



# *Peace Movement Aotearoa*

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## Act today for indigenous peoples' rights

This action alert relates to the NZ government's continuing refusal to support indigenous peoples' human rights - as seen most recently in their statement to the new Human Rights Council which is currently meeting for the first time in Geneva. The Human Rights Council was established to strengthen human rights at the international level and their application nationally and locally. Unfortunately however, some governments are already attempting to use the Council to deny indigenous peoples' their human rights, and the NZ government is foremost among them - please act today to let them know this is not acceptable.

This alert has four sections: an update on the United Nations draft Declaration on the Rights of Indigenous Peoples, the NZ government's position on the draft Declaration, what you can do about this, and where you can get more information.

### **Update on the United Nations draft Declaration on the Rights of Indigenous Peoples**

The draft Declaration on the Rights of Indigenous Peoples provides minimum standards of protection for the rights and well-being of indigenous peoples around the world. The rights included in it are those generally taken for granted in dominant societies: the right to survival, to political and cultural identity, and to control over resources. It began its lengthy journey through the UN system in 1985, when the Working Group on Indigenous Populations began drafting a declaration on the rights of indigenous peoples. Representatives of indigenous peoples' organisations and states were involved in the drafting process. The draft was completed in 1993, and was adopted by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (now the Sub-Commission on the Promotion and Protection of Human Rights) in 1994. In 1995, the UN Commission on Human Rights established an open-ended inter-sessional Working Group on the Draft Declaration (WGDD) to consider the text submitted by the Sub-Commission; a decision that was endorsed by the UN Economic and Social Council later that year.

From 1995 until the 11th WGDD session, the draft Declaration (that is, the text adopted by the Sub-Commission) has been negotiated through a consensus decision making process including representatives of indigenous peoples' organisation and states. For more information about the background to the draft Declaration, what rights it contains, the 11th WGDD session, and links to analysis and more resources, see 'Act now! for Indigenous Peoples' Rights' at <http://www.converge.org.nz/pma/in080306.htm>

During the 11th WGDD session, the Chairperson Luis-Enrique Chavez submitted a reworded document (known as the Chair's text). His report, which includes the wording of both the draft Declaration and the Chair's text is available as a word doc at [http://www.pcpd.org.nz/ddrip/chairstext\\_report.doc](http://www.pcpd.org.nz/ddrip/chairstext_report.doc) and as a pdf file at <http://www.converge.org.nz/pma/chr0306.pdf>

The Chair's text was based on proposals for changes put forward by states and some indigenous peoples, and following the 11th session was presented by the Chairperson to the Commission on Human Rights, essentially the predecessor to the new Human Rights Council. This week the Human Rights Council will decide whether to send the Chair's text (not the draft Declaration) to the United Nations General Assembly for adoption, or to refer it back to a Working Group for further discussion. It is not clear at this point if the text to be referred to a possible new Working Group will be the draft Declaration or the Chair's text, nor if the Working Group will be comprised of representatives of indigenous peoples' organisations and states, or states only. If the latter, then that will be an absolute travesty of the consensus process to date.

An analysis of the Chair's text, prepared by Estebancio Castro Diaz and Tracey Whare, is now available as a word doc at [http://www.pcpd.org.nz/ddrip/chairstext\\_analysis.doc](http://www.pcpd.org.nz/ddrip/chairstext_analysis.doc) and as a pdf file at <http://www.converge.org.nz/pma/anct0606.pdf>

The Analysis covers the procedural concerns as mentioned above, and sets out clearly the differences between the draft Declaration and the Chair's text. In summary, the conclusion reached is that: "Our analysis has shown that some amendments neither diminish nor strengthen the text whilst others change the original meaning of the text or diminish the text. Given the current discussion amongst Indigenous Peoples as to whether the Chair's text is the best text that we can expect, we have formed the view that the Chair's text *as a whole* must be rejected."

With regard to the preambular paragraphs in the Chair's text: "There are some changes to the preambular paragraphs that strengthen the original text such as PP1, PP10 and PP18. There are also some amendments that are not necessary for example PP15 and PP19 however; they do not change the original meaning of the text. The major change is to PP13. Treaties, agreements and constructive arrangements are deemed to be domestic arrangements but some may be considered of international importance. Given the importance of Treaties, agreements and constructive arrangements to Indigenous Peoples, any attempt to limit the scope of these documents is concerning. The United Nations expert Martinez in his Treaty report clearly stated that such documents were international in nature. If the Chair's text was accepted, then the Declaration would be inconsistent with his findings."

With regard to the Articles in the Chair's text: "There are some changes to the articles that strengthen the original text such as A1, A14 and A44. There are also some amendments that are not necessary for example A18 and A23 however these amendments do not change the original meaning of the text. The major changes relate to self determination (A3 and A31), ethnocide and genocide (A7), rights to land (A26), ownership of intellectual and cultural property (A29) and inclusion of third party rights (A45). All these changes strike at the heart of the fundamental principles upon which the Declaration is based being collective rights, ownership of land and resources and full self determination over those resources. These principles cannot be diminished without having significant repercussions for Indigenous Peoples rights."

## **The NZ government's position on the draft Declaration**

The NZ government has never been supportive of a strong Declaration on the Rights of Indigenous Peoples. Their position is perhaps summarised most clearly in a speech by a government representative at the 60th Session of the UN General Assembly last year:

"The draft text that has been under debate for over ten years is unworkable and unacceptable for many States, including New Zealand. It must be amended if a Declaration can be implemented as a standard of

achievement. Failure to recognise this will effectively mean no Declaration. Let us all be absolutely clear about that, Mr Chairman" ... "in elaborating the rights of one group of citizens, New Zealand cannot agree to a document that suggests there are two standards of citizenship or two classes of citizen." [Statement by Mr Andrew Begg, at the UN General Assembly 60th Session, Third Committee, Item 68: Indigenous Issues, 20 October 2005]

Similar 'one law for all' wording as in the government representative's statement about the draft Declaration at the UN Commission of Human Rights in 2004: "In articulating the rights of one group, we have to be careful not to discriminate against other members of society." [Statement by Tim Caughley, CHR 61: Item 15: Human Rights and Indigenous Issues, 11 April 2005.] This is a particularly misleading statement as the rights of particular groups are already articulated and protected in international law, and by the NZ government - the rights of children and of women for example - without discriminating against others. It also ignores that fact that the failure to articulate indigenous peoples' rights is fundamental and blatant discrimination against them. The underlying problem with the NZ government is not a genuine concern about articulating the rights of one group; it is rather that they are stuck in denial mode when it comes to indigenous peoples' rights.

Although NZ is not a member of the new Human Rights Council, they nevertheless made a statement in the opening session of the General Segment once again expressing their opposition to the draft Declaration: "... the new Human Rights Council needs to make sure that it delivers quality outcomes and supports proper process. Sadly, that is not yet the case with the Chair's text for the Draft Declaration on the Rights of Indigenous Peoples. New Zealand cannot associate itself with this text which, despite our most strenuous efforts and genuine intentions, remains fundamentally flawed. We want a consensus decision and a text that is capable of practical implementation." [Statement by Don Mackay, NZ Representative, 21 June 2006].

This statement is quite absurd - a consensus decision on the draft Declaration has been blocked precisely by a handful of self-interested states, including NZ, that refuse to acknowledge that indigenous peoples have the same rights as other peoples. And now it seems the government is not even prepared to support the Chair's text which is substantially weaker in the crucial areas of the right of self-determination, control over land and resources, and ownership of intellectual and cultural property - all rights which are guaranteed to all peoples in Articles 1: 1-3 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of which the NZ government has signed and ratified:

"1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. 3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."

The NZ government's position on the draft Declaration is inconsistent with their obligations under international law, in particular as a state party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Article 1:3 of both Covenants requires them to promote the realization of the right of self-determination, not to oppose it and attempt to redefine it according to their narrow self-serving domestic political agenda. The draft Declaration is

supposed to reflect a universal and international perspective, not the limited views of any particular coloniser state.

The NZ government's position is also a fundamental breach of the Treaty of Waitangi as it is a denial of the self-determination that Maori exercised for hundreds of years prior to the arrival of non-Maori, the continuance of which was guaranteed to them in the Treaty. Furthermore, the lack of discussion with Maori about the government's position on the Draft Declaration constitutes a further Treaty breach - as expressed, for example, by an Intervention from the Aotearoa Indigenous Rights Trust in 2004:

"Whilst the New Zealand government and others have tabled this paper and attempted to show themselves to be acting in good faith and being reasonable, I must express my concern regarding the following. I am aware of no consultation undertaken with Maori regarding this proposal. Formal written requests have been made to the New Zealand government to disclose any new developments since the last intersessional working group. No information regarding this proposal was disclosed. The New Zealand government is well aware of their obligation of consultation pursuant to the Treaty of Waitangi. That obligation has been seriously breached by the lack of consultation and dialogue with Maori regarding this proposal." [Aotearoa Indigenous Rights Trust Intervention in response to the NZ government's tabling of a new paper on the Draft Declaration on the Rights of Indigenous Peoples at the United Nations in Geneva', 13 September 2004]

Furthermore, the government's legitimacy to even comment at international fora on the rights of indigenous peoples, let alone attempt to influence what they might be, is somewhat dented by their failure to respect the human rights of Maori as detailed in the United Nations Committee on the Elimination of Racial Discrimination's decision on the foreshore and seabed legislation in March 2005 and in the Report of the Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples on his mission to New Zealand released in April 2006, and by the government's dismissive and disrespectful response to both.

It is a sad reflection of the NZ government's attitude towards Maori that they are apparently unable to support the full and effective enjoyment by indigenous peoples of their fundamental freedoms and human rights either here or overseas. If they cannot bring themselves to play a constructive role, then at the very least they must stop obstructing progress towards a strong and effective UN Declaration on the Rights of Indigenous Peoples.

## **What you can do about this**

Below are two actions you can take today - the first is for organisations only, the second is for both organisations and individuals.

**1) Organisations can sign on** to the Aotearoa Indigenous Rights Trust statement 'New Zealand's position on the draft Declaration on the Rights of Indigenous Peoples lacks legitimacy' which will be presented to the Human Rights Council. The statement reads:

"This document sets out why New Zealand's position on the Draft Declaration on the Rights of Indigenous Peoples (dDRIP) lacks legitimacy. It is submitted on behalf of the Aotearoa Indigenous Rights Trust, a non-governmental organisation made up of Maori and aligned with the International Indian Treaty Council, and is supported by other Maori individuals and organisations.

1. New Zealand has not consulted with Maori on its proposed amendments to the dDRIP over the last five years, despite repeated requests that it do so. 2. New Zealand has not consulted with Maori on New Zealand's objections to the Chair's text on the dDRIP. 3. Te Puni Kokiri, with whom New Zealand claims to consult, is a government ministry made up of a government Minister and government officials. 4. New Zealand's position undermines existing international law and is based on an outdated interpretation of norms such as the right to self-determination. 5. The Committee on the Elimination on Racial Discrimination found New Zealand in breach of international law (March 2005). 6. The Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People criticised New Zealand's treatment of Maori in February 2006. 7. The Prime Minister and Deputy Prime Minister have publicly and offensively criticised United Nations institutions in response to negative United Nations comment on its treatment of Maori."

If your organisation wishes to add its name to this statement, please send a message with the subject heading 'Sign AIR Trust statement', including the organisation's name; whether it is a Maori, Pakeha or Taiwi organisation; and the name and position of the contact person, to email <clairecharters@yahoo.com> by the end of today.

**2) For organisations and individuals** - please fax or email (today if possible) the Prime Minister and Minister of Foreign Affairs, as well as your Member of Parliament if they are an MP in a party that is part of the current government; contact details are provided below.

As well as expressing your concerns about the information in the sections above (if you require more information see the section below), it would be useful if your letter could include these points:

- that the New Zealand government refrain from its current unhelpful stance, and decline to make any further interventions opposing the Declaration at the UN Human Rights Council or other fora;
- that the Government re-open meaningful dialogue with Maori in regard to the Declaration and the Chair's text; and
- that the government assist Maori to hold appropriate dialogue on the issues.

Contact details for politicians: Helen Clark, Prime Minister, email pm@ministers.govt.nz or fax (04) 473 3579; Winston Peters, Minister of Foreign Affairs, email wpeters@ministers.govt.nz or fax: (04) 471 2042; letters to any MP should be posted to Freepost Parliament, PO Box 18-888, Wellington - full contact details for MPs are available online at <http://www.clerk.parliament.govt.nz/YourMP/ListMPs/> or by phoning Parliament tel (04) 471 9999.

It is really helpful for our work on this if you can send a copy (bcc if by email) of your letter/s to Peace Movement Aotearoa, PO Box 9314, Wellington, fax (04) 382 8173, email <pma@xtra.co.nz> as well as a copy of any reply you receive.

## **Where you can get more information**

There are two online sources of information and resources on the government's approach to indigenous peoples' human rights - <http://www.pcpd.org.nz/ddrip> which has a focus on providing information for Maori, and <http://www.converge.org.nz/pma/indig.htm#hrcnz06> which has a focus on Pakeha and other non-indigenous support for indigenous peoples' rights.