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BRIEFING TO THE COMMITTEE ON ECONOMIC SOCIAL AND CULTURAL RIGHTS

Aotearoa Indigenous Rights Charitable Trust (AIR Trust) is a non-governmental organisation made up of Māori individuals, all of who are active in their hapū and iwi and Māori politics more generally. We seek to support the indigenous peoples' rights movement internationally and domestically. AIR Trust representatives have consistently attended, and played a role in United Nations (UN) fora relevant to indigenous peoples including: in negotiations on the UN Declaration on the Rights of Indigenous Peoples (the Declaration); before the UN Working Group on Indigenous Populations, the UN Expert Mechanism on the Rights of Indigenous Peoples; the UN Permanent Forum on Indigenous Issues; various expert UN meetings, the UN Committee on the Elimination of Racial Discrimination (CERD); the UN Human Rights Committee; the UN Special Rapporteur on the rights of Indigenous Peoples and the Human Rights Council.

Members have also represented a number of tribes, pan-Māori organisations and indigenous peoples' organisations in UN fora, such as before CERD and the Human Rights Council.

We have also disseminated information to Māori about developments regarding indigenous peoples' rights at the international level.

Our comments, relate mainly to issues facing Māori in relation to the rights to self-determination under Article 1 and to culture under Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) in particular, and then generally, involving disparities in Māori enjoyment of economic, social and cultural rights.

Our participation in this process began in 2008 when we made a submission on the New Zealand (NZ) government's draft report to the Committee on Economic Social and Cultural Rights. Since that draft report was prepared there has been a change in government. Many of the policies of the former government have been amended however there continues to be recurring issues in relation to the enjoyment of the Covenant rights by Māori.

1. NZ approach to Indigenous Peoples Rights

On 19 April 2010 NZ endorsed the Declaration. Whilst this is a positive and welcome change from its previous position of rejecting the adoption of the Declaration, the government has failed to take any steps to consult with Māori as to how the Declaration is to be implemented nor has the government undertaken a review of existing policies and laws in light of their obligations under the Declaration.

Question: What steps has the NZ government taken since endorsing the Declaration to implement the Declaration and what parts of the Declaration does the government consider to be the most challenging to give effect to?

2. Treaty of Waitangi Settlements

NZ's Treaty of Waitangi settlements process attempts to address the historical injustices suffered by Māori. It is unfair in many respects: Treaty settlements policy and processes are determined wholly by the government, meaning that one party to the Treaty is also the arbiter of the fairness of the measures to provide redress for historic injustices against Māori. The government does not recognise claims to self-determination or to ownership rights over oil, gas and other minerals, and has treated iwi Māori (tribes) and hapū Māori (sub tribes) inequitably. The processes and substance of Treaty settlements, policy and processes cannot be legally challenged. Having arbitrarily set a cut off date of 1 September 2008 for the filing of all historical claims, the government's goal now is to settle such claims by 2014. Further, Waitangi Tribunal reports assessing the Crown's compliance with the Treaty cannot be enforced and are often rejected by Government.

Questions: Does NZ accept the Treaty settlement process could be improved by amending areas that are criticised as unfair for example by making recommendations of the

Waitangi Tribunal legally binding on all parties and recognising claims of self determination?

Will NZ ensure that the Treaty settlements process legally complies with Te Tiriti o Waitangi (the Māori language version of the Treaty of Waitangi) and human right standards?

Is the Waitangi Tribunal sufficiently funded to complete the hearing of historical claims by 2014?

3. Marine and Coastal Area (Takutai Moana) Act

The Foreshore and Seabed Act has been replaced by a new piece of legislation called the Marine and Coastal Area (Takutai Moana) Act. The replacement legislation maintains the discrimination created by the previous Act and continues to affect Māori existing and potential economic and cultural rights, and the right to self-determination. For example:

- 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;
- fee-simple titles in the foreshore and seabed are not extinguished, Māori titles are;
- a protected customary right does not give Māori any proprietary rights in the area over which they have proven their territorial rights;
- there is no ability for Māori to negotiate redress for the loss of their territorial customary rights and the government is under no obligation to provide redress;
- 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;
- the Act provides a time frame of six years by which time 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 ;
- 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; and
- the Act is inconsistent with the rights set out in the Declaration for example, the unilateral extinguishment of rights without compensation.

Question: Why does the Marine and Coastal Area (Takutai Moana) Act still retain discriminatory aspects that were present in its predecessor the Foreshore and Seabed Act?

4. Crown Minerals Programme

On June 1 2010 the government granted a five-year permit to Brazilian oil company Petrobras to explore 12,330km² in the Raukumara Basin for oil and gas. In the Raukumara Basin, the proposed depths for drilling an exploratory well range from 1500 to 3000 metres. The Raukumara Basin sits on a major and active fault line. It is therefore particularly risky to place any sub-sea installation, such as an oil well, there. Te Whānau a Apanui and Ngāti Porou are two iwi whose lands are on the East Coast of the North Island which border the Raukumara Basin. These tribes and their communities were not properly informed or consulted by government about the exploration permit, nor did they give their consent for the seismic survey.

The lack of opportunity for Māori input on the Crown Minerals Programme and the absence of engagement with affected communities before exploration and extraction permits were granted has created serious tension between the government and both Te Whānau a Apanui and Ngāti Porou, so much so that on 23 April 2011 Elvis Teddy¹, skipper of the Te Whānau a Apanui tribal fishing boat San Pietro, was arrested at sea and detained on a navy warship while fishing in Te Whānau a Apanui customary fishing grounds in the vicinity of the Orient Explorer, the deep sea oil survey ship currently conducting seismic testing in the Raukumara Basin on behalf of Petrobras.

Question: How has NZ ensured that Te Whānau a Apanui and Ngati Porou will be able to exercise their rights to take part in cultural life and their right to exercise self determination in their traditional fishing areas in light of the consent granted to Petrobras?

How has NZ implemented the right of free, prior and informed consent set out the Declaration on the Rights of Indigenous Peoples in relation to the granting of permits to Petrobras?

5. Socio-Economic Disparities

As noted by the Special Rapporteur on the Rights of Indigenous Peoples in his recent country report on NZ, “The Special Rapporteur cannot help but note the extreme

¹ <http://www.stopdeepseaoil.org.nz/23-April-2011.html?fb>

disadvantage in the social and economic conditions of Māori people in comparison to the rest of New Zealand society.”²

This concern is clearly evidenced by statistical information taken from government sources and is propagated by continual government cuts to the funding of social services. This has a more significant effect on Māori due to their already poor social and economic conditions. Some examples of this are:

- research undertaken by Year 12 students at Gisborne Girls High School on the correlation between school attendance, achievement and lack of affordable public transport in Kaiti, a neighbourhood of 10,000 residents of which 70% are Māori, led more than 2,000 school students and their supporters to protest in a march across the city in April 2011. However the Minister of Education says getting students to school is not something the Ministry of Education should be helping with.³
- alternative education provision for students who have been alienated from mainstream schooling has a much higher proportion of Māori than the general population. From 2000 when alternative education programme funding was established, there was no increase in the funding to accommodate inflation, wage rises and other cost increases. The Government announced new funding for alternative education in 2010⁴ but accompanied the new resourcing with new compliance that has meant little if any funding has reached the programmes as administering schools have had to employ new staff to ensure compliance with the new regulations.
- health remains a critical issue for Māori. As noted by the Special Rapporteur in his report⁵, “Māori continue to experience higher levels of many health problems than non-Māori, including disproportionate levels of cancer, diabetes, heart failure and communicable diseases. From 2005 to 2007, male life expectancy at birth was 79.0 years for non-Māori, but 70.4 years for Māori.⁶ Female life expectancy

2 See page 2 summary of UN report at http://www2.ohchr.org/english/issues/indigenous/rapporteur/docs/A.HRC.18_NewZealand.pdf

3 <http://gisborneherald.co.nz/article/?id=22319>

4 <http://www.beehive.govt.nz/speech/alternative-education-2010-forum>

5 Paragraph 61, UN report A/HRC/18/XX/Add.Y found at http://www2.ohchr.org/english/issues/indigenous/rapporteur/docs/A.HRC.18_NewZealand.pdf

6 Ministry of Social Development, 2010 Social Report, An Indication of New Zealanders' Health 2007, at: <http://www.moh.govt.nz/moh.nsf/indexmh/an-indication-nz-health-2007> .

at birth was 83.0 years for non-Māori and 75.1 years for Māori. Infant mortality rates are higher for Māori than Asian or European New Zealanders, and rates of childhood vaccination are lower among Māori.

Māori also continue to experience higher levels of drug and alcohol abuse, suicide (twenty per cent of national suicides in 2007), smoking (more than twice the national rate at forty-six per cent) and obesity (nearly twice the national rate at forty-three per cent).

Māori are also nearly three times as likely as non-Māori to die as the result of an assault, with nearly twenty per cent of Māori women reporting being assaulted or threatened by an intimate partner, three times the national average.”

- there was no consultation prior to cuts to family violence funding. Those providing successful Child Advocate services and nationally recognised as effective and innovative Te Rito Collaborative Agency Networks must submit new service proposals with no guarantee of future funding.⁷
- in relation to employment, in the year to September 2010⁸, the unemployment rate for Māori in 2010 was 13.7% (compared with 6.5 % in NZ overall), 1% higher than the previous year and 5% higher than its level five years ago. Also, among 15-24 year olds, 18.8% of Māori males and 15% of Māori females were not employed, in education or in training, compared with 10.6 per cent of all males and 9% of females in NZ overall in this age group.
- Whānau Ora is a new government initiative that the government claims is designed to enable Māori to realise their potential and ensure whānau (family) priorities are at the centre of planning and development processes. “Whānau Ora is an inclusive approach to providing services and opportunities to whānau across NZ. It empowers whānau as a whole, rather than focusing separately on individual whānau members and their problems.”⁹ However the bulk of the funding for the initiative is still dedicated to over 100 existing social service providers and there may be little opportunity for vulnerable whānau to have input into the Programme of Action each provider collective is required to develop before implementing their Whānau Ora initiative.

7 <http://gisborneherald.co.nz/article/?id=22404>

8 Maori Labour Market Fact Sheet at <http://dol.govt.nz/publications/lmr/quick-facts/maori.asp>

9 <http://www.tpk.govt.nz/en/in-focus/whanau-ora/>

***Questions:** What, if any, mechanisms does the Government have in place to ensure that central government agencies spending is aligned with locally developed priorities as articulated through local government plans, iwi/hapū development plans and community-identified outcomes?*

Given that Māori feature poorly in all socio economic indicators, does the government agree that special measures are required to address these disparities and if yes, what special measures does the government have in place to address these inequalities?

Is a reduction of the growing inequalities in income levels a goal of the NZ government, and if so, what is the government plan to achieve greater income equality (as opposed to income levels) across the country?