



UN Expert Seminar on Restorative Justice, Indigenous Juridical Systems and Access to Justice for Indigenous women, children and youth and persons with disabilities

*Waipapa Marae
16 Wynyard St
University of Auckland
Auckland, New Zealand*

17-18 February 2014

Objective

The objective of the expert seminar is to support the Expert Mechanism on the Rights of Indigenous Peoples in its drafting of its 2014 study on:

access to justice in the promotion and protection of the rights of indigenous peoples, with a focus on restorative justice and indigenous juridical systems, particularly as they relate to achieving peace and reconciliation, including an examination of access to justice related to indigenous women, children and youth and persons with disabilities (the Study)

as requested by the Human Rights Council in September 2013.¹ It builds on the Expert Mechanism's 2013 study on access to justice (available here: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-50_en.pdf). The Study will be submitted to the Human Rights Council in September 2014 for adoption.

The expert seminar is designed to best enable contributions by participants to the topics addressed in the draft Study, which will be disseminated to participants before the seminar begins. Indeed, it is hoped that the focus of each session will be devoted to suggestions for language, examples/cases and ideas for inclusion in the Study. With that in mind, participants are requested to be familiar with the draft and to be prepared to make contributions to it, also in writing, as well as to participate in conversations about the relevant issues addressed in the draft Study.

Structure of the seminar

The seminar is structured around the central themes of the Study. Indigenous juridical systems is discussed first in the light of its overarching importance to both Indigenous peoples' access to justice in the criminal justice setting (part 2 of the seminar) and to restorative justice (part 3 of the seminar).

¹ Resolution 24/10, available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/24/10.

Day 1: Monday 17 February

9.00-10.00	Powhiri
10.00 - 10.30	Opening of the seminar
10.30-11.30	Indigenous juridical systems <ul style="list-style-type: none"> • International law and jurisprudence • Regional jurisprudence
11.30-11.45	Break
11.45-13.00	Indigenous juridical systems (continued) <ul style="list-style-type: none"> • Possible tensions with international human rights law • National level experiences
13.00-14.00	Lunch
14.00-15.00	Indigenous juridical systems (continued) <ul style="list-style-type: none"> • Possible tensions with international human rights law • National level experiences
15.00-16.15	Access to justice for specific groups – Overarching issues <ul style="list-style-type: none"> • Discrimination in the criminal justice system • Over-representation in incarceration • Links with other human rights issues
16.15-16.30	Break
16.30-17:30	Access to justice for specific groups – Indigenous women <ul style="list-style-type: none"> • Barriers • Remedies

Day 2: Tuesday 18 February

9.00-10.00	Access to justice for specific groups – Indigenous children and youth <ul style="list-style-type: none"> • Barriers • Remedies
10.00-11.00	Access to justice for specific groups – Indigenous persons with disabilities <ul style="list-style-type: none"> • Barriers • Remedies
11.00-11.15	Break
11.15-12.30	Restorative justice <ul style="list-style-type: none"> • What is restorative justice? • Restorative justice and self-determination Relationship between restorative justice and indigenous juridical systems (common ground, differences, experiences)
12.30-14.00	Lunch

14.00-16.00	Restorative justice <ul style="list-style-type: none">• Restorative justice for peace and reconciliation• Restorative justice and lands, territories and resources
16.00-16.15	Break
16.15-17.30	Wrap up and conclusions
17.30-18.00	Karakia whakawatea

Participants

The Expert Mechanism on the Rights of Indigenous Peoples, the Office of the High Commissioner for Human Rights and members of the Faculty of Law, University of Auckland have worked together to enable participation in the expert seminar by experts from many of the Indigenous regions of the world. Given the location of the seminar, there are also likely to be many participants from the Pacific and Aotearoa/New Zealand especially.

The expert seminar is also open to those interested in attending subject only to the capacity of the Waipapa marae.

However, it is the Expert Mechanism's hope that the seminar will be sufficiently small and intimate to enable participants with expertise in the areas covered by the Study to take the lead in addressing the topics identified in the draft Study. Particular participants will be asked to provide their contributions first before the floor is opened to others for their contributions. Each session will be chaired by a person familiar with the topic.

Guidance for each session

Each session will be run as a roundtable. The Chair of each session has been requested to briefly introduce the principal participants who will be given an opportunity to speak for around 5 minutes on the topic. Participants are asked to focus on their proposals for inclusions/amendments to the draft Study. The floor will then be open to all the participants to make a contribution.

Guidance to Chairs

As detailed above, each session should be run as a roundtable discussion focused on proposed additions and amendments to the Expert Mechanism's draft Study. To that end, the session could be run as follows:

1. Introduction to the topic
2. Brief introduction of the "named" speakers
3. Each speaker has 5 minutes to contribute to the draft Study
4. The floor can be opened to other participants to contribute, including from the audience (though it might be appropriate to select participants to speak first?)
5. A brief summation of the comments made vis a vis the draft Study

The marae

The expert seminar is taking place at Waipapa marae, University of Auckland, 16

Wynyard St, Auckland. A campus map is available here:
<http://web.env.auckland.ac.nz/public/maps/city.pdf>

The main proceedings will take place in the whareniui. Participants are requested to observe marae protocol throughout the proceedings, including during the official welcoming, the powhiri. This includes, for example, not wearing shoes in the whareniui.

The powhiri

Participants will be welcomed onto the marae at 9 am sharp on Monday 17 February by members of Te Rakau Ture (the Maori law students association). Marae protocol will be followed.

Please note that the manuhiri (guests/seminar participants) will need to wait at the gates of the marae to be welcomed on. Once the karanga (call) begins, manuhiri will be expected to walk slowly onto the marae, with the women at the front. Once in the whareniui, the women will be expected to sit behind the men.

Catering

Morning tea/Afternoon tea and lunch:

Catering will be provided for 30 people for morning tea, afternoon tea and lunch, which will be set up in the wharekai (dining room) next to the whareniui. If the number of people present, taking into account the audience, exceeds 30, the audience will be asked to give priority to the identified speakers and chairs as above.

Drinks reception

A drinks reception will be held in the evening of the 18th of February in the University of Auckland Old Government Building, on campus, close to the marae. Please see the above campus map for directions.

Full Agenda

Day 1: 17 February 2014

9.00 – 10.00	Powhiri
10.00 – 10.30	Opening of the seminar: <ul style="list-style-type: none">• Jannie Lasimbang (member of the Expert Mechanism on the Rights of Indigenous Peoples)• Juan Nunez (OHCHR): introduction of agenda and participants• Claire Charters (Faculty of Law, University of Auckland): logistical information
10.30-11.30	Indigenous juridical systems <ul style="list-style-type: none">• International law and jurisprudence• Regional jurisprudence

	<p>Chair:</p> <ul style="list-style-type: none"> • Andrew Erueti (Te Piringa, University of Waikato) <p>Participants:</p> <ul style="list-style-type: none"> • Megan Davis (Faculty of Law, University of New South Wales and member UN Permanent Forum on Indigenous Issues) • Moana Jackson (Ngati Kahungunu) • Celeste McKay (Technical analyst to Chairperson of the Expert Mechanism) • Juan Nunez (Indigenous Peoples and Minorities Section, UN Office of the High Commissioner for Human Rights) • Rachel Sieder (CIESAS, Mexico)
11.30-11.45	Break
11.45-13.00	<p>Indigenous juridical systems (continued)</p> <ul style="list-style-type: none"> • Possible tensions with international human rights law • National level experiences <p>Chair:</p> <ul style="list-style-type: none"> • Nin Tomas (Faculty of Law, University of Auckland) <p>Participants</p> <ul style="list-style-type: none"> • Carwyn Jones (Faculty of Law, Victoria University of Wellington) • Jannie Lasimbang (UN Expert Mechanism on the Rights of Indigenous Peoples) • Ipul Powaseu (Pacific Adventist University, PNG) • Alexey Tsykarev (Member, Expert Mechanism on the Rights of Indigenous Peoples)
13.00-14.00	Lunch
14.00-15.00	<p>Indigenous juridical systems (continued)</p> <ul style="list-style-type: none"> • Possible tensions with international human rights law • National level experiences <p>As above</p>
15.00-16.15	<p>Access to justice for specific groups – Overarching issues</p> <ul style="list-style-type: none"> • Discrimination in the criminal justice system • Over-representation in incarceration • Links with other human rights issues <p>Chair:</p> <ul style="list-style-type: none"> • Bill Hamilton (New Zealand Human Rights Commission) <p>Participants:</p> <ul style="list-style-type: none"> • Edward (Taihakurei) Durie (Co-chair, New Zealand Maori Council) • Moana Jackson (Ngati Kahungunu)

	<ul style="list-style-type: none"> • Jannie Lasimbang (Member, Expert Mechanism on the Rights of Indigenous Peoples)
16.15-16.30	Break
16.30-17:30	<p>Access to justice for specific groups – Indigenous women</p> <ul style="list-style-type: none"> • Barriers • Remedies <p>Chair:</p> <ul style="list-style-type: none"> • Valmaine Toki (Te Piringa, University of Waikato) <p>Participants:</p> <ul style="list-style-type: none"> • Megan Davis (Faculty of Law, University of New South Wales and member UN Permanent Forum on Indigenous Issues) • Hannah McGlade (Noongar human rights lawyer) • Celeste McKay (Technical analyst to Chairperson of the Expert Mechanism) • Ipul Powaseu (Pacific Adventist University, PNG)

Day 2: 18 February 2014

9.00-10.00	<p>Access to justice for specific groups – Indigenous children and youth</p> <ul style="list-style-type: none"> • Barriers • Remedies <p>Chair:</p> <ul style="list-style-type: none"> • Claire Charters (Faculty of Law, University of Auckland) <p>Participants:</p> <ul style="list-style-type: none"> • Hannah McGlade (Noongar human rights lawyer) • Danny Titus (Member, Expert Mechanism on the Rights of Indigenous Peoples) • Alexey Tsykarey (Member, Expert Mechanism on the Rights of Indigenous Peoples)
10.00-11.00	<p>Access to justice for specific groups – Indigenous persons with disabilities</p> <ul style="list-style-type: none"> • Barriers • Remedies <p>Chair:</p> <ul style="list-style-type: none"> • Bill Hamilton (New Zealand Human Rights Commission) <p>Participants:</p> <ul style="list-style-type: none"> • Huhana Hickey (Research fellow at AUT at Taupua Waiora Maori health research unit)

	<ul style="list-style-type: none"> • Ipul Powaseu (Pacific Adventist University, PNG)
11.00 – 11.15	Break
11.15-12.30	<p>Restorative justice</p> <ul style="list-style-type: none"> • What is restorative justice? • Restorative justice and self-determination • Relationship between restorative justice and indigenous juridical systems (common ground, differences, experiences) <p>Chair:</p> <ul style="list-style-type: none"> • Brad Morse (Te Piringa, University of Waikato) <p>Participants:</p> <ul style="list-style-type: none"> • Jennifer Bull (Faculty of Law, University of Auckland) • Andrew Erueti (Te Piringa, University of Waikato) • Rachel Sieder (CIESAS, Mexico) • Alexey Tsykarev (Member, Expert Mechanism on the Rights of Indigenous Peoples)
12.30-14.00	Lunch
14.00-16.00	<p>Restorative justice</p> <ul style="list-style-type: none"> • Restorative justice for peace and reconciliation • Restorative justice in post-conflict situations • Restorative justice and lands, territories and resources <p>Chairs:</p> <ul style="list-style-type: none"> • Dayle Takitimu • Tracey Whare <p>Participants:</p> <ul style="list-style-type: none"> • Moana Jackson (Ngati Kahungunu) • Carwyn Jones (Faculty of Law, Victoria University of Wellington) • Robert Joseph (Te Piringa, University of Waikato) • David MacDonald (University of Guelph) • Danny Titus (Member, Expert Mechanism on the Rights of Indigenous Peoples)
16.00-16.15	Break
16.15-17.30	<p>Wrap up and conclusions</p> <ul style="list-style-type: none"> • Jannie Lasimbang and Danny Titus (Members, Expert Mechanism on the Rights of Indigenous Peoples) • Juan Nunez (OHCHR)
17.30-17.45	Karakia whakawatea

Participants' biographies

Natalie Coates is of Ngāti Awa, Ngati Hine, Tūwharetoa, Te Arawa and Tūhoe descent and is a lecturer at the Faculty of Law, the University of Auckland. She teaches courses in Law and Society, Jurisprudence and the Treaty of Waitangi. Her research interests include Māori legal issues, indigenous peoples' rights and legal pluralism.

Dr Claire Charters is a senior lecturer at the University of Auckland Faculty of Law. Claire writes and teaches in Indigenous peoples' rights under international and comparative constitutional law. Prior to her appointment at the University of Auckland, Claire was the secretary to the UN Expert Mechanism on the Rights of Indigenous Peoples within the UN's Office of the High Commissioner for Human Rights.

Professor Megan Davis is a Commissioner of the NSW Land and Environment Court and an expert member of the United Nations Permanent Forum on Indigenous Peoples. She was the Rapporteur of the United Nations International expert group meeting on combating violence against indigenous women and girls.

Sir Edward Taihakurei Durie is Co-Chairman of the New Zealand Maori Council and is regarded as a leading legal expert on the Treaty of Waitangi. He is of Rangitāne, Ngāti Kauwhata and Ngāti Raukawa descent and was the first Māori appointed as a Justice of the High Court of New Zealand. Durie is a former Chief Judge of the Māori Land Court and Chairman of the Waitangi Tribunal.

Andrew Erueti is a senior lecturer at Te Piringa—Faculty of Law at the University of Waikato. Andrew's current research and writing interests include international human rights and indigenous peoples and minorities, legal and political theory in relation to rights of marginalised peoples. Previously, Andrew was Amnesty International's (UK) policy and law specialist on projects related to promoting the human rights of Indigenous peoples.

Moana Jackson Ngāti Kahungunu, Rongomaiwahine and Ngāti Porou. Director of Ngā Kaiwhakamārama i ngā Ture and Lecturer at Te Wānanga o Raukawa, Ōtaki. Moana graduated in Law from Victoria University of Wellington and was Director of the Māori Law Commission and was elected Chair of the Indigenous Peoples' Caucus of the United Nations working Group on the Rights of Indigenous Peoples. He has written extensively, and is a highly-regarded expert, on restorative justice and Indigenous peoples' rights.

Carwyn Jones Carwyn is of Ngāti Kahungunu and Te Aitanga-a-Māhaki descent. He is a Senior Lecturer in the Faculty of Law at Victoria University of Wellington. His primary research interests relate to the Treaty of Waitangi and indigenous legal traditions. Before joining the faculty in 2006, Carwyn worked in a number of different roles at the Waitangi Tribunal, Māori Land Court, and the Office of Treaty Settlements. In 2012 he participated in the UN Indigenous Fellowship programme and in 2013 he completed a PhD at the University of Victoria, British Columbia. Carwyn is co-editor of the Māori Law Review and maintains a blog, Ahi-kā-roa, on legal issues affecting Māori and other indigenous peoples.

Dr Robert Joseph has tribal affiliations to Tainui, Tūwharetoa, Kahungunu and Ngāi Tahu. He is a Barrister and Solicitor and graduated with a PhD in law in 2006. Dr Joseph is director of Te Mata Hautū Taketake--the Centre for Māori and Indigenous Governance at the University of Waikato and chair of the Government and private sector committee investigating better Maori Governance options for Maori collectives. Dr Joseph's research interests include Māori and Indigenous Peoples' governance in settler nation-states, Indigenous Peoples' internal self-determination rights and responsibilities, Treaty of Waitangi settlement processes and post-settlement development; and the importance of remembering the New Zealand Wars in public and private discourse.

Te Huia Bill Hamilton is of Ngati Kahungunu, Ngati Rauru, Ngati Raukawa and Ruapani descent. He has three children and seven mokopuna. He has been a teacher, unionist, senior public servant and currently works with the Human Rights Commission as a Kaiwhakarite. Recently the Commission has produced resources that help explain the human rights dimensions of the Treaty of Waitangi especially the links between the Treaty and the UN Declaration on the Rights of Indigenous Peoples.

Dr Huhana Hickey is a Research Fellow at Auckland University of Technology. She is a scholar of disabilities research and legal theory and has a long-standing interest in the human rights of people from marginal backgrounds and the consequences of discrimination and social oppression. Previously, Huhana has been a solicitor at Auckland Disability Law.

Ms Jannie Lasimbang is a Kadazan from Sabah, Malaysia. She has been a member of the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) established under the UN Human Rights Council for six years (2008 – 2014). Jannie was a Commissioner with the Malaysian Human Rights Commission of Malaysia from 2010 - 2013, where she headed a committee to conduct National Inquiry into the Land Rights of Indigenous Peoples. She now sits in a government task force to look into the implementation of the recommendations from the National Inquiry. Jannie currently works as the Secretariat Director of the Jaringan Orang Asal SeMalaysia (JOAS) or Indigenous Peoples Network of Malaysia but has previously held the position of Secretary General of the Asia Indigenous Peoples Pact (2000 – 2008) and trainer and programme coordinator for the Partners of Community Organisations, Sabah (PACOS Trust) from 1984 - 2000.

David B MacDonald is professor of political science at the University of Guelph, Canada. He has written three books related to issues of genocide, collective identity, and the politics of memory, as well as numerous book chapters and articles on similar themes. He has also co-edited three books, and recently co-authored a political science textbook. His books include *Thinking History, Fighting Evil* (Lexington/Rowman & Littlefield), and *Identity Politics in the Age of Genocide* (Routledge). Funded by a Social Sciences and Humanities Research Council of Canada grant, Professor McDonald is comparing models of indigenous-settler relations and debates about multiculturalism in Canada and New Zealand during his sabbatical. Before moving to Guelph, he was a faculty member at the University of Otago and the Graduate School of Management Paris. He has a PhD in international relations from the London School of Economics.

Hannah McGlade is a Noongar human rights lawyer and has written and published on many aspects of Aboriginal legal issues including the book “Our Greatest Challenge: Aboriginal Children and Human Rights” published in 2012.

Céleste McKay is Métis from Manitoba, with a background in social work and law, including an LL.M. degree from the University of Ottawa, which focused on the international right to health of indigenous women in Canada. She has been involved with International Indigenous Women’s Forum (North America) (FIMI) for numerous years as a special advisor (volunteer) and is an Academic Advisory Council Member of the Global Leadership School of Indigenous Women, housed at Columbia University. Céleste works in the areas of human rights, policy, research and advocacy work, both nationally and internationally, primarily on behalf of Indigenous peoples’ organizations. Currently, she is working part-time for the National Aboriginal Initiative of the Canadian Human Rights Commission. She also works as a Technical Analyst to International Chief Wilton Littlechild, Expert Member of the UN Expert Mechanism on the Rights of Indigenous Peoples. Céleste’s greatest source of joy is her son, Evan Raoul Chartrand.

Professor Bradford W. Morse is the Dean and Professor of Law at Te Piringa--Faculty of Law at the University of Waikato and has previously served as the Vice-Dean and Director of Graduate Studies at the University of Ottawa. He has taught a wide variety of courses including Canadian and comparative indigenous law issues and has served as legal advisor to many First Nations in Canada in relation to a range of constitutional, land claim, governance, economic and treaty issues. He has also been a consultant to various royal commissions and, government departments and indigenous peoples’ organisations in Canada, Australia and New Zealand.

Juan Fernando Núñez joined the Office of the United Nations High Commissioner for Human Rights in April 2010. He is currently the secretary to the Human Rights Council’s Expert Mechanism on the Rights of Indigenous Peoples. He has been working within the UN system since 2004, with previous experience including posts at the Secretariat of the UN Permanent Forum on Indigenous Issues and UNICEF’s Regional office for Latin America and the Caribbean. Juan holds an MSc in Development Management from the London School of Economics.

Ms Ipul Powaseu is the Dean of Women at the Pacific Adventist University. She graduated with a Bachelor of Science degree from UPNG in 1985 and a Masters in Business from Queensland University of Technology in Australia in 1995. She currently holds the positions of co-chairperson of the Pacific Disability Forum (a regional disability organisation in the Pacific) as well as the co-chairperson for the PNG Assembly of Disabled persons in PNG. She has been instrumental in developing a structure of disabled peoples’ organisations in the 20 provinces of PNG as well as advocating for the establishment of a Women with Disability Network across the 20 provinces of PNG and strong advocate for the promotion and protection of the rights of people with disabilities in her country as well as in the Pacific region.

Dr Rachel Sieder is Senior Research Professor at the Center for Research and Graduate Studies in Social Anthropology (CIESAS) in Mexico City and associate senior researcher at the Chr. Michelsen Institute in Bergen, Norway. She has an MA in Latin American Studies and a PhD in Politics from the University of London. Her research interests include human rights, indigenous rights, social movements, indigenous law, legal

anthropology, the state and violence. She currently heads a collective research project on “Indigenous Women in Latin America: Access to Justice and Security.”

Dayle Takitimu is a Barrister and Solicitor of the High Court who has practiced in Māori, Indigenous rights, and environmental law for over 12 years. She holds a law degree from Victoria University and is a graduate of the United Nations World Intellectual Property Academy in Geneva. Previously, Dayle has presented before the UN Treaty Expert Seminar hosted by the Cree Nation and has represented iwi interests before the UN Working Group for Indigenous Peoples and the Committee for the Elimination of Racial Discrimination.

Dr Danfred (Danny) Titus is a member of the Expert Mechanism on the Rights of Indigenous Peoples and is a part-time Commissioner at the South African Human Rights Commission. Dr Titus obtained a Doctor of Laws (LLD) from the University of Lieden in the Netherlands. Dr Titus is currently the Executive Director of Culture at ATKV (Afrikaans Language and Cultural Society).

Valmaine Toki is a legal academic at Te Piringa—Faculty of Law at Waikato University and a member of the United Nations Permanent Forum on Indigenous Issues.

Dr Nin Tomas is a member of the Tai Tokerau confederation of iwi and an Associate Professor of Law at the University of Auckland. An area of focus for her teaching and research is the development of a modern system of law based on customary concepts and principles derived from a uniquely Māori worldview.

Mr Alexey Tsykarev is a member of the United Nations Expert Mechanism on the Rights of Indigenous Peoples and heads the International Youth Organisation of Finno-Ugric Peoples which includes public organisations from Russia, Finland, Hungary and Estonia. Mr Tsykarev has participated in a number of sessions of the United Nations Permanent Forum on Indigenous Issues. His interests include indigenous international affairs, indigenous rights, youth policies, media and the environment.

Tracey Castro Whare Tracey is the rapporteur and secretariat for the indigenous global coordinating group (GCG), the working group responsible for organising the indigenous preparatory activity for the United Nations World Conference on Indigenous Peoples to be held in September 2014. She is also a trustee of the Aotearoa Indigenous Rights Charitable Trust, a non-profit organisation committed to promoting informed debate and action to protect the rights of indigenous peoples within Aotearoa/New Zealand and around the world.