



# General Assembly

Distr.: General  
26 August 2010

English only

---

## Human Rights Council

Fifteenth session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya\***

Addendum

**Preliminary note on the mission to New Zealand  
(18 to 24 July 2010)**

---

\* The present report was submitted late owing to the fact that the mission took place after the submission deadline.

1. During the course of the visit of the Special Rapporteur to New Zealand between 18 and 24 July 2010, he met with Government authorities, representatives of Maori communities and organizations, and others, in places in and around Auckland, Wellington, Waitangi, Hamilton and Whanganui. The Special Rapporteur visited a number of Maori communities in both rural and urban areas, and collected information from various sources. He expresses his appreciation for the support of the Government, in particular the Ministry of Maori Affairs, and the Maori individuals and organizations that provided indispensable support in planning and coordinating the visit. The Special Rapporteur would especially like to thank those Maori peoples that invited him into their marae and communities, and shared with him aspects of their unique and vibrant culture.
2. At the invitation of the Government, and with the encouragement of Maori leaders, the Special Rapporteur visited New Zealand to follow up on the work of Rodolfo Stavenhagen, the previous Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, who visited the country in 2005.
3. The Special Rapporteur observed several positive aspects of New Zealand's legal and policy landscape, as well as ongoing challenges, in relation to Maori issues. A unique feature of New Zealand is the Treaty of Waitangi of 1840, which is understood to be one of the country's founding instruments. The principles of the Treaty provide a foundation for Maori self-determination based on a real partnership between Maori and the State of New Zealand, within a framework of respect for cross-cultural understanding and the human rights of all citizens. The Special Rapporteur learned of steps being taken within this framework, which can be described as constituting a good practice in the making, and hopes that concerted efforts will continue to be made in this regard.
4. It should be noted that certain initiatives under way in New Zealand represent important steps towards advancing the purpose and objectives of the United Nations Declaration on the Rights of Indigenous Peoples. This Declaration, far from affirming rights that place indigenous peoples in a privileged position, aims at repairing the ongoing consequences of the historical denial of the right to self-determination and other basic human rights. The Special Rapporteur is very pleased to note that New Zealand recently declared its endorsement of the Declaration, thus joining the overwhelming majority of States that have expressed their support for this historic instrument.
5. During his visit, the Special Rapporteur was especially interested in examining the process for settling historical and contemporary claims based on the Treaty of Waitangi, a matter that was addressed in detail in the report of his predecessor. The Special Rapporteur notes that the treaty settlement process is clearly one of the most important examples in the world of an effort to address historical and ongoing grievances of indigenous peoples, and that settlements already achieved have provided significant benefits in several cases. The Waitangi Tribunal, which is connected to the treaty settlement process, itself provides an important venue for examining Maori claims. The Special Rapporteur notes the Government's commitment to the ongoing functioning of the Waitangi Tribunal and steps it has taken to improve and accelerate the treaty settlement process, and he encourages further efforts towards this end.
6. However, during his visit, the Special Rapporteur heard complaints about the treaty settlement process that are similar to those reported by his predecessor. These include complaints about the inherent lack of bargaining power on the part of Maori in the settlement negotiations, the resulting lack of settlement outcomes that provide full and adequate redress to Maori grievances, and policies that restrict the transference of lands back into Maori ownership or control.
7. These complaints were highlighted to the Special Rapporteur in accounts of the recent refusal of the Government to allow for the possibility of the return of lands within

the Urewera National Park to the Tuhoe iwi (tribe). He respectfully urges the Government to reconsider this decision in the light of the merits of the Tuhoe claim and considerations of restorative justice, and to not preclude return of these lands to the Tuhoe in the future even if such return is not included in a near-term settlement.

8. Another matter raised by the Special Rapporteur's predecessor was the Foreshore and Seabed Act of 2004. The Special Rapporteur would like to take note of the Government's efforts to repeal and reform this act, which he sees as a positive development since his predecessor's visit. While recognizing that this process is still under way, the Special Rapporteur would like to urge the Government to ensure that the reform process includes an adequate dialogue with Maori people, and that the new legislative arrangement avoids any discriminatory effects and establishes measures to recognize and protect rights of iwi over the foreshore and seabed.

9. The Special Rapporteur would like to emphasize that all these concerns lend support to the assertion he repeatedly heard during his visit that the principles enshrined in the Treaty of Waitangi and related internationally protected human rights must be provided with constitutional security. The Special Rapporteur observed that the Treaty's principles appear to be vulnerable to political discretion, resulting in their perpetual insecurity and instability. The Special Rapporteur understands that the Government has committed to undergo a process of review of constitutional arrangements as they relate to Maori people and encourages the Government to carry out these efforts with the full and adequate participation of Maori.

10. Finally, the Special Rapporteur cannot help but note the extreme disadvantage in the social and economic conditions of Maori people, which are dramatically manifested in the continued and persistent high levels of incarceration of Maori individuals. These troubling conditions undoubtedly result from the historical and ongoing denial of the human rights of Maori, which must continue to be addressed as a matter of utmost priority. In this regard, the Special Rapporteur is pleased to learn about a number of Government programmes to address this disadvantage, including the Whanau Ora programme, an initiative currently being developed by the Government, to be carried out in partnership with Maori people to address socio-economic concerns, especially through the strengthening of Maori families.

11. The Special Rapporteur will continue to examine these and other issues that have been brought to his attention in further detail, and will be issuing a full report providing observations and recommendations addressing these concerns. The Special Rapporteur looks forward to ongoing engagement and cooperation with the Government of New Zealand and Maori representatives with a view towards advancing the human rights of Maori people in Aotearoa.