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NGO submission on the Progress Report on the Follow up to the Concluding Observations of New Zealand

We have read the progress report on the follow up to the Concluding Observations of New Zealand (CCPR/C/NZL/CO/5/Add.1) and make the following comments.

Concluding Observation 12

The State party acknowledges that it is a long term challenge to improve the effectiveness of the criminal justice system and address underlying causes of Māori overrepresentation in prisons. Whilst their own research (paragraph 6) has identified bias in the criminal justice system as an explanation for over representation, their attempts to address this are minimal. Only new Police staff will receive induction training that includes human rights training whilst the Department of Corrections offers no human rights training. Further, there is no information as to what human rights training the judiciary receives. Human rights training must be undertaken by all those involved in the criminal justice system on a regular basis. This is particularly important to ensure that everyone is aware of the latest developments in human rights law, ensuring that human rights remains a critical focus for those involved in the criminal justice system and addressing entrenched views.

We also note there is no specific focus on how overrepresentation of Māori women in prisons can be reduced.

Concluding Observation 14

The Supreme Court of New Zealand recently held that the video surveillance obtained by the Police alleging criminal conduct by those facing charges due to Operation 8 is for the most part inadmissible because it was obtained illegally. On that basis 13 of the 17 originally charged will be discharged whilst the remaining 4 continue to face charges. Their charges have been considered serious enough to allow the video footage to be used as evidence. The State Party is currently rushing through urgent law to suspend the effect of the Supreme Court decision which ruled the surveillance unlawful. This pending legislation will not affect Operation 8.

We note the State Party has not provided any information on the outcome of the Human Rights Commission complaints process.

We further note that the State Party has advised that the Law Commission has been tasked with specific questions arising out of police gathering of evidence during Operation 8. However, this work is not a priority for the Law Commission and a timeframe for when it will become a priority is not provided.

Concluding Observation 16

Whilst the Foreshore and Seabed Act has been repealed, it has been replaced by legislation that is fundamentally the same as its predecessor. The premise of the new Act is that no one owns the foreshore and seabed. This discriminates against Māori on the basis of race because Māori interests in the foreshore and seabed are unable to be recognised except through the Marine and Coastal Area (Takutai Moana) Act. Such interests that can be recognised fall far short of a proprietary right whilst non-Māori rights in the marine area remain unchanged.

The Marine and Coastal Area (Takutai Moana) Act is also problematic because of the following:

1. the statutory tests to have protected customary rights or customary marine title recognised are inconsistent with Māori customary law and are extremely difficult to meet;

2. fee-simple titles in the foreshore and seabed are not extinguished, Māori titles are;

3. a protected customary right does not give Māori any proprietary rights in the area over which they have proven their territorial rights;

4. there is no ability for Māori to negotiate redress for the loss of their territorial customary rights, if these rights are extinguished there must be redress which the Act does not provide for;

5. Māori can apply to the High Court to have protected customary right and customary marine title orders made, or negotiate directly with the Crown. There will be no independent and impartial oversight of the negotiating process. Indeed, Māori will be in a very poor negotiating position (see, in particular, section 93);

6. the Act specifies a time frame of six years within which Māori must have given notice to the Crown of their intention to negotiate or file an application in the High Court; this is an arbitrary timeframe and places undue pressure on Māori; and

7. the Act legislatively overrides Māori access to the courts to prove their territorial and non-territorial interests in the foreshore and seabed under Te Ture Whenua Māori Act 1993 and common law aboriginal title.

The statutory tests to have protected customary rights or customary marine title recognised are inconsistent with Māori customary law, are expensive, unobtainable and provide nothing of substantive benefit to those holding customary rights. Whānau (family), hapū (sub tribe) and iwi (tribe) when exercising their rights in the foreshore and seabed in accordance with tikanga Māori (Māori law) should not need to apply to a court first to have such rights acknowledged.

The argument[1] has also been made that the new statutory customary title requires that Māori prove exclusive use and occupation however, the title does not provide for such exclusive use. This raises the serious question as to why Māori must prove exclusive use and occupation if the statutory title does not guarantee the same.

[1] http://ahi-ka-roa.blogspot.com/2010/09/marine-and-coastal-area-takutai-moana.html