

13 April 2010

**Report on the 98<sup>th</sup> session of the Human Rights Committee  
8 – 26 March 2010  
New York, USA**

Prepared by Tracey Whare, trustee for Aotearoa Indigenous Rights Trust.

**Background**

The Human Rights Committee (HRC) is the body of experts that monitors the implementation of the International Covenant on Civil and Political Rights<sup>1</sup> (the Covenant) by State Parties. The phrase “State Party” is the term given to governments that have ratified the Covenant. The Covenant is a United Nations international human rights law instrument that sets out the rights of peoples and the obligations of states to ensure that those rights can be enjoyed. International human rights law lays down obligations which states are bound to respect. The Covenant includes rights such as the right to self determination, the right to protection and life, liberty and physical security, the right to a fair trial, freedom of thought as well as the right of minorities to enjoy and practice their culture, religion and language. This last set of rights has been used by the HRC in relation to the protection of indigenous peoples’ rights.

The New Zealand government ratified the Covenant in 1978. It has reported to the HRC five times including during this most recent session. By becoming a party to this international treaty, New Zealand assumes obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that New Zealand must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires New Zealand to protect individuals and groups against human rights abuses. The obligation to fulfil means that New Zealand must take positive action to facilitate the enjoyment of basic human rights.

The HRC meets three times a year. During its meetings it considers periodic reports submitted by State Parties on their compliance with the Covenant. The HRC also considers complaints from individuals alleging violation of their rights. Maori have used the individual complaint process on one occasion. In 1992 Apirana Mahuika and other Maori took a complaint to the HRC in relation to the Sealords deal.<sup>2</sup>

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<sup>1</sup> The text of the Covenant can be found at <http://www2.ohchr.org/english/law/ccpr.htm>

<sup>2</sup> CCPR/C/70/D/547/1993

There are eighteen experts appointed by State Parties in the HRC. Currently they are:

- Mr. Abdelfattah Amor (Tunisia)
- Mr. Bouzid Lahari (Algeria)
- Mr Prafullachandra Natwarlal Bhagwati (India)
- Ms. Christine Chanet (France)
- Mr. Mahjoub El-Haiba (Morocco)
- Mr. Ahmad Amin Fathalla (Egypt)
- Mr. Yuji Iwasawa (Japan)
- Ms. Helen Keller (Switzerland)
- Judge Rajsoomer Lallah (Mauritius)
- Ms. Zonke Zanele Majodina (South Africa)
- Ms. Iulia Antoanella Motoc (Romania)
- Mr. Michael O'Flaherty (Ireland)
- Mr. Jose Luis Perez Sanchez-Cerro (Peru)
- Mr. Rafael Rivas Posada (Colombia)
- Sir Nigel Rodley (United Kingdom)
- Mr. Fabian Omar Salvioli (Argentina)
- Mr. Krister Thelin (Sweden)
- Ms. Ruth Wedgwood (USA)



*The HRC in session. On the left side are the members of the HRC, on the right members of the NZ delegation.*

All experts have extensive legal experience and act in their individual capacity. Not all experts were present. Ms. Wedgwood had a death in her family and Mr. Iwasawa left after the first week due to the death of his mother.

### **My attendance**

I attended the HRC from 8 – 16 March 2010. This allowed me to attend the opening session, observe how the HRC carries out its work, and witness the interaction between the HRC and states as well as how the HRC interacted with nongovernmental organizations (NGO's). My main objective was to participate in the consideration of New Zealand's 5<sup>th</sup> periodic report to the HRC. As NGO's do not have the right to speak during the reporting of a State Party, all work I undertook at the meeting was in the form of lobbying members of the HRC. Four States presented their reports to the HRC during the 98<sup>th</sup> session, Mexico, Argentina, Uzbekistan and New Zealand.

### **Civil society participation**

On the first day of the meeting, NGO's had the opportunity to address the HRC. I made a statement (Appendix A) focusing on the need for the HRC to consider the UN Declaration on the Rights of Indigenous Peoples in their deliberations. There were a number of NGO's present from all of the four states whose reports were being considered. The international NGO Human Rights Watch also made interventions. Apart from myself, Tony Ellis a barrister from Wellington were the only NGO's present from Aotearoa during New Zealand's reporting to the HRC.



*Tony Ellis and I during NZ report to the HRC.*

### **The working methods of the HRC**

The HRC creates country report task forces from amongst its members. There are usually 4-6 members in a country task force. From within that task force a country rapporteur is chosen, their role is to draft the list of issues and the Concluding Observations. A list of issues is drafted by the task force in the session prior to the

State Party attending. The list of issues is then sent to the State Party allowing them time to reply in writing prior to their attendance. The task force also divides up amongst themselves questions they will ask the State Party in relation to each of the issues set out in the list of issues. This ensures that experts can familiarise themselves with the State Party they are focussing on and ensures a certain level of scrutiny. The role of NGO's in providing what are known as "shadow reports" to the HRC in this sense is invaluable. Without alternative reports and the presence of NGO's during the session to draft questions and provide specific cases of rights violations, the HRC would be unable to effectively question the State Party.

The HRC consistently reiterated to all states presenting their periodic reports that they wanted to enter into a constructive dialogue with the State Party. Each State Party is given the opportunity to make an introductory statement. The State Party then replies orally to the first set of issues set out in the list of issues of the HRC. The HRC then asks questions of the State Party in relation to their written and oral replies. This process is repeated for the second set of issues.

After the State Party presents its report, the Country Rapporteur drafts the Concluding Observations. The Concluding Observations are the report of the HRC that deals specifically with each state.

#### **NGO briefing on New Zealand to HRC**

I also had the opportunity to address members of the HRC during a lunch time briefing session. The session was organised by the NGO Centre for Civil and Political Rights. I wish to thank Patrick Mutzenberg for arranging the logistics for this meeting and encouraging as many of the members of the HRC to attend. This briefing allowed Tony Ellis and Edwina Hughes of Peace Movement Aotearoa – the later who joined by videoconference – and I to hold an informal briefing with the experts in relation to issues we wanted them to consider. This opportunity to meet with the members of the HRC in an informal setting and answer specific questions that they raised was important for two reasons, it allowed me to see who to approach for lobbying purposes as well as gauge the level of understanding of the experts in relation to our concerns.

One of the unusual aspects of the country report task forces is that the membership of each group is kept secret. The reasons for this are not clear but from a practical perspective it makes lobbying more difficult given there are 18 experts who may or may not be on the country task force.

#### **New Zealand government**

The head of the delegation was Minister Simon Powers. He was supported by a number of government officials. Minister Powers read an opening statement referring amongst other things to the relationship of the government to Maori being a vibrant growing part of New Zealand society, that the Treaty of Waitangi gives effect to this relationship and continues to evolve and that, New Zealand's constitution was unique yet enduring and unique and robust. Whilst some of these phrases do not mean much, my view is that the government was taking the process seriously; they genuinely wanted to engage with the HRC and were prepared to accept criticisms of how the implementation of the Covenant in New Zealand could be strengthened. This mature attitude was a welcome sign given the previous governments inability to accept international censure. However, as always the status which the government accords to the Concluding Observations of the HRC report will be a much stronger indicator of the respect that is given to the HRC.

The questions put by the members of the HRC to NZ in relation to Maori issues were critical and took into account the information we had provided. Questions relating to consultation, the Treaty of Waitangi, the high levels of Maori incarceration and the UN Declaration on the Rights of Indigenous Peoples were all asked. The government in turn provided answers to all questions either referring to their previous written replies or answering the questions orally.



*Minister Powers addressing the HRC. To his left is NZ ambassador in NY, Mr Jim McLay, the Chair of the HRC, Sir Nigel Rodley and the HRC Secretariat.*

### **HRC report and Concluding Observations**

The Concluding Observations have been released. The document reference is CCPR/C/NZL/CO/5. The document can be found at <http://www2.ohchr.org/english/bodies/hrc/hrcs98.htm>

I am very pleased with the Concluding Observations that focus on Maori concerns. Paragraph 7 focuses on enacting all the rights set out in the Covenant. Currently the Bill of Rights Act 1990 does not give effect to all the Covenant rights. Secondly, the HRC recommended that current mechanisms be strengthened to ensure that legislation is consistent with the Covenant.

Paragraph 12 addresses the high levels of Maori incarceration and systemic discrimination. The government rejects the view that systemic discrimination exists however, the Committee believes otherwise. The recommendation calls on New Zealand to address the overrepresentation of Maori in prisons particularly Maori

women and address systemic discrimination by the provision of human rights training to the police and the judiciary.

Paragraph 14 addresses Operation 8 and the shutdown of the Ruatoki community. The HRC said that the Terrorism Suppression Amendment Act should not be applied in a discriminatory manner, that detailed information on the results of any investigation, prosecution and disciplinary measures taken vis-à-vis law enforcement officials in connection with the alleged human rights violations perpetrated, in particular cases of excessive use of force, in the context of Operation 8 be included in their next periodic report and, that the trials are held within a reasonable timeframe.

Paragraph 19 addresses the Foreshore and Seabed Act. It calls on the New Zealand government to consult with all Maori groups in a reasonable timeframe. The committee also notes the Act is discriminatory against Maori. They also refer to the need for special attention to be paid to cultural and religious significance of access to the foreshore and seabed for Māori.

Lastly paragraph 20 focuses on the Treaty of Waitangi and the settlement process. The review of the status of the Treaty should continue and that views expressed by Maori during settlement processes are duly taken into account.

Further, the government is required to report back within a year on their recommendations in relation to 12, 14 and 19.



*NZ reporting to the HRC.*

### **The benefits of the HRC to Maori**

Whilst participation in UN processes can often seem incredibly intangible, the benefit of participating in the HRC reaped benefits for Maori. We were able to raise the awareness of the members of the HRC in relation to our concerns and ensure that they had the most up to date information regarding the issues and questions relating to Maori that they were considering. Particular reference to the case of Te Kahui Ngahuru and their dealings with the Office of Treaty Settlements raised public profile of Te Kahui Ngahuru back in New Zealand and a specific Concluding Observation regarding their case provides leverage for them in their negotiations with the Crown. Further the Concluding Observations add to the growing censure against New Zealand in relation to indigenous peoples rights.

### **Funding**

I would like to thank Incomindios, Christian World Service and CARITAS for their financial assistance and to Peace Movement Aotearoa for their assistance in finding sources of funding. Without their support, it would not have been possible to attend the HRC.

### **Summary and recommendations**

Overall in my view participation in the 98<sup>th</sup> session of the HRC was a success. I was able to lobby the experts and ensure that our views were heard and reflected in their deliberations. I was also able to monitor what New Zealand was saying and provide the HRC with alternative information on all of the Maori issues that were raised.

I was pleased that New Zealand was well prepared and accorded the HRC the respect that it deserves. It would seem that the present government has a more mature approach to the scrutiny of the UN and is prepared – at least in the presence of the HRC and observers – to consider the proposals of the HRC and respond accordingly. As always the proof is in how things change in government policy. Future NZ reports to the HRC can only build on the Concluding Observations; a good precedent has been set.

### **Future work for consideration:**

1. Disseminate the Concluding Observations to Maori;
2. Monitor in the coming year NZ's reply to the recommendations regarding Maori incarceration, Operation 8 and the Foreshore and Seabed Act and provide information to the HRC directly in relation to those issues;
3. Monitor future reports of the HRC to reference when they address indigenous peoples rights including self determination, land and resources and political participation; and
4. Participate in future sessions of the HRC.

## **Appendix A – intervention made to the HRC**

8 March 2010

Good afternoon members of the Committee and representatives of non governmental organisations.

My name is Tracey Castro Whare. I am a Maori from Aotearoa/New Zealand and a trustee of the non governmental organisation Aotearoa Indigenous Rights Trust. I will use this time to address a legal matter of importance to the Committee and leave my specific concerns regarding New Zealand's treatment of Maori for the NGO briefing to the Committee on Friday.

I want to emphasise the importance of the UN Declaration on the Rights of Indigenous Peoples. As I am sure this Committee is aware the Declaration was adopted by the General Assembly in September 2007 and is the most comprehensive and advanced of international instruments dealing with indigenous peoples rights.

There is a significant synergy between general state human rights obligations and the rights affirmed in the Declaration. Areas of priority concern for indigenous peoples include self determination, cultural integrity, land and resources and social and economic advancement.

The substantive right of article 1 of the International Covenant of Civil and Political Rights is mirrored in articles 3 and 4 of the Declaration on the Rights of Indigenous Peoples. The substantive rights of privacy and family, articles 17 and 23 of the Covenant are mirrored in articles 25 – 28 of the Declaration which focus on lands, territories and resources and the substantive right of freedom of association, article 22 of the Covenant is mirrored in articles 5 and 34 of the Covenant and focus on political and social institutions of indigenous peoples.

The Declaration now constitutes a robust framework of reference for the application and development of new interpretations of state obligations under the Covenant.

I bring this to the Committee's attention and trust it will be of use to you during your deliberations.

Thank you.