

INDIGENOUS PEOPLES' RIGHTS UNDER INTERNATIONAL LAW

I. INTRODUCTION

In 2014 Indigenous peoples' rights under international law were in the spotlight due to the high-level plenary meeting of the United Nations (UN) General Assembly (GA), known as the World Conference on Indigenous Peoples (WCIP), the first meeting of its kind. Discussions relevant to Indigenous peoples' rights occurred in relation to the draft Sustainable Development Goals (SDGs), the Climate Summit and the UN Framework Convention on Climate Change (UNFCCC).¹ Domestically, Māori rights were affirmed in an important Waitangi Tribunal report, a novel piece of legislation and a Police apology. New Zealand had its second Universal Periodic Review (UPR) through the UN Human Rights Council (HRC). The UN Committee on the Rights of Persons with Disabilities (CRPD), the UN Working Group on Arbitrary Detention (WGAD) and the UN Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) each commented on the human rights situation of Māori. The GA, the HRC and World Intellectual Property Office (WIPO), amongst others, considered Indigenous peoples' rights in the course of their work. International human rights treaty monitoring bodies and states participating in the UPR progressed jurisprudence on the rights of Indigenous peoples, which will inform the bodies' future reviews of New Zealand. This note reviews New Zealand's state practice regarding Indigenous peoples' rights under international law in 2014 and traces key international developments concerning those rights.

II. DEVELOPMENTS IN RELATION TO INTERNATIONAL RESOLUTIONS, RECOMMENDATIONS AND OTHER FORMS OF NON-BINDING OR SOFT LAW INSTRUMENTS

A. World Conference on Indigenous Peoples

The WCIP was held in New York in September 2014 with the aim of sharing "perspectives and best practices on the realization of the rights of indigenous peoples, including to pursue the objectives of the UN Declaration on the Rights of Indigenous Peoples" (UNDRIP).² The lead up to the Conference saw significant controversy. This was due to concerns

- 1 United Nations Framework Convention on Climate Change (opened for signature 4 June 1992, entered into force 21 March 1994) [UNFCCC].
- 2 United Nations (UN) General Assembly (GA) Resolution 65/198 *Indigenous issues* A/RES/65/198 (2010) at [8].

around the ability of Indigenous peoples to participate in the drafting of the outcome document and planning of the meeting. New Zealand was vocal in its support for an inclusive preparatory process.³ Ultimately, Indigenous peoples, through two Indigenous advisers to the President of the GA's office, actively contributed to the drafting of the outcome document; although the final draft was subject to an intergovernmental process that provided for limited participation. The adopted outcome document reflects aspects of the priority areas singled out by Indigenous peoples for inclusion. For example, the document contains provisions on an international oversight mechanism, lands and resources, national policy direction, Indigenous women, youth and children and traditional knowledge (TK) and livelihoods.⁴ However, it does not reflect all of Indigenous peoples' concerns as articulated in the outcome document of the 2013 global Indigenous meeting in Alta.⁵

During WCIP New Zealand reaffirmed its support for the Declaration; shared steps it was taking to advance the partnership approach envisioned by the Treaty of Waitangi (Treaty); and described the WCIP outcome document as capturing "the spirit of this partnership approach". Despite progress, New Zealand acknowledged that "there is still more to do".⁶ It also emphasised the close relationship Māori share with their lands and resources, acknowledged much of its loss and detailed how historical Treaty settlement negotiations sought to redress this injustice. It advocated sustainable economic development for Māori as this enables Māori "ultimately to exercise their rangatiratanga [authority]".⁷

B. Climate Summit

The UN Secretary-General's Climate Summit 2014 overlapped in part with the WCIP. One of its outcomes was the New York Declaration on Forests. The Declaration recognises the devastating impact of forest loss on

3 Statement by Carl Reaich, Deputy Permanent Representative, "Expert Mechanism on the Rights of Indigenous Persons, Item 3: World Conference on Indigenous Peoples" (7 July 2014); Statement by Michelle Hippolite, Chief Executive of Te Puni Kōkiri (Ministry of Māori Development), "United Nations Permanent Forum on Indigenous Issues, Item 6: World Conference on Indigenous Peoples" (dated 19 May 2014 and read 23 May 2014).

4 *Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples* GA Res 69/2 A/RES/69/2 (2014) at, for example, [7], [10], [12], [14], [15], [17]-[22], [25], [28], [35]-[36]. For further discussion see Tracey Whare "World Conference on Indigenous Peoples" in Cæcilie Mikkelsen (ed) *The Indigenous World 2015* (IWGIA, 2015) 462.

5 For background see Fleur Adcock "Year in Review: Indigenous Peoples' Rights under International Law" (2013) 11 NZYIL 232 at 232-233.

6 Statement by Hon Dr Pita Sharples, Minister of Māori Affairs, "Statement to the World Conference on Indigenous Peoples – Roundtable 2: Implementation of the Rights of Indigenous Peoples at the National and Local Level" (New York, 22 September 2014).

7 Statement by Hon Dr Pita Sharples, Minister of Māori Affairs, "Statement to the World Conference on Indigenous Peoples – Roundtable 3: Indigenous Peoples' lands, territories, and resources" (New York, 23 September 2014).

Indigenous peoples and, notably, commits to “[s]trengthen forest governance, transparency and the rule of law, while also empowering communities and recognizing the rights of indigenous peoples, especially those pertaining to their lands and resources”.⁸ New Zealand did not endorse the Declaration.

C. Sustainable Development Goals

Indigenous peoples continued to contribute to discussions on the development of SDGs through the Open Working Group of the GA on SDGs. The draft SDGs, which were presented to the GA in September, contain 17 goals and 169 targets, of which two expressly mention Indigenous peoples. The first reference is in relation to Goal 2 on hunger and food security and the second to Goal 4 on inclusive and equitable education.⁹ The references fall short of the recognition lobbied for by Indigenous peoples in the negotiations.¹⁰

III. DEVELOPMENTS IN RELATION TO INTERNATIONAL TREATIES

A. UN Framework Convention on Climate Change

The UNFCCC’s 20th Conference of the Parties (COP) and the 10th meeting of the parties to the Kyoto Protocol were held in 2014. Following intensive lobbying and negotiations by Indigenous peoples, the preamble to the draft negotiating text, which will form the basis for negotiating the new 2015 climate agreement, states:¹¹

Stressing that all actions to address climate change and all the processes established under this agreement should ensure a gender-responsive approach, take into account environmental integrity / the protection of the integrity of Mother Earth, and respect human rights, the right to development and the rights of indigenous peoples[.]

It also recognises the role that Indigenous peoples can play in implementation.¹² However, there is only one reference to Indigenous peoples in the operative part of the text, which encourages Indigenous peoples to play a role in tackling climate change.¹³ The references fall far short of the key messages articulated in Indigenous peoples’ position paper for COP20 and COP21, which include calls for respect for Indigenous peoples’ rights to their lands, territories, resources and TK.¹⁴

8 New York Declaration on Forests 2014 <<http://www.un.org/climatechange/>>.

9 *Report of the Open Working Group of the General Assembly on Sustainable Development Goals* GA A/68/970 (2014) at 11, 13.

10 Indigenous Peoples’ Centre for Documentation, Research and Information *Update No 109* (June 2015) at 29-34.

11 Framework Convention on Climate Change Conference of the Parties *Report of the Conference of the Parties on its twentieth session, held in Lima from 1 to 14 December 2014 – Addendum Part Two: Action taken by the Conference of the Parties at its twentieth session* FCCC/CP/2014/10/Add.1 (2015) at 7.

12 At 7.

13 At 10.

14 Shree Kumar Maharjan and others “UN Framework Convention on Climate Change (UNFCCC)” in Mikkelsen, above n 4, at 509.

The Subsidiary Body for Scientific and Technological Advice also met to discuss, inter alia, non-carbon benefits in REDD+ but could not reach agreement on them. Land rights are one of the crucial non-carbon benefits for Indigenous peoples.¹⁵

IV. ADOPTION OF NATIONAL LAWS AND REGULATIONS AND OTHER NATIONAL DEVELOPMENTS OF INTERNATIONAL SIGNIFICANCE

A. Waitangi Tribunal affirms Treaty did not cede sovereignty

In its report on stage one of the Wai 1040: Te Paparahi o te Raki inquiry, relating to the Northland region, the Waitangi Tribunal affirmed that the Treaty did not cede Māori sovereignty.¹⁶ However, at this initial stage of the inquiry, the Tribunal did not make findings regarding the contemporary exercise of Crown sovereignty in New Zealand.¹⁷

B. Haka Act offers intellectual property-like protection

Legislation affording some intellectual property-like protection to the *haka* (performance) *Ka Mate* was enacted as a result of Treaty settlement negotiations with Ngāti Toa Rangatira through the Haka Ka Mate Attribution Act 2014.¹⁸

C. Police Commissioner apologises to Tuhoe

The Police Commissioner offered a belated apology to the iwi Ngāi Tuhoe for police actions during the 2007 “terror” raids on Tuhoe country, which were the subject of an allegation letter from the UN Special Rapporteur on the rights of indigenous peoples in 2007.¹⁹ The apology included an acknowledgement of “the impact of subsequent media stigmatisation of Tuhoe as terrorists”.²⁰

15 At 510-511.

16 Waitangi Tribunal *He Whakaputanga me te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry* (online, 2014) at [10.4.4].

17 Carwyn Jones *He Whakaputanga me te Tiriti – The Declaration and the Treaty* (23 November 2014) <<https://ahikaroa.wordpress.com>>.

18 Lynell Tuffery Huria and Laura Carter *The Haka Ka Mate Attribution Act: The right of attribution* (7 May 2014) <<http://www.ajpark.com>>.

19 James Ihaka “Police Commissioner makes landmark apology to Tuhoe” (13 August 2014) <<http://www.nzherald.co.nz>>. See UN Human Rights Council [HRC], *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S. James Anaya Addendum: Summary of cases transmitted to Governments and replies received* A/HRC/9/9/Add.1 (2008) [339]-[357].

20 Ihaka, above n 19.

V. INTERNATIONAL OVERSIGHT OF NEW ZEALAND'S COMPLIANCE WITH INDIGENOUS PEOPLES' RIGHTS

A. UN Human Rights Council Universal Periodic Review

New Zealand had its second review under the HRC's UPR in January.²¹ Around a quarter of the 155 recommendations made expressly concerned Indigenous rights issues, including that New Zealand:

- “[t]ake concrete measures to ensure the implementation and promotion” of the UNDRIP;²²
- “promote measures to find a positive solution to the Māori population’s land claims”;²³
- “[e]nsure that . . . legislation includes a consultation process with indigenous peoples in all actions concerning them”;²⁴
- address discrimination against Māori in the criminal justice system;²⁵
- improve the socio-economic position of Māori;²⁶
- address constitutional issues affecting Māori;²⁷
- address concerns with the Treaty settlement process;²⁸
- “[e]xpeditate the development of a new Māori language strategy”;²⁹
- “[s]trengthen efforts to secure Māori political participation”;³⁰ and
- ratify International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples (ILO 169).³¹

In its response, New Zealand “accepted” 121 of the recommendations, although for many of these New Zealand pointed out that it accepted “the spirit behind the recommendation, but cannot commit to a specific proposed method of implementation”.³² For example, New Zealand technically accepted the recommendation regarding implementation of the UNDRIP but stated that the “UNDRIP is consistent with the Treaty of Waitangi, which

21 HRC *Report of the Working Group on the Universal Periodic Review: New Zealand* A/HRC/26/3 (2014).

22 At [128.89].

23 At [128.87].

24 At [128.88].

25 At [128.81], [128.82], [128.83], [128.84].

26 At [128.36], [128.64], [128.65], [128.66], [128.67], [128.78], [128.80], [128.87], [128.95], [128.143], [128.69], [128.74], [128.79], [128.137].

27 At [128.37], [128.38].

28 At [128.40], [128.41].

29 At [128.85].

30 At [128.90].

31 At [128.13], [128.14], [128.23].

32 HRC *Report of the Working Group on the Universal Periodic Review: New Zealand - Addendum Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review* A/HRC/26/3/Add.1 (2014) at [2].

continues to be the central focus for the Government's efforts to resolve issues affecting New Zealand's indigenous people".³³ Among the recommendations New Zealand rejected were those concerning ratification of ILO 169.³⁴

B. UN Working Group on Arbitrary Detention

The WGAD undertook its first official country mission to New Zealand and, at the conclusion of its visit, identified signs of systemic bias against Māori "at all levels of the criminal justice process". It recommended:³⁵

that a review is undertaken of the degree of inconsistencies and systemic bias against Maori at all the different levels of the criminal justice system, including the possible impact of recent legislative reforms. Incarceration that is the outcome of such bias constitutes arbitrary detention in violation of international law.

WGAD encouraged New Zealand to search "for creative and integrated solutions to the root causes which lead to disproportionate incarceration rates of the Maori population".³⁶ The Government rejected the suggestion of institutional bias against Māori within its justice system.³⁷

C. UN Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

The SPT undertook its first periodic country visit to New Zealand where it also commented critically on the position of Māori in the criminal justice system. Its recommendations included placing greater focus on social reintegration programmes for those in the criminal justice system, "as well as more active involvement with the Māori community"; further developing and replicating programmes aimed at reducing Māori recidivism, including Māori literacy programmes; and considering Māori literacy programmes for Youth Justice Residences.³⁸ New Zealand responded that it was, inter alia, enhancing and expanding its Māori Focus Units to foster reintegration; that its own analyses indicated "that Māori prisoners perform equally well in mainstream prison-based programmes, including literacy"; and that the Māori language was already a feature of the New Zealand Curriculum taught in Youth Justice residences.³⁹

33 At [24].

34 At [5].

35 Working Group on Arbitrary Detention "United Nations Working Group on Arbitrary Detention statement at the conclusion of its visit to New Zealand (24 March - 7 April 2014)" (media statement, 7 April 2014).

36 Above n 35.

37 "Maori offenders not targetted [sic] – minister" Radio New Zealand News (8 April 2014).

38 Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [SPT] *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to New Zealand* CAT/OP/NZL/1 (2014) at [21], [33], [34], [50], [51], [52], [94].

39 SPT *Replies of New Zealand to the recommendations and questions put forward by the Subcommittee on Prevention of Torture in its report on its first periodic visit to New Zealand (CAT/OP/NZL/1)* CAT/OP/NZL/Add.1 (2014) at [59], [60], [116]. See Fleur Adcock "Aotearoa (New Zealand)" in Mikkelsen, above n 4, at 227-228.

D. UN Committee on the Rights of Persons with Disabilities

The CRPD issued recommendations regarding the human rights situation of Māori in the course of considering New Zealand's first periodic report. In its concluding observations, the Committee recommended, inter alia, that "measures be strengthened to enhance the health outcomes of Maori and Pacific persons with disabilities" and "that further steps be taken to increase the employment levels of persons with disabilities", noting the especially low employment levels for Māori and Pacific persons with disabilities.⁴⁰

VI. DISCUSSION OF INTERNATIONAL ISSUES RELATED TO INDIGENOUS PEOPLES IN INTERNATIONAL FORA

A. UN General Assembly Third Committee

In the UN GA's Third Committee New Zealand described the WCIP and its outcome document as "a significant milestone for indigenous peoples" and reiterated its "call for States and the UN system to implement the outcome document".⁴¹

B. UN Human Rights Council

During the HRC's 27th session in September New Zealand "welcomed the identification by the Special Rapporteur [on the rights of Indigenous peoples (SRIP)] of the key challenges still confronting the indigenous peoples around the world, including in New Zealand" and advised that New Zealand "continued to work with the Maori communities to address socio-economic challenges they faced".⁴² The HRC also held a half-day panel discussion on the promotion and protection of the rights of Indigenous peoples in natural disaster risk reduction and prevention and preparedness initiatives.⁴³

C. UN Expert Mechanism on the Rights of Indigenous Peoples

At the Expert Mechanism on the Rights of Indigenous Peoples' (EMRIP) 7th session New Zealand agreed "that over-representation of Maori in the criminal justice system as both victims and offenders is a serious problem" but

40 Committee on the Rights of Persons with Disabilities *Concluding observations on the initial report of New Zealand* CRPD/C/NZL/CO/1 (2014) at [53], [55]. See also [17], [43].

41 Statement by Ambassador Phillip Taula, Deputy Permanent Representative, "UNGA 69: Third Committee, Agenda Items 69 (b) Promotion and protection of human rights" (29 October 2014).

42 UN Office at Geneva *Human Rights Council Holds Panel on Indigenous Peoples and Disaster Risk Reduction Initiatives, Dialogue with Special Rapporteur and Expert Mechanism on Indigenous Rights* (press release, 17 September 2014).

43 Above n 42.

asserted that “significant progress has been made in this area”.⁴⁴ An EMRIP expert seminar on access to justice in the promotion and protection of the rights of Indigenous peoples was held in Auckland in February.⁴⁵

D. Permanent Forum on Indigenous Issues

The 13th session of the Permanent Forum on Indigenous Issues focused on the theme of good governance consistent with the UNDRIP. New Zealand reaffirmed its support for the UNDRIP; asserted several areas of progress in promoting Māori rights; but acknowledged that “more can be done”, pointing to the over-representation of Māori in the criminal justice system and poor socio-economic statistics that were “significant and systemic”.⁴⁶ New Zealand also “welcomed” the outgoing SRIP’s 2010 visit and report on New Zealand.⁴⁷

E. Convention on Biological Diversity Conference of the Parties

The 12th meeting of the COP to the Convention on Biological Diversity (CBD)⁴⁸ noted with appreciation the WCIP outcome document and adopted a Plan of Action on Customary Sustainable Use of Biological Diversity. Notably, after long negotiation, it was also agreed that the term “indigenous peoples and local communities” would be used by the COP going forward, although there were some reservations.⁴⁹ New Zealand was one of 152 countries to provide a national report on the CBD and, as with some other states, it acknowledged Indigenous peoples’ TK and practices in its report.⁵⁰ The Indigenous caucus in the CBD negotiations supported the decisions adopted at COP12 but identified that much work remained to be done.⁵¹ The Nagoya Protocol entered into force on 12 October 2014 after receiving the required 57 ratifications and met for the first time.⁵²

44 Statement by the Representative of New Zealand “Expert Mechanism on the Rights of Indigenous peoples 7th Session: Continuation of the Study on Access to Justice” (8 July 2014).

45 HRC Expert Mechanism on the Rights of Indigenous peoples *Report of the Expert Mechanism on the Rights of Indigenous Peoples on its seventh session, Geneva, 7-11 July 2014* A/HRC/12/7/64 (2014) at [57]-[65].

46 Statement by H E Lieutenant General Hon Sir Jerry Mateparae, Governor-General of New Zealand, “United Nations Permanent Forum on Indigenous Issues Opening Ceremony” (12 May 2014).

47 Statement by Michelle Hippolite, Chief Executive of Te Puni Kōkiri (Ministry of Māori Development) “United Nations Permanent Forum on Indigenous Issues Item 4 (b): Dialogue with the Special Rapporteur on the Rights of Indigenous Peoples” (20 May 2014).

48 Convention on Biological Diversity 1760 UNTS 79 (opened for signature 5 June 1992, entered into force 29 December 1993) [CBD].

49 Conference of the Parties to the Convention on Biological Diversity, *Report of the twelfth meeting of the conference of the parties to the Convention on Biological Diversity* UNEP/CBD/COP/12/29 (2014) at 77, 79-92.

50 See for example CBD, *New Zealand’s Fifth National Report to the United Nations Convention on Biological Diversity – Reporting period: 2009-2013* (2014) at 5; Tatiana Degai “Convention on Biological Diversity” in Mikkelsen, above n 4, at 516.

51 Degai, above n 50, at 515-516.

52 CBD *Report of the first meeting of the conference of the parties to the Convention on Biological Diversity serving as the meeting of the parties to the Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization* UNEP/CBD/NP/COP-MOP/1/10 (2014).

F. World Intellectual Property Office

WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) held its 26th-28th sessions to develop an instrument to protect Indigenous peoples' genetic resources, TK and traditional cultural expressions (TCEs). At the 27th session New Zealand supported:

- a proposal “aimed at amending the rules of the Voluntary Fund in order to make it possible in the future...to allow WIPO to make an *ad hoc* contribution to the fund from its regular budget”.⁵³ New Zealand stated that “[i]t saw indigenous peoples and local communities’ participation as being vital to the work of the Committee”.⁵⁴ The Indigenous Caucus supported the proposal;⁵⁵
- “those who thought that the IGC should look more closely at whether the type of protection should vary depending on the type of TK or TCEs in question”;⁵⁶
- suggestions to synchronise the TK and TCE texts;⁵⁷
- including a provision in the Preamble on TK stating that “nothing in this instrument may be construed as diminishing or extinguishing the rights that indigenous people may have now or may acquire in the future”;⁵⁸ and
- suggestions that the cross-cutting TK/TCE issues related, particularly, to the articles covering subject matter, beneficiaries and scope of protection.⁵⁹

No agreement was reached on entry into final high-level treaty negotiations or a new program of work for the IGC.⁶⁰

G. World Heritage Convention

The World Heritage Committee (WHC) continued to prepare a draft policy for the integration of a sustainable development perspective into the processes of the World Heritage Convention, including in relation to

53 World Intellectual Property Office [WIPO] *Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore Twenty-Seventh Session Geneva, March 24 to April 4, 2014* WIPO/GRTKF/IC/27/10 (2014) [WIPO IGC 27th Session] at [20].

54 At [23]. The Intergovernmental Committee took note of the document setting out the proposal: at [35]. See also WIPO *Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore Twenty-Eighth Session Geneva, July 7 to 9, 2014 Draft Report* WIPO/GRTKF/IC/28/11 PROV. 2 (2014) [WIPO IGC 28th Session] at [31].

55 WIPO IGC 28th Session, above n 54, at [22].

56 WIPO IGC 27th Session, above n 53, at [81].

57 At [187].

58 At [204].

59 At [210].

60 WIPO General Assembly *Forty-Seventh (22nd Ordinary) Session* WO/GA/47/12 (2015) at 4.

“local communities/indigenous peoples”, but with only limited Indigenous participation. The WHC requested a report on options for changes to the listing criteria and evaluation process for mixed cultural/natural World Heritage sites. Several decisions of the WHC made reference to Indigenous peoples’ rights, including regarding the Lake Bogoria National Reserve in Kenya.⁶¹

VII. EVENTS/DEVELOPMENTS CONTRIBUTING TO THE DEVELOPMENT OF CUSTOMARY INTERNATIONAL LAW AND/OR OF PARTICULAR RELEVANCE TO NEW ZEALAND

A. Committee on the Elimination of Racial Discrimination

The Committee on the Elimination of Racial Discrimination’s (CERD) recommendations included that states:

- protect Indigenous peoples’ rights to their lands and natural resources;⁶²
- respect Indigenous peoples’ right to be consulted and to provide their free, prior and informed consent;⁶³
- take measures to combat structural discrimination;⁶⁴
- ensure Indigenous peoples’ participation in decision-making institutions;⁶⁵ and
- take steps to foster the realisation of Indigenous peoples’ rights to culture and language.⁶⁶

61 Stefan Disko “World Heritage Convention” in Mikkelsen, above n 4, at 521-524.

62 Committee on the Elimination of Racial Discrimination [CERD] *Concluding observations on the nineteenth to twenty-first periodic reports of Cameroon* CERD/C/CMR/CO/19-21 (2014) at [16]; CERD *Concluding observations on the combined sixteenth and seventeenth periodic reports of El Salvador* CERD/C/SLV/CO/16-17 (2014) at [17]; CERD *Concluding observations on the combined seventh to ninth periodic reports of Japan* CERD/C/JPN/CO/7-9 (2014) at [20(a)]; CERD *Concluding observations on the eighteenth to twenty-first periodic reports of Peru* CERD/C/PER/CO/18-21 (2014) at [15].

63 CERD *Concluding observations on the combined initial and second to fifth periodic reports of Honduras* CERD/C/HND/CO/1-5 (2014) at [20]; CERD *Concluding observations on the combined sixteenth and seventeenth periodic reports of El Salvador*, above n 62, at [18]; CERD *Concluding observations on the combined seventh to ninth periodic reports of the United States of America* CERD/C/USA/CO/7-9 (2014) at [24(a)].

64 CERD *Concluding observations on the combined initial and second to fifth periodic reports of Honduras*, above n 63, at [7]; CERD *Concluding observations on the combined seventh to ninth periodic reports of Japan* CERD/C/JPN/CO/7-9 (2014) at [20(b)].

65 CERD *Concluding observations on the combined initial and second to fifth periodic reports of Honduras*, above n 63, at [21]; CERD *Concluding observations on the nineteenth to twenty-first periodic reports of Cameroon*, above n 62, at [11]; CERD *Concluding observations on the combined seventh to ninth periodic reports of Japan*, above n 64, at [20(a)].

66 CERD *Concluding observations on the combined sixteenth and seventeenth periodic reports of El Salvador*, above n 62, at [19]; CERD *Concluding observations on the combined seventh to ninth periodic reports of Japan*, above n 64, at [20(c)].

CERD also requested further information on allegations of violations of Indigenous peoples' rights from three states – Guyana, India and Kenya – as part of its Early Warning and Urgent Action Procedure.⁶⁷

B. Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights recommended, *inter alia*, that states:

- guarantee Indigenous peoples' rights to their lands;⁶⁸
- seek the free prior and informed consent of Indigenous peoples to development projects on their lands;⁶⁹
- step up efforts to promote and apply the principles in the UNDRIP;⁷⁰ and
- adopt effective measures to guarantee Indigenous peoples access to education in their languages.⁷¹

C. Committee on the Rights of the Child

The Committee on the Rights of the Child's recommendations included that states:

- ensure the prior informed consent of Indigenous peoples to the exploitation of natural resources in their traditional territories;⁷²

67 Letter from CERD to Guyana (7 March 2014); Letter from CERD to India (7 March 2014); Letter from CERD to Kenya (7 March 2014). For a useful compilation of UN human rights treaty bodies' conclusions and recommendations regarding Indigenous peoples see Fergus Mackay *Indigenous Peoples and United Nations Human Rights Bodies: A Compilation of UN Treaty Body Jurisprudence, Reports of the Special Procedures of the Human Rights Council, and the Advice of the Expert Mechanism on the Rights of Indigenous Peoples Volume VI 2013-2014* (Forest Peoples Programme, 2015).

68 Committee on Economic, Social and Cultural Rights [CESCR] *Concluding observations on the combined third, fourth and fifth periodic reports of El Salvador* E/C.12/SLV/CO/3-5 (2014) at [27]; CESCR *Concluding observations on the initial report of Indonesia* E/C.12/IDN/CO/1 (2014) at [38(b)], [39(b)]; CESCR *Concluding observations on the sixth periodic report of Finland* E/C.12/FIN/CO/6 (2014) at [9(a)]; CESCR *Concluding observations on the third periodic report of Guatemala* E/C.12/GTM/CO/3 (2014) at [6]; CESCR *Concluding observations on the third periodic report of Nepal* E/C.12/NPL/CO/3 (2014) at [9(c)].

69 CESCR *Concluding observations on the combined third, fourth and fifth periodic reports of El Salvador*, above n 68, at [27]; CESCR *Concluding observations on the initial report of Indonesia*, above n 68, at [38(c)]; CESCR *Concluding observations on the sixth periodic report of Finland*, above n 68, at [9(b)]; CESCR *Concluding observations on the third periodic report of Guatemala*, above n 68, at [7]; CESCR *Concluding observations on the third periodic report of Nepal*, above n 68, at [9(d)].

70 CESCR *Concluding observations on the combined third, fourth and fifth periodic reports of El Salvador*, above n 68, at [27].

71 CESCR *Concluding observations on the combined third, fourth and fifth periodic reports of El Salvador*, above n 68, at [26]; CESCR *Concluding observations on the sixth periodic report of Finland*, above n 68, at [29]; CESCR *Concluding observations on the third periodic report of Guatemala*, above n 68, at [26].

72 UN Committee on the Rights of the Child [CRC] *Concluding observations on the combined third and fourth periodic reports of Indonesia* CRC/C/IDN/CO/3-4 (2014) at [70].

- increase the participation of Indigenous communities in the development of health policy and the delivery of services;⁷³ and
- ensure that Indigenous children receive basic education in their native language to the extent possible.⁷⁴

D. Human Rights Committee

The Human Rights Committee recommended, *inter alia*, that states:

- adopt measures to effectively protect Indigenous peoples' sacred areas;⁷⁵
- recognise Indigenous peoples in its Constitution;⁷⁶ and
- guarantee Indigenous peoples' rights to their traditional lands and natural resources.⁷⁷

It also delivered its decision in *Paadar et al v Finland*,⁷⁸ a communication under the first Optional Protocol, regarding the slaughter of reindeer belonging to Sami. A majority (with four members dissenting) did not find violations of the Covenant's minority rights provision. It also found no violation of the non-discrimination provision.

E. Committee on the Elimination of Discrimination against Women

The Committee on the Elimination of Discrimination against Women's recommendations included that states adopt specific measures to increase Indigenous women's representation in public affairs⁷⁹ and education.⁸⁰

73 CRC *Concluding observations on the combined second to fourth periodic reports of the Congo* CRC/C/COG/CO/2-4 (2014) at [59(g)].

74 CRC *Concluding observations on the combined fourth and fifth periodic reports of the Russian Federation* CRC/C/RUS/CO/4-5 (2014) at [64].

75 UN Human Rights Committee [HRCtee] *Concluding observations on the fourth periodic report of the United States of America* CCPR/C/USA/CO/4 (2014) at [25].

76 HRCtee *Concluding observations on the sixth periodic report of Chile* CCPR/C/CHL/CO/6 (2014) at [10].

77 HRCtee *Concluding observations on the sixth periodic report of Japan* CCPR/C/JPN/CO/6 (2014) at [26].

78 *Kalevi Paadar et al v Finland*, Communication No 2102/2011, CCPR/C/110/D/2102/2011 (2014).

79 UN Committee on the Elimination of Discrimination against Women [CEDAW] *Concluding observations on the seventh periodic report of Finland* CEDAW/C/FIN/CO/7 (2014) at [37(b)].

80 CEDAW *Concluding observations on the combined seventh and eighth periodic reports of Peru* CEDAW/C/PER/CO/7-8 (2014) at [30]; CEDAW *Concluding observations on the combined seventh and eighth periodic reports of the Bolivarian Republic of Venezuela* CEDAW/C/VEN/CO/7-8 (2014) at [15(a)].

F. Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment's recommendations included increasing "efforts to address the overrepresentation of indigenous people in prisons, in particular its underlying causes".⁸¹

G. Human Rights Council Universal Periodic Review

During the UPR states recommended, inter alia, that:

- Norway "[e]nsure that the activities of transnational corporations and other business enterprises do not have a negative impact on the enjoyment of rights of indigenous peoples, and other ethnic groups";⁸² and
- Congo "[e]nsure land rights of indigenous communities within protected natural parks".⁸³

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81 Committee against Torture *Concluding observations on the combined fourth and fifth periodic reports of Australia* CAT/C/AUS/CO/4-5 (2014) at [12].

82 HRC *Report of the Working Group on the Universal Periodic Review: Norway* A/HRC/27/3 (2014) at [131.186].

83 HRC *Report of the Working Group on the Universal Periodic Review: Democratic Republic of the Congo* A/HRC/27/5 (2014) at [134.162].

* Ngāti Mutunga and English.