

STATEMENT OF TE WHANAU A APANUI
INDIGENOUS PEOPLES OF THE EAST CAPE – AOTEAROA / NEW ZEALAND

Te Whanau a Apanui are an indigenous tribal nation; whose traditional tribal territory is located on the East Coast of the North Island of New Zealand. The tribal population is approximately 11,000 people. This statement is made for and on behalf of the entire tribal group.

Support for the Statement of the Maori Caucus

Te Whanau a Apanui support the statement of the Maori Caucus in relation to the NZ Governments treatment of transnational corporations at the expense of, and to the detriment of, indigenous peoples. Our first hand experience of the NZ Governments policies to promote reckless economic development without regard to indigenous rights has seen the future survival of our peoples put in jeopardy, and the environmental integrity of our traditional lands and seas put at risk. We support wholeheartedly the statements of the Maori Caucus in relation to New Zealands' continued advancement of policies based on the flawed Doctrine of Discovery. We know firsthand the implications of these policies; based upon the erroneous legal fictions the NZ Government has entrenched in law to support its illegal colonisation of the many indigenous peoples in New Zealand, on our people. These assimilation and marginalisation policies continue to threaten our survival as a distinct peoples; and indeed threaten our continued presence and participation within the global family of nations.

Breach of Treaty of Waitangi and International Obligations

The New Zealand Government continue to act dishonourably towards the people of Te Whanau a Apanui. In breach of the tribal rights and interests protected by the Treaty of Waitangi, and in direct breach of the multiple provisions of the Declaration of the Rights of Indigenous Peoples; a summary table is attached at the conclusion of this statement.

Extractive Industries Permitted (and Encouraged) by NZ Government over Indigenous Rights

On 1 June 2010 the NZ Government – without consultation or the free, prior and informed consent of Te Whanau a Apanui – issued an exploration permit for oil and gas to Petrobras, a Brazilian Government owned oil company for the Raukumara Basin. This is a marine area within the Te Whanau a Apanui tribal territory. It had been recognised (through negotiations that proceeded the granting of the permit for six years) by the NZ Government as part of the tribal estate in which Te Whanau a Apanui have customary authority and customary title. The NZ Government unilaterally gave the permit, and then apologised to Te Whanau a Apanui, and its neighbouring tribe, Ngati Porou for lack of consultation. Despite the apology the NZ Government refused to revoke the permit. Since 1 June 2010 Te Whanau a Apanui has objected to the permit in every domestic and international forum available to it. The tribe object because deep sea oil exploration; from surveying through to drilling, compromises the environmental integrity of the tribal territory. The environmental risk poses a risk to the survival of the indigenous people who depend on the lands, seas and natural resources to sustain themselves, and future generations. Te Whanau a Apanui oppose the deep sea oil drilling because it threatens their survival and their way of life. The NZ Government refused to enter dialogue to correct the situation, and Te Whanau a Apanui have been forced to engage in physical defence of their territory as a result of the NZ Government denying any political avenues to constructively resolve the matter.

In addition, and adding to the abuse of indigenous and Treaty rights, the NZ Government has also commenced processes to award land-based permits for oil, gas and other mineral extraction within the Te Whanau a Apanui territory. Again this is without consultation, or the free, prior and informed consent of the tribe. In fact it is in the face of very public and very direct opposition by the tribe, which is known to the NZ Government, but not respected or acknowledged. The NZ Government have also issued petroleum block offers for other areas within numerous tribal territories in New Zealand; all without the consent of the indigenous peoples.

The NZ Government asserts the right to do this based on the Crown Minerals Act; a legislative confiscation that assumes Crown ownership of specified minerals. The Crown assert these minerals form part of the 'Crown mineral estate' following a Royal Proclamation made decades before New Zealand was ever occupied by British settlers. They imported the rhetoric underlying this Royal Proclamation to form the basis of the Petroleum Act, and later the Crown Minerals Act – both without any indigenous consent.

STATEMENT OF TE WHANAU A APANUI
INDIGENOUS PEOPLES OF THE EAST CAPE – AOTEAROA / NEW ZEALAND

Use of Military Force Against Te Whanau a Apanui by NZ Government

On the 12 April 2011, and for two successive weeks thereafter, the NZ Government utilised three Navy warships, an Air Force Orion plane and multiple police vehicles and personnel to quash Te Whanau a Apanui protection of its traditional tribal territory, and its assertion of customary rights to fish within its tribal waters. The tribe was asserting its right to protect its traditional marine territory, and engage in customary fishing practices in waters the tribe has protected and fished for many generations. At the time the Orient Explorer, a survey vessel under contract to Petrobras, a Brazilian Government owned oil company, was undertaking a 2D seismic survey approximately 2 km away, without the free, prior and informed consent of the tribe. The tribe informed the vessel they were not welcome in Te Whanau a Apanui waters, and they were asked to leave immediately. The NZ Government then used military presence to bully Te Whanau a Apanui, and to remove a tribal fishing boat from its own territory. The NZ Government actions meant that in NZ indigenous / customary rights must yield to big business and the corporate and financial interests – otherwise the Government will utilise the military against indigenous peoples, or to gain access to indigenous territories and resources.

Prosecution of Tribal Members protecting the territorial integrity of Te Whanau a Apanui

The skipper of the Te Whanau a Apanui tribal fishing boat has been charged by the NZ Government, and following a series of Government delays through the court process, is forcibly undergoing prosecution for asserting his inherent indigenous rights, and in the interim is denied, by the NZ Government, the right to sustain himself and his family through customary fishing.

Te Whanau A Apanui Continued Commitment to Protecting and Promoting Indigenous Rights

Te Whanau a Apanui will continue to assert our inherent right to self determination; and steadfastly promote the rights articulated in the Declaration of the Rights of Indigenous Peoples. We remain concerned that the NZ Government continues to pay lip-service to this landmark human rights document, and are actively engaged in activities at a domestic and international level that undermine those rights every day. The NZ Government are well versed in international law and politics, and have become masterful in presenting falsehoods and fictions about the treatment of indigenous peoples in New Zealand to the United Nations and the world stage. They quote the historic Treaty settlements process as a advancement of indigenous rights; when it is, under a very thin veneer, merely an extinguishment process. They quote racial harmony within New Zealand, but where it occurs in New Zealand it occurs despite the NZ Government actions, not because of it. It quotes ‘special measures’ when these are little more than assimilation policies dressed up for international favour. In reality, in Te Whanau a Apanui’s reality, the NZ Government continues to treat indigenous rights as non-existent, continues to assume for itself the sole right to determine the nature and extent to Treaty rights, continues to marginalise and threaten the survival of indigenous peoples throughout New Zealand, and when indigenous resistance to their policies and practices occurs the NZ Government uses the military, the police and other illegal methods of coercion to suppress indigenous rights. We call on the Permanent Forum to support Te Whanau a Apanui, and all indigenous Maori groups within New Zealand, in their struggle to assert their inherent right to self-determination, and their right to freely determine their economic, social, cultural and spiritual wellbeing and development. We call also on the Brazilian Government to abandon and surrender the permit for oil and gas exploration in the Raukumara Basin; to continue to pursue the permit is to aid NZ in their dishonourable breach of the Treaty of Waitangi, and the Declaration of the Rights of Indigenous Peoples.

STATEMENT OF TE WHANAU A APANUI
INDIGENOUS PEOPLES OF THE EAST CAPE – AOTEAROA / NEW ZEALAND

Te Whanau a Apanui v NZ Government

Under the Declaration of the Rights of Indigenous Peoples (2007, endorsed by NZ Government 2010)ⁱ

Raukumara Basin Exploration Permit to Petrobras Case Study

<p><i>Article 3</i> Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.</p>	<p><i>NZ Government denies indigenous right to self determination. Te Whanau a Apanui denied ability to freely determine economic, social and cultural development because NZ Government engages in, and permits activities that potentially compromise the survival of Te Whanau a Apanui, and threaten the environmental sanctity of the tribal territory, and are completely inconsistent with Te Whanau a Apanui tribal law. NZ Government continues to rely on legal fictions to support its colonial regime – particularly the Crown Minerals Act which assumes, without the consent of the indigenous owners / occupiers, exclusive rights to specified minerals. It is on the basis of this Act that the Government assume to unilaterally grant permits for exploration and exploitation of what they now term ‘the Crown Minerals Estate’. The NZ Government have no legitimate right to this estate, but instead quote a Royal Proclamation made in England decades before the first British subject ever set foot in New Zealand, as the basis for assuming Crown ownership and control of minerals.</i></p>
<p><i>Article 5</i> Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.</p>	<p><i>The NZ Government interferes with Te Whanau a Apanui maintenance of political, legal, economic, social and cultural institutions by denying their existence and promoting a ‘one-sovereignty’ model as the only constitutional model in New Zealand. That this is not supported by historical fact is merely inconvenient to the NZ Government, but does not detract from their denial of tribal law or tribal governmental institutions.</i></p>
<p><i>Article 7</i> 1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. 2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.</p>	<p><i>NZ Govt has used the military – Navy, Air Force and Police – to threaten and detain Te Whanau a Apanui tribal members who oppose their policies.</i></p>
<p><i>Article 8</i> 1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.</p>	<p><i>The NZ Government has repeatedly refused to revoke the permit given to Petrobras, a Brazilian Government owned company; subjecting Te Whanau a Apanui to the destruction of, or risk of destruction of, tribal culture. Resistance has been met with a mixture of denial by the Government (where they marginalise the opposition as uninformed emotion), or Government ordered military action against the tribe – requiring the tribe to forcibly assimilate.</i></p>
<p><i>Article 10</i> Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.</p>	<p><i>NZ Government have used the Navy and Police to forcibly remove at least one tribal member, Elvis Teddy, from the tribal territory. They have used the Navy and Police to escort, under duress, tribal leader Rikirangi Gage, and tribal elder, Hone Wharepapa, from the tribal territory.</i></p>
<p><i>Article 18</i> Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision making institutions.</p>	<p><i>Te Whanau a Apanui were denied participation in decision making regarding the granting of the Raukumara Basin Exploration Permit to Petrobras, a Brazilian Government owned oil company. The NZ Government have acknowledged this, but arrogantly refuse to rectify it. Te Whanau a Apanui have been subjected to interference by the NZ Government, or its agents, with representation according to tribal process. Instead the NZ Government, and its agents, have</i></p>

STATEMENT OF TE WHANAU A APANUI
INDIGENOUS PEOPLES OF THE EAST CAPE – AOTEAROA / NEW ZEALAND

	<i>specifically sought to undermine the representation of Te Whanau a Apanui by its chosen representatives by insisting that the tribe adopt decision making institutions proscribed and approved by the Government. Te Whanau a Apanui has resisted this, and will continue to do so – but the NZ Government, and their agents, continue to attack tribal government and engage in personality attacks on chosen representatives in an effort to undermine their leadership (whilst at the same time strangely trying to deny tribal government exists, or is ‘allowed’ to exist).</i>
<p><i>Article 25</i></p> <p>Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.</p>	<i>Deep sea oil and gas exploration in the Raukumara Basin, by Petrobras, a Brazilian Government owned oil company, threatens the spiritual relationship Te Whanau a Apanui have with their traditional lands, territories, waters and coastal seas. It is totally inconsistent with the Te Whanau a Apanui worldview to unsustainably exploit natural resources to feed human greed; instead tribal law dictates that the tribe live in harmony with the environment.</i>
<p><i>Article 26</i></p> <p>1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.</p> <p>2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.</p> <p>3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.</p>	<i>NZ Government assume the right to Te Whanau a Apanui traditional territory and resources – and make Te Whanau a Apanui tenure or title subject to Crown tenure – which is defined by, regulated by, administered by and unilaterally controlled by, the Crown. Te Whanau a Apanui reject the Crown right to do this; and reject the right of the Crown to impose foreign land tenure and resource management regimes on the tribe without their free, prior and informed consent.</i>
<p><i>Article 29</i></p> <p>1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.</p> <p>2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.</p> <p>3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.</p>	<i>Deep sea oil and gas exploration in the Raukumara Basin, by Petrobras, a Brazilian Government owned oil company, threatens the spiritual relationship Te Whanau a Apanui have with their traditional lands, territories, waters and coastal seas. It is totally inconsistent with the Te Whanau a Apanui worldview to unsustainably exploit natural resources to feed human greed; instead tribal law dictates that the tribe live in harmony with the environment.</i> <i>Far from taking effective measures to ensure no storage or disposal of hazardous materials in the Te Whanau a Apanui territory the Crown is actively permitting Petrobras, a Brazilian Government owned oil company, and other corporations, to engage in activities that will import and generate hazardous materials – ie the chemicals used in hydraulic fracturing (fracking) – into the Te Whanau a Apanui territory.</i>
<p><i>Article 30</i></p> <p>1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.</p> <p>2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.</p>	<i>On the 12 April 2011, and for two successive weeks thereafter, the NZ Government utilised three Navy warships, an Air Force Orion plane and multiple police vehicles and personnel to quash Te Whanau a Apanui protection of its traditional tribal territory, and its assertion of customary rights to fish within its tribal waters. The tribe was asserting its right to protect its traditional marine territory, and engage in customary fishing practices in waters the tribe has protected and fished for many generations. At the time the Orient Explorer, a survey vessel under contract to Petrobras, a Brazilian Government owned oil company, was undertaking a 2D seismic survey approximately 2 km away, without the free, prior and informed consent of the tribe. The tribe informed the vessel they were not welcome in Te Whanau a Apanui waters, and they were asked to leave immediately. The NZ Government then used military presence to bully Te Whanau a Apanui, and to remove a tribal fishing boat from its own territory. The NZ Government actions meant that in NZ indigenous / customary rights must yield to big business and the corporate and financial interests – otherwise the Government will utilise the military against indigenous peoples, or to gain access to indigenous</i>

STATEMENT OF TE WHANAU A APANUI
INDIGENOUS PEOPLES OF THE EAST CAPE – AOTEAROA / NEW ZEALAND

	<p><i>territories and resources.</i></p> <p><i>In addition the NZ Government currently has military troops (Army) “training” in the Raukumara forest area within the Te Whanau a Apanui territory, immediately proximate to Te Whanau a Apanui settlements. Lest the tribe forget the military might and potential of the Government.</i></p>
<p><i>Article 32</i></p> <p>1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.</p> <p>2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.</p> <p>3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.</p>	<p><i>At no time has the NZ Government sought or respected the priorities and strategies for development determined by Te Whanau a Apanui. The tribe is immensely concerned with the impacts of climate change, and is determined to develop strategies that responsibly restore environmental stewardship and sustainability. Te Whanau a Apanui is interested in advancing green technology that respects the environment, and rejects the NZ Government approach to recklessly pursue fossil fuel extraction when the rest of the world is actively moving away from this dangerous practice.</i></p> <p><i>No free prior and informed consent from Te Whanau a Apanui was ever sought regarding “the approval of any project affecting their lands or territories” – particularly in connection with the exploitation of mineral, water or other resources – in regards to the Raukumara Basin this permit was issued without Te Whanau a Apanui knowledge, let alone free, prior and informed consent. Te Whanau a Apanui found out about the granting of the permit on the national news broadcast along with the rest of New Zealand, a full 6 hours AFTER it had been granted. Te Whanau a Apanui have not consented to this activity, and have informed the NZ Government and the Brazilian Government of that position.</i></p> <p><i>The NZ Government has not implemented ANY measures to mitigate the adverse environmental, cultural or spiritual impacts. In fact it continues to deny that deep sea oil drilling has any adverse impact despite Te Whanau a Apanui’s assertions.</i></p>
<p><i>Article 37</i></p> <p>1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.</p> <p>2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.</p>	<p><i>Article II of the Treaty of Waitangi (signed by ancestors of Te Whanau a Apanui, in Te Kaha, on 14 June 1840) states that hapu (sub tribal groupings) shall have the ‘full undisturbed and exclusive possession of their lands, forests, fisheries, kainga (homelands) and taonga (all other treasured things) – which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession’ⁱⁱ.</i></p> <p><i>Te Whanau a Apanui assert the NZ Government has, and continues to, interfere with their full, undisturbed and exclusive possession of their tribal territories – and acts in breach of the Treaty of Waitangi.</i></p>

ⁱ Endorsed by NZ Government at United Nations, New York on 19 April 2010; less than two months before the NZ Government would totally ignore the indigenous peoples of Te Whanau a Apanui and unilaterally grant an oil and gas exploration permit within their territory without consultation, or regard for their wellbeing and survival.

ⁱⁱ Quoted from NZ Government Ministry of Culture and Heritage maintained website - <http://www.nzhistory.net.nz/politics/read-the-treaty/maori-text>