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Human Rights Committee  
5<sup>th</sup> periodic report of New Zealand

### **Submission of nongovernmental organisation Aotearoa Indigenous Rights Trust**

We provide, below, Aotearoa Indigenous Rights' Trust's (AIR Trust) comments on New Zealand's response to the Human Rights Committee list of issues.

The AIR Trust is a non-governmental organization made up of Maori individuals, all of who are active in their hapu and iwi and Maori politics more generally. We seek to support the indigenous peoples' rights movement internationally and domestically. AIR Trust representatives attended, and played a role in, the negotiations on the United Nations Declaration on the Rights of Indigenous Peoples. Members have also represented a number of tribes, pan-Maori organizations and indigenous peoples' organizations in United Nations fora, such as before the Committee on the Elimination of Racial Discrimination and the Human Rights Council. Unsurprisingly, then, our comments relate principally to Maori issues.

#### **Counter-terrorism measures and respect of Covenant guarantees – paragraph 8<sup>1</sup>**

The Committee notes that information provided to it indicates that Maori individuals and their families were victims of violations of their rights and subjected to discriminatory treatment during the October 2007 raids in the community of Ruatoki. New Zealand's response to this is insufficient. There is an underlying assumption that because the few individuals who were the target of the raids were potentially involved in serious criminal offending this in turn justified the use of armed police officers and the lock down of Ruatoki. This community was treated differently from other areas and towns where raids also took place and as such is discriminatory.

New Zealand's reply fails to mention that the 'serious charges' referred to were charges that were to be laid under the Terrorism Suppression Act. In order for such charges to be laid, the Attorney General must consent. His consent was not forthcoming and those arrested have been charged under the Arms and Misuse of Drugs Acts. Further, whilst the raids took place in October 2007 and charges were laid at that time, the defendants have yet to stand trial. On 18 December 2009 the High Court set down the hearing for 12 weeks starting on August 8, 2011 – nearly four years after the nationwide police operation in October 2007.

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<sup>1</sup> The headings and paragraph references throughout this submission are taken from the Committee's list of issues report CCPR/C/NZL/Q/5.

It should also be noted that the Tuhoe community members who were subject to the raid but were not arrested engaged a lawyer. The lawyer wrote to the police and asked them to consider a negotiated settlement which included such things as, appropriate apologies to people abused; police-held photographs being destroyed; items removed from searched homes being returned; evidence that surveillance had ceased; and compensation paid to the iwi (tribe) in a mutually agreed manner, including to kohanga reo (pre school language nests) and a school for fear and harm caused. The police rejected the request for a negotiated settlement. The community which has limited financial means continues to pursue this matter seeking accountability from the police for their actions.

### **Principle of non-discrimination (art. 2 and 26) – paragraph 9**

On 2 November 2009, the Government announced that it is *likely* that the Foreshore and Seabed Act would be repealed. No decisions have been made about what will replace it. Given the discriminatory provisions of this Act and the damage it has caused in relations between Maori and the government it would be prudent for the government to prioritise the repeal of this Act as a matter of urgency as well as work with Maori as to what should replace it. Allowing it to continue after indicating its repeal is not good enough, especially given the international criticism of this legislation by the Committee on the Elimination of Racial Discrimination, the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people and the Human Rights Council.

### **Rights of persons belonging to minorities (art. 27) – paragraph 26**

The incorporation of the Treaty of Waitangi into domestic law remains piecemeal.

The Treaty of Waitangi and its actual terms are not part of a written constitution meaning that legislation cannot be assessed before a Court for its compliance with the Treaty. New Zealand's lack of constitutional protections means that Maori as a collective remain vulnerable to the view of the majority and discriminatory legislation like the Foreshore and Seabed Act can be passed with no domestic legal recourse available to Maori. States in the Human Rights Council's Universal Periodic Review called on New Zealand to consider entrenching the Treaty of Waitangi.

The Treaty of Waitangi is not enforceable unless incorporated into legislation, which is uncommon. Even where the Treaty is included in legislation, Parliament's recent tendency to prescribe the meaning of Treaty of Waitangi principles in legislation means that the courts have significantly less scope to hold the Crown to robust Treaty of Waitangi obligations. It also aggravates the problem that one party to the Treaty of Waitangi is determining the content of its own obligations and how it must set about complying with them.

The mechanisms to settle land rights or what is commonly referred to as the Treaty of Waitangi settlement process is unsatisfactory. Specific aspects of concern include:

- the requirement that all claims are extinguished fully and finally;
- the Crown's refusal to consider Maori self-determination;

- the Crown’s refusal to consider Maori interests in oil and gas;
  - unfairness between settlements e.g., the Tainui and Ngai Tahu settlements include relativity clauses whereas others do not, which could well lead to financial disparities between settlements;
  - the failure to provide fair redress;
  - there is no independent and impartial oversight of the Treaty of Waitangi settlement process and the courts have been unwilling to intervene (citing deference to politics); and
  - the condition that the Crown will only negotiate with ‘large natural groupings’, into which Maori groups do not always naturally fall, has created tensions within the groupings.
- The courts will not address claims of unfairness in Treaty of Waitangi settlements because they consider them political issues.
  - The Waitangi Tribunal has criticised governmental Treaty settlements policy. For example, it stated in relation to one settlement that as a result of governmental actions in its Treaty settlement “Te Arawa is now in a state of turmoil as a result. Hapu are in contest with other hapu and the preservation of tribal relations has been adversely affected. See: [http://www.nzherald.co.nz/topic/story.cfm?c\\_id=252&objectid=10445985](http://www.nzherald.co.nz/topic/story.cfm?c_id=252&objectid=10445985); and [http://www.nzherald.co.nz/section/1/story.cfm?c\\_id=1&objectid=10446541](http://www.nzherald.co.nz/section/1/story.cfm?c_id=1&objectid=10446541).

The government has said that it is satisfied with the current level of funding of \$12.15 million for the Tribunal to carry out its functions. Given the increased workload of the Tribunal due to the imposed cutoff date for historical claims as well as the government’s position of settling all historical claims by 2020, it is difficult to understand why the government has not approved further funding to ensure the Tribunal can meet its obligations.

In comparison the Office of Treaty settlements which represents the government in the negotiation process received new funding in the 2009 budget. The extra funding includes \$22.2 million in operating funding and \$133,000 in capital expenditure.

### **Additional Matters**

New Zealand continues to oppose the UN Declaration on the Rights of Indigenous Peoples, and is only one of three states to continue to do so, despite being called on to support the Declaration during the Human Rights Council’s Universal Periodic Review of New Zealand. To live up to its own rhetoric of compliance with human rights, New Zealand should be advised to support the Declaration immediately.