

4. We note the New Zealand Government’s statement yesterday that New Zealand’s founding document, the Treaty of Waitangi, is *“of fundamental constitutional and historical importance”*. However, it is the Māori version of that document - “Te Tiriti” – which is of fundamental constitutional importance, not the English version. The collective and individual Māori rights guaranteed by the Crown under te Tiriti³ still remains vulnerable.
5. We also note the state party’s comment yesterday that the New Zealand Government is *“proud of its unique framework for settling the grievances of its indigenous people”*, and we wish to remind the state party of two significant points:

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² Ref A/HRC/WG.6/5/NZL/3 (23February 2009), Summary Prepared by the Office of the High Commissioner for Human Rights, In Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resoulution 5/1.

³ Referring to Te Tiriti o Waitangi (the English version which is known as the Treaty of Waitangi): the agreement signed between Māori and Crown representatives in 1840 which enabled the protection of Māori lands, forests, fisheries, our other prized possessions, and our self determination in exchange for Crown Governance in New Zealand.

- a. **First:** the correct reference to Māori is "indigenous PEOPLES", and **second,** Māori have never given our free, prior and informed consent for what we consider to be a Crown Treaty settlement process which violates the standards contained in the Declaration on the Rights of Indigenous Peoples.
6. It is correct that the current New Zealand Government has established a Constitutional Review Panel. However, the Terms of Reference of that Panel are restricted in our view to merely making superficial adjustments to the constitutional 'status quo', while what is really required is radical transformation.
7. Māori on the other hand have established our own Independent Constitutional Working Group with the following terms of reference:
 1. *To work on developing a model for a constitution for our country based on our tikanga [rules] and fundamental values, He Whakaputanga o te Rangatiratanga o Niu Tirenī [the Declaration of Independence 1835] and Te Tiriti o Waitangi and the work already carried out in this area. ...*
 2. *To give consideration to the Declaration of the Rights of Indigenous Peoples, the Bolivian constitution and the international context.*
 3. *To ensure that whānau and Hapū [Māori peoples] are fully informed and participate fully in the development of the model.*
 4. *To discuss the model with government once Maori are satisfied with it.*
8. In the spirit of giving effect to a 'Doctrine of Re-Discovery' of indigenous peoples rights, we encourage and support our own indigenous brothers and sisters around the world to likewise pursue their own process of constitutional transformation.

Thank you for your attention Mr Chair.