

# Why New Zealand's consultation process is important for REDD+ countries

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## Introduction

As the first country to implement a national level emissions trading system (ETS) that also includes a forestry component as part of its climate change strategy and meets New Zealand's obligations under the Kyoto Protocol, NZ's experience in developing this system warrants close attention. In particular, NZ's consultation with its Indigenous Peoples for the creation of their ETS is an important example that can provide valuable lessons for countries such as Colombia, Chile, and other countries as they begin constructing their own climate policies. In fact, NZ's experience may be particularly useful to countries pursuing national strategies to reduce emissions from deforestation and forest degradation (REDD+).

The UN Framework Convention on Climate Change (UNFCCC) Cancun Agreements created a mandate that REDD+ texts ensure Indigenous Peoples' "full and effective participation" in REDD+ processes and activities. Now countries pushing to implement REDD+ programs are considering how to execute some kind of public consultation. This is where NZ's experience may be useful. While there are other examples of broad consultation processes that have been carried out at local, regional and state levels and for a variety of initiatives, including REDD+, New Zealand remains the only example of a national level consultation process conducted and initiated by a national government. <sup>1</sup>The consultation process with the Indigenous Peoples in NZ was neither perfect nor is the NZ context similar to most potential REDD+ countries, but it still provides key lessons around timing, resource needs, and process that will be valuable for countries moving forward.



Although the Durban SBSTA REDD+ decision added more detail to consultation process requirements, there is still no technical work scheduled on the near horizon to specifically address this issue. Further, despite the supportive

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financing of national level consultation processes provided by the Forest Carbon Partnership Facility and UN-REDD programs, these processes have yet to begin and will not produce any useful lessons on the topic for at least another 2 or more years. In the meantime, countries using their own funds and those from other noted programs will need to begin these national level consultation processes, but with little guidance. In order to ensure a good supply of REDD+ credits from a national level jurisdiction, however, thorough consultation processes are essential and must be implemented. Thus, the New Zealand ETS consultation case study can and should be used to inform these processes.

The case study that follows identifies both successes and pitfalls in the NZ approach to indigenous consultation. NZ



invested significantly in its ETS outreach and education effort in order to ensure indigenous buy-in to and support for the program. However, the indigenous response indicated that the NZ Government's ETS consultations should have received even more time and included greater and more inclusive outreach efforts. One problem the indigenous people of NZ, the Māori, raised was that the process did not resemble other consultation processes that they were already familiar with and had previously approved. Furthermore, Māori have their own processes of internal consultation, and the timeline of the government process did not give enough time for these internal processes to reach their conclusion. As a result, these shortfalls hindered the NZ consultation process and the development of unified views in favor of the NZ ETS.

Although NZ ETS consultation process can serve as a valuable guidance tool, other countries reviewing the NZ methodology should be aware of the context in which it occurred. The Indigenous People in NZ have engaged with government policies since 1840 in the context of the foundational agreement between these two parties: the Treaty of Waitangi. Since then, an entire body of law and legal precedents has developed. In recent decades, Māori have invested resources in developing their own capacity; and, as a result, they have now reached a highly sophisticated level of legal and policy

engagement with the Crown and are regularly consulted on issues of national significance. This has often resulted in favorable legal settlements for Māori in resolving claims between individual tribes (iwi) and the Crown, which has in turn, has yielded more land and financial resources to the iwi. Thus, Māori have gained quite a bit of experience in pressing their claims with the Crown and have created a set of expectations whenever such processes are undertaken for any policy that affects Māori. Although the unique circumstances found within NZ do not exist everywhere, social and political elements similar to NZ may be found elsewhere. Therefore, the extent to which the following case study is relevant to developing nations should be evaluated only after the similarities and differences in context have been taken into account.

## Executive summary

This case study addresses the steps taken by the New Zealand Government to incorporate Māori interests in designing its 2008 emissions trading scheme (NZ ETS). It will explore the NZ ETS consultation design with respect to Māori inclusion and participation, determine which, if any, strategies should be replicated elsewhere, and identify ways to improve the consultation process in the future.

In general, the NZ ETS consultations have been extensive and inclusive for both Māori and non-Māori stakeholders. However, many Māori still argue that these consultations were inadequate. Several publications analyzing the process reveal a degree of dissatisfaction among Māori regarding both the ETS proposal and the method of public consultation. Some of the key issues raised by the proposal and process included: forest designation strategies,

elevated economic impacts, inadequate Māori inclusion, and disregard of traditional Māori land-use principles. Considering the issues raised by both Māori and non-Māori following the ETS review periods, NZ could have improved its consultation strategy and likely gained broader Māori support for the proposal. After reviewing the NZ consultation approach, there are lessons to be learned, which may help other countries considering public consultations build greater and more widespread support for advances in national climate policies like the NZ ETS. Through better planning and consideration of past consultation weaknesses, other countries could implement a more effective and constructive process, which also thoroughly considers the interests and circumstances of a nation's Indigenous Peoples (IP).

Based on the NZ experience, national level ETS consultations conducted elsewhere, particularly in developing countries with IP populations, could be improved if Indigenous Peoples are:

- included in designing the consultation process itself;
- given sufficient time to review the material to increase substantive understanding;
- provided with more information about the economic benefits, not just the ETS costs; and
- afforded additional opportunities to review the proposal prior to legislative reading.

Although not exclusive, these suggestions showcase several elements that will help facilitate a more thorough and constructive consultation period, while considering and respecting the interests of Indigenous Peoples. As a result, countries will be more apt to create a system that fits their national structure and considers the rights and interests of local Indigenous Peoples who might be particularly affected by the new policy.

## New Zealand's ETS and its national circumstances

To effectively evaluate the NZ consultation process, it is necessary to first review the final NZ ETS and NZ's case specific circumstances. The basic objective of an ETS is to shift costs of emissions to those who cause them by creating a price for emissions that will then take on a negative value in the marketplace. In NZ, the approved ETS policy also aims to “support and encourage global efforts to reduce greenhouse gas emissions by: (1) reducing New Zealand's net emissions below business-as-usual levels; and (2) complying with our international obligations, including the Kyoto Protocol obligations; while maintaining economic flexibility, equity, and environmental integrity at least cost in the long term.”<sup>ii</sup> The overarching goal of the NZ ETS is to reduce and control NZ's domestic emissions, while permitting international trade to help harmonize the price of emissions permits with other markets in the future.<sup>iii</sup> NZ chose the ETS approach primarily because it was the least cost method for curbing NZ's contribution to climate change and it would establish market incentives for consumers and businesses to alter their behavior. Unlike a tax, the NZ ETS combines features of a cap and trade system that is Kyoto compliant, and which will eventually apply to all economic sectors and types of gas emissions.

The basic NZ ETS design is simple. Polluters are granted a limited level of greenhouse gas (GHG) emissions allowances, or permits, and are responsible for purchasing a sufficient quantity of New Zealand Units (NZUs) to cover any emissions in excess of their designated GHG allowance. The specific NZU to GHG ration is dependent on the type of GHG. Those parties that emit GHGs and who can pass on the costs of the ETS – purchasing necessary NZUs – to consumers will be forced to *surrender* NZUs to cover their excessive emissions. Other parties will *earn* NZUs for activities or services that absorb GHGs. Forest owners, for example, will be eligible to earn NZUs and may then sell them to polluters who exceed their designated limit. Finally, some NZUs will *be given* away by the government to those parties that cannot pass costs onto consumers. This includes those businesses exposed to international trade or involved in fishing and forestry. When all sectors have been incorporated into the system, the NZ ETS will encourage participants to reduce their own emissions while helping to fund emissions reductions of other parties.<sup>iv</sup>

Another important distinction regarding the NZ ETS is its division of NZ forests into two camps: pre-1990 forest and post-1989 forest. Under the policy, forests designated as pre-1990 will not automatically earn forest managers carbon credits for additional carbon sequestration. Instead, pre-1990 landowners are eligible to receive a one-time cost-free allocation in the form of NZUs for their decreased land values under the NZ ETS. The amount of NZUs per hectare is

determined by the land's purchase date and is distributed to landowners in two annual installments. However, pre-1990 landowners must apply to be eligible.<sup>v</sup> However, if these forests are permanently deforested and converted into agricultural lands or cleared for timber, for example, landowners will be subject to the ETS and must account for the correlating emissions from deforestation on their lands. For forests designated as post-1989, owners can voluntarily enter their lands into the NZ ETS and begin earning NZUs for carbon stock increases, which they can sell to polluters in the NZ ETS market. However, if owners of post-1989 forests participate in the NZ ETS they will also have to relinquish earned NZUs if the carbon stock of their forests fall.<sup>vi</sup> The use of pre-1990 and post-1989 land distinctions raised issue with Māori stakeholders during the consultation process and it became a contentious point. Since a significant number of Māori have land titles that existed in 1989, a large portion of Māori land would constitute pre-1990 forest and obligate owners to participate in the ETS should they chose to harvest those pre-existing forestlands.<sup>vii</sup>

Comparatively, New Zealand is similar to many developing countries in that its land-based sectors, primarily agriculture and forestry, present the greatest amounts of both debits and credits for GHGs. In NZ, land is frequently cleared and converted into pastureland, which makes it no surprise that NZ's agriculture sector, for example, is responsible for almost 50% of NZ's GHG emissions. This is predominantly due to the pastureland demands of the 50 million grazing ruminants in NZ.<sup>viii</sup> In addition, like many developing nations, NZ's forestry sector also provides one of the greatest opportunities for building emissions credits and helping reduce GHGs in the atmosphere. Data from the *New Zealand Greenhouse Gas Inventory 1990-2009* already shows that NZ's forested land, which covers approximately 38% of NZ, increased NZ's net removal of GHG by 16.6% from 1990 to 2009. Plus, the annual conversion of non-forested land to forested land has also been increasing. <sup>ix</sup>Since NZ's large renewable energy sector limits the potential for significant GHG reductions from energy emissions, decreased emissions from agriculture and forestry become increasingly more important.<sup>x</sup> In addition, another concern in NZ is that much of its forestland is incorporated into plantations that are scheduled for harvest over the next decade. Therefore, although the forests are presently helping to offset emissions, in time they are expected to be a net source of emissions.<sup>xi</sup> As a result, the danger of deforestation and permanent forest conversion, not just degradation, are a growing concern in NZ.

## **Māori and Māori land tenure**

In order to appreciate the NZ consultation process and reflect on its usefulness as a model for other national approaches, it is important to understand the NZ context, especially the relevant national demographics. When the NZ ETS consultation process began in 2008, there were approximately 643,000 Māori living in NZ.<sup>xii</sup> Since 1840 and following British colonial rule, there has been extensive individualization of Māori land in NZ. Today, most Māori populations have lost their original territories and presently possess land in three broad categories: customary land, freehold land, and general Māori land. Māori customary land is defined as land held by Māori in accordance with traditional or customary ownership systems.<sup>xiii</sup> Māori freehold lands are lands whose beneficial ownership and use has been determined by the Māori Land Court. Freehold lands are portions of previous Māori customary lands that have been partitioned to specific Māori individuals and are held in joint Māori ownership of up to 10 individuals.<sup>xiv</sup> This designation applies to 98% of Māori land.<sup>xv</sup> Finally, general Māori land is fee simple land held by Māori, which has been transferred from the Crown and into the beneficial ownership by a Māori or group of Māori through a process of reclassification.<sup>xvi</sup> This often includes land trust arrangements where Māori managed parcels are held and used by multiple Māori stakeholders. In effect, this makes Māori land tenure issues complicated and difficult to work into a national ETS. Therefore, creating a cohesive consultation process – let alone an agreeable national climate policy – under these circumstances presents a challenge.

Further, Māori land tenure demographics also present challenges for developing a national policy which will impact IP land use. When the NZ ETS consultation was conducted, the total area of Māori land in NZ was roughly 1.4 million hectares.<sup>xvii</sup> More than half of that land was under the administration of multiple land trusts and under appointed governance structures. The average area of each title was approximately 54 hectares. In addition, there were over 26,000 Māori land titles and over 2 million Māori ownership interests in these lands.<sup>xviii</sup> Unsurprisingly, Māori

interests in land and forest policies were high as were the difficulties of building an ETS that reflects their interests and benefits them.

Aside from land tenure complications, different Māori land usage should also be considered. About 30% of Māori land use is dedicated to pastoral farmland, and another 30% is covered with indigenous forests. Exotic forests on Māori land are reportedly 10-14% of Māori land use and approximately 20% of Māori land is categorized as scrublands. Very little Māori land has been allocated to real estate or energy projects.<sup>xix</sup> The majority of Māori forested lands are designated pre-1990 forestlands and therefore Māori must apply for their onetime offset of NZUs.<sup>xx</sup> However, much of Māori post-1989 lands under Māori ownership are deemed marginal lands where there is a significant opportunity for Māori to create new forests, which would make them eligible for NZU credits through afforestation activities and direct access to the emissions trading markets.<sup>xxi</sup> Therefore, even though most Māori land would not presently be eligible for NZU credits, significant opportunities for credit acquisition could exist in the future.

## Summary of the NZ ETS consultation process

As discussed above, the Māori and their complicated land tenure circumstances create a difficult and delicate field in which to design a national climate strategy and to execute a constructive consultation process. In NZ, the official consultations began when the Government initiated public discussion as to whether it should adopt an emissions trading, taxation, incentive-based or regulatory scheme to help combat climate change. This process involved approximately 50 public and multi-sector meetings, workshops, and Māori hui.<sup>xxii</sup> There were nearly 100 targeted meetings with over 4,000 attendees at events around the country. In addition, the government released five consultation documents and invited public response, which drew in over 3,000 written submissions.<sup>xxiii</sup> Using these criticisms, suggestions and documents, the government selected the clear public and stakeholder preference – a national emission trading scheme.<sup>xxiv</sup>

Following the decision, the NZ Ministries and Parliamentarians worked together to design a system with “economic flexibility, equity, and environmental integrity.”<sup>xxv</sup> To help draft the NZ ETS Bill, the Government initiated public comment based on its document *The Framework for a New Zealand Emissions Trading Scheme* (“*The Framework*”). This was to ensure stakeholder interests, particularly Māori interests, were incorporated into any proposed NZ ETS Bill. The Government created advisory groups, developed policy and legislation, drafted reports; and published regular online bulletin updates for stakeholder and public review. These bulletins were also used to publish policy announcements and serve as a record of considerations and decisions over time.<sup>xxvi</sup> Advisory groups also collected information, analyzed data, and advised policymakers on design.

The Government also held meetings across the country between Ministries, government officials, stakeholders and Māori. These included: cross-sector emissions trading workshops, regional and national Māori hui, regional forestry meetings, workshops for NZ ETS participants, NGO forums, and “one-on-one” stakeholder meetings. The Climate Change Leadership Forum (CCLF) was also created to help facilitate communication between the government, consultation participants and the broader community. The CCLF included 33 senior representatives of public sectors and private firms subject to the new policies; community and NGO representatives; academics; and chief executives of relevant government departments responsible for NZ ETS advising.<sup>xxvii</sup>

Finally, in December 2007 - less than three months after the release of *The Framework* and the start of public consultation - the Ministry for the Environment published the Government’s response to public feedback. The purpose was to ensure stakeholder and Māori concerns were addressed; to clarify what policies were still in development; and to explain the government’s positions. It also acknowledged areas where additional work and stakeholder input would be necessary. Following the release of the Government’s response, however, the public was not given another opportunity to review or comment on the NZ ETS Bill as it was read to Parliament and ultimately passed into law.<sup>xxviii</sup>

In February 2011, and after the NZ ETS was approved, the NZ Climate Change Minister created an independent review panel to analyze NZ ETS progress and to make recommendations. The Panel initiated a brief post-implementation consultation period seeking comments on the following topics: short-term impacts (cost, competition, and competitiveness); administrative efficiency; long-term economic resilience; environmental integrity; balancing design with trading partners; and equity between sectors and groups. The document did not request comments on the consultation process itself. The Panel gave one month for public comment and met with stakeholders, chosen from a range of interests. These included environmental NGOs, Māori representatives, carbon market experts and sector representatives.<sup>xxxix</sup>

The Panel also requested feedback on the short- and long-term impacts of the NZ ETS on Māori economy and society. Thirty of the 162 written submissions discussed these issues. In its final report, *Doing New Zealand's Fair Share*, the Panel provided specific recommendations for remedying issues raised by Māori.<sup>xxx</sup> Unlike the initial consultation process, this review and round of discussions were less widespread and did not involve the same countrywide Māori hui or large stakeholder assemblies that were previously applied. Instead, this consultation period was predominantly internal and narrowly focused; it relied considerably on private hearings and written submissions.

## **Māori Participation in the NZ ETS consultation process**

Māori were an obvious stakeholder in the NZ ETS consultation process and they raised many concerns about the proposal during the review period. In particular, Māori were concerned with the ETS impact on the Treaty of Waitangi, a bilateral treaty between Britain and Māori that established land rights for Māori in conjunction with the Crown of England obtaining a transfer of sovereignty. When signed, the Treaty did not create, change or vanquish existing Māori land rights, but instead applied the doctrine of native title. This ensured that all original inhabitants maintained their property rights and, as a result, Māori are extremely protective of their land-use rights.<sup>xxxi</sup>

Aside from the concern for the effect of the NZ ETS on the historic Treaty, the consultation process itself was also heavily criticized by Māori stakeholders. The procedural weaknesses of the NZ consultation identified by Māori following the process are discussed in the paragraphs below and are followed by suggestions for improving future efforts elsewhere.

## **Forest designations**

As a signatory to the Kyoto Protocol, NZ designed its ETS with this global agreement in mind. In effect, the NZ ETS policy uses the same 1990 threshold as the Kyoto Protocol that creates a distinction between pre-1990 and post-1989 forestlands. In doing so, NZ ETS participants are able to surrender some of their Kyoto units to meet their emissions obligations under the NZ ETS policy as well.<sup>xxxii</sup> This temporal policy division raised serious concerns among Māori landowners, in part, because the majority of Māori possessed pre-1990 forest interests. Whether due to governance issues under applicable statutes, capital constraints, lack of information and managerial expertise, or having granted long-term forestry leases/rights to third parties, many Māori landowners felt disproportionately and more adversely affected by the proposed ETS policy than other stakeholders. Since many Māori would not obtain full possession of their land until after implementation of the NZ ETS, they were concerned about inhibited land-use rights without the benefits of post-1989 forest conservation efforts.<sup>xxxiii</sup> Similarly, many Māori landowners that might otherwise qualify for an exemption to deforestation liabilities due to small plot size would not if they owned multiple forest plots, which many did.<sup>xxxiv</sup> Even though these policies were designed to favor and protect the interests of local indigenous people, they arguably created disagreeable outcomes. Therefore, it may be helpful to consider and discuss possible temporal land designations and exemptions with respect to indigenous land owners during the consultation process to identify any previously unforeseen impacts and reach a more agreeable alternative.

Similarly, Māori criticized the proposal for failing to compensate landowners for the carbon sink benefits contained in their pre-1990 indigenous forests or for these forests' contributions to broader community needs, such as high quality water and reservoirs of biodiversity.<sup>xxxv</sup> Since Māori are the largest private owner of indigenous forests and they face

considerable opportunity costs from logging limits, Māori were frustrated that the carbon sequestration by their forests would not be recognized. Although considered, it was ultimately decided that pre-1990 indigenous forests did not require special consideration as carbon sequesterers under the NZ ETS since such mechanisms existed elsewhere.<sup>xxxvi</sup> This could be a reoccurring theme, however, so consultation processes should discuss both the types and quantities of forests under indigenous control, and what consequences or advantages might occur by distinguishing indigenous landowners separately from non-indigenous forest owners. As The New Zealand Emissions Trading Review Committee noted, the precise mix of land and forest types held by Māori individuals and iwi are essential for determining the NZ ETS impacts on local indigenous populations.<sup>xxxvii</sup> The Committee encouraged the Government to create a map with detailed inventory and mapping of Māori and non-Māori forest land ownership to provide stakeholders with a greater appreciation for the individual impacts of the ETS. Making landowners better aware of how the ETS may affect their particular property will further improve feedback during consultations.

## Economic impacts

Māori stakeholders also raised numerous questions about the economic consequences of the plan. Most notably, Māori were concerned about: living cost increases due to ETS impacts on electricity and fuel prices; employment effects; potential losses associated with Māori-owned assets; preservation and protection of ancestral lands; and self-governance of Māori-owned resources.<sup>xxxviii</sup> In its 2009 follow-up, the Ministry of the Environment acknowledged that given the broader economic concerns facing local indigenous populations, better information upfront and in the future would enable these groups to make more informed consultation submissions, particularly regarding the estimated economic effects of the NZ ETS. In addition to greater disclosure during the pre-consultation period, suggestions were made that the government should attempt to quantify the emissions reduction contribution, and the ecological and ecosystem goods and services of the ETS, not just associated costs.<sup>xxxix</sup> It was thought that including this information would help indigenous groups become familiarized with not only the expenses, but also the economic gains provided by an ETS. In turn, this could also lead to better consultation submissions by stakeholders, including local Indigenous Peoples, while simultaneously increasing feelings of procedural and substantive inclusion.

## Indigenous Peoples' involvement

Māori also expressed general dissatisfaction with the Western format of the consultation process. Although the NZ format included traditional indigenous forums (i.e. hui) for conducting policy discussions between Māori and policymakers, some participants called for a more honest and robust debate amongst Māori themselves.<sup>xl</sup> In addition, the tight timeframe for review and comment was also criticized by Māori participants.<sup>xli</sup> Others believed continuous dialogue between individual Māori groups and tribes would improve the overall consultation, while including more time to review the unfamiliar material.<sup>xlii</sup> Although the hui held within Māori communities were driven to help local Māori gain a better understanding of the complexities and impacts of the proposed ETS, many still felt it was insufficient. Further criticism included Māori frustration that the hui, although they addressed the NZ ETS broadly, failed to discuss the opportunities and risks the NZ ETS would have in relation to individual Māori rohe (iwi districts).<sup>xliii</sup> In addition, while every hui identified particular issues of concern to its attendees, it is unclear how those were later addressed.<sup>xliv</sup> These were constructive concerns and things that could be easily discussed at the start of any consultation.

## Land-use principles

A valid consultation process should uncover important cultural distinctions, which may help improve the ultimate ETS design. For instance, in Māori culture, people hold a strong spiritual and historical connection to their own lands. Therefore, the proposed “off-setting” plan included in the NZ ETS that allows landowners to purchase or lease other forested property purely for conservation and as a means of avoiding the deforestation consequences does not make sense in traditional Māori culture. When considering alternatives, ETS planners failed to consider the strategy in

terms of Māori history and culture. Instead, the NZ consultation should have considered potential cultural distinctions followed by a more concerted effort to develop alternatives that thoroughly incorporated Māori cultural beliefs and practices. While there is no guarantee that the Māori would have provided the right or most agreeable off-setting alternatives from this process, there is still greater probability that their participation would result in stronger and more readily acceptable alternatives. By considering possible cultural conflicts at the outset and then using the consultation process to determine more suitable mechanisms, the consultation processes would be more likely to produce the right off-set alternative that better fits with local culture and custom.

## **Māori on improving climate policy consultations**

Following the NZ ETS consultation periods, Māori stakeholders expressed a series of concerns, but also provided some suggestions on improving future consultation efforts. First, as frequent participants in public discussions, Māori have faced considerable adversity in past consultations and have often felt “over-consulted.”<sup>xlv</sup> Instead, Māori have openly stated they would prefer cohesive consultations that incorporate several issues at once.<sup>xlvi</sup> Where impractical or infeasible, Māori argue that their opinions on consultation procedure should have been included. Through pre-consultation, Māori could have provided input on preferred inquiry approaches, better methods of information distribution, and consultation sequencing. Following the ETS consultation, Māori pointed to several previous consultation procedures that they preferred over the ETS format and wished the Government had applied to this process.<sup>xlvii</sup> The Māori argued that these other consultation processes succeeded at incorporating more Māori representatives in the process, increased overall Māori engagement, began the consultation earlier and effectively used the existing Māori Iwi Chief Executives Group to help develop the most appropriate process for the issues addressed.<sup>xlviii</sup> These same critics also noted that incorporating previous consultation practices that have already been used by local Indigenous Peoples would advance the entire process since the design would be both familiar and previously approved by the targeted IP community. By using tactics from previously tested approaches in the NZ ETS consultation, the Government may have gained better community feedback and IP commentary than it did. Therefore, Māori suggested that future consultation designs should consider and reflect past IP approved processes and strategies, which may encourage more constructive feedback and less procedural criticism.

In addition, the reports following the NZ consultation also reveal that the public advertisement of NZ ETS meetings involving indigenous people should have been better and more consistent. A common problem seen by Māori was that notification of public informational and discussion events was often insufficient, except between co-coordinators that knew or had connections with certain Māori stakeholders. To ensure broader indigenous community engagement, all public events about a proposed ETS or other climate strategy should be adequately publicized to all, not just the obvious stakeholders. One conclusion is that developing a system to ensure broad dispersal of information is essential for the success of any public consultation.

Māori comments also reflected a disappointment that another consultation round for the proposed NZ ETS Bill was not conducted before the first draft was sent to the legislature. Implementing a second pre-parliament review of a proposed ETS bill would likely be costly and time consuming, but doing so, even in an abbreviated capacity, would continue to encourage IP participation and potentially build greater support for the proposal so long as the consultations and comments are taken seriously and incorporated into the final draft to the best of the government’s abilities. Other countries introducing national ETS policies should keep IP stakeholders engaged throughout each stage of the process despite any added burden because doing so will likely reflect well on the government and continue to strengthen policy support.

## **Observations and recommendations**

The NZ ETS consultation process between 2008 and 2011 produced positive results, but also revealed some procedural inadequacies. For other countries looking to implement their own national emissions trading plan, this assessment and the following recommendations may help them to capitalize on the progress made in NZ. However, it

is necessary to keep NZ's accomplishments in perspective. NZ's economic resources for conducting its consultation process is a necessary consideration when assessing consultation strategies in developing nations, particularly those interested in improving IP participation. According to NZ's Ministry of the Environment, the NZ Government spent NZ\$420,700 on the NZ ETS consultation process conducted in 2011. This figure included the fees associated with the expert panelists, but does not reflect the costs associated with staff support for their work. The unfortunate reality is that executing a similar consultation process elsewhere may exceed the capabilities of developing nations and could require additional external funding. Although a limited budget should not deter implementation of an ETS, it is an issue that deserves early recognition and consideration ahead of time.

Aside from budgetary considerations, countries will need a strong consultation process to build support for their proposed emissions trading systems. This process should reflect the strengths of the NZ proceedings while adjusting to correct for aforementioned weaknesses. In particular, like NZ did with Māori, other countries should absolutely incorporate Indigenous Peoples into the review process and make strides to utilize their suggestions in the ETS design as Indigenous Peoples will likely face significant impacts from the new policy. At the same time, the NZ procedural inadequacies revealed that there are also less obvious measures that should be included to improve IP involvement in consultation processes. These observations lead to the following key recommendations, which, if utilized, will help maximize the value of consultations elsewhere:

1. Include Indigenous Peoples in the initial design of the ETS consultation process to help ensure Indigenous Peoples are thoroughly considered, given sufficient time for review; and have their cultural distinctions incorporated into the process;
2. Provide information to the public regarding the economic costs of ETS implementation and execution, but also ensure the emissions reduction contribution and ecological/ecosystem goods and services created by implementing the ETS are also adequately quantified to the public;
3. Ensure Indigenous Peoples have multiple opportunities to comment on proposals as they are drafted and do not limit their consultation opportunities to only a pre-legislative reading context.

First, Indigenous Peoples should be included as national governments design their consultation processes. The NZ Government received criticism from its Indigenous Peoples for failing to do this at the outset. Instead, organizers should get IP assistance and suggestions on how to implement the best and most inclusive process for IP stakeholders early on. This may include the incorporation of IP approved consultation strategies used in previous national, regional or local government and NGO consultation proceedings. Doing so may help preemptively address cultural conflicts, reduce frustration and limit procedural dissatisfaction. While complaints will always exist, governments that include Indigenous Peoples in the process earlier will better serve the governments' interests in the long term by facilitating stronger stakeholder-government communications from the start, as opposed to half way through the process. Since good cooperation is essential for designing and building support for controversial and ground breaking plans – like the NZ ETS – it is essential to conduct frequent and thorough stakeholder collaboration. In addition to incorporating tested and approved consultation procedures, Indigenous Peoples should simultaneously be ensured sufficient time to familiarize themselves with the technical details of the proposed ETS. As noted by Māori after the NZ process, more informed stakeholders may have been less burdened by procedural inadequacies and better able to prove constructive comments and suggestions. Finally, consultation planners need to be better aware when proposed mitigation alternatives may be economically inadequate, not easily understood or culturally unacceptable to local Indigenous Peoples. The planning process should serve as an opportunity to address these cultural differences and identify a more appropriate alternative before the actual consultation begins. Doing so will help move discussions forward towards more agreeable alternatives.

Further, countries must also consider how the proposed ETS will affect IP land-use rights. Although the Treaty of Waitangi is specific to NZ and its terms will not be applicable elsewhere, a generalization can be made. Wherever Indigenous Peoples have certain land rights, careful consideration must be taken to ensure these rights are not unlawful jeopardized or weakened by a proposed ETS. Governments should give special attention to these issues

where they exist and consider NZ's consultation approach a good, but not perfect, model for how to help Indigenous Peoples understand the ETS and its affect on their property rights.

In addition, economic impacts are consistently a public concern, particularly with new and unfamiliar regulations. Any proposed ETS will raise these issues immediately. While ETS proponents must publicly address the added costs of the plan, they should not neglect presenting and discussing the financial benefits of the plan as well. Failure to include the quantifiable values associated with the broader ecological and ecosystem benefits brought about by the ETS will undermine the process and provide Indigenous Peoples with inadequate information on the proposed policy. Providing Indigenous Peoples with a comprehensive picture of all the expected effects of the ETS will likely improve understand of the plan and, hopefully, encourage Indigenous Peoples to take advantage of its benefits earlier. Finally, Indigenous Peoples should be given multiple opportunities to comment and assist the government with the ETS design. Although this will largely depend on resource availability, national government's need to maintain an open forum for public comment, particularly with regards to its Indigenous Peoples. This should involve governments taking deliberate steps to keep Indigenous Peoples engaged and part of their national policy construction process. In so doing, governments will likely enhance general feelings of inclusion, build additional support for, and, hopefully, educate Indigenous Peoples on taking advantage of the ETS benefits as soon as the laws go into effect.

When a government chooses to tackle climate change by implementing an ETS or a similar national-level climate change policy, it should be applauded. At the same time, these governments must seek the input and consider the concerns of its constituents in order to be support. By using a consultation process that incorporates the suggestions mentioned above and uses the best aspects of the NZ ETS process, other nations will have a better model to work from as they explore new climate policies and seek public input. Although NZ had guaranteed financial backing when it conducted its consultations, other countries without sufficient government financing may still replicate this process when pursuing an ETS policy through proper planning, foresight and collaboration with international funders. Funding aside, nations that choose to move forward on independent climate policies, such as national ETS or REDD+ frameworks, do so with little guidance and minimal public understanding. This makes advancing such initiatives very difficult without a thorough and conscientious public consultation process. However, by using NZ's process and the suggestions noted herein as a guide, nations can fearlessly take that necessary step forward and blaze a trail for those who follow.

<sup>i</sup> Brazil is one nation where widespread non-governmental and sub-national government consultation proceedings are familiar. Several coalitions have already utilized inclusive consultation processes to increase participation of indigenous peoples and forest communities in policy development discussions. However, its work has not involved all Brazilian states or government participation and financing. While the Brazilian state government in Acre executed a thorough government sponsored public consultation related to sustainable climate policies, the effort was limited to the State of Acre. Therefore, NZ's consultation proceedings remain unique as the first example of a national level consultation on domestic climate policy.

<sup>ii</sup> Climate Change Response Act 3(1)(b).

<sup>iii</sup> Climate Change Response Act 160(5)(b)

<sup>iv</sup> See, The Framework for a New Zealand Emissions Trading Scheme page. NZ Ministry for the Environment website, <http://www.mfe.govt.nz/publications/climate/framework-emissions-trading-scheme-sep07/html/page3.html>. Accessed on 02/12/12.

<sup>v</sup> Forestry in the ETS page. NZ Ministry of Agriculture and Forestry website, <http://www.maf.govt.nz/forestry/forestry-in-the-ets/pre-1990-forest-land-allocations-and-exemptions> (Accessed on 02/12/12).

<sup>vi</sup> *Ibid*

<sup>vii</sup> Above n. 4

<sup>viii</sup> "New Zealand Emissions Trading Scheme: Government's Response to Feedback from Engagement." Ministry for the Environment website. <http://www.mfe.govt.nz/publications/climate/#emissions> (December 2007), Accessed on 02/17/12. at 8.

<sup>ix</sup> "New Zealand's Greenhouse Gas Inventory 1990-2009," Ministry for the Environment website. <http://www.mfe.govt.nz/publications/climate/greenhouse-gas-inventory-2011/index.html>(April 2011), Accessed on 02/17/12, at 181

<sup>x</sup> Stephenson, John and Chris Schilling, "The Impacts of the proposed Emissions Trading Scheme on New Zealand's economy", New Zealand Institute of Economic Research Inc (Wellington, 2008), at 13. Available at: <http://nzier.org.nz/sites/nzier.live.egressive.com/files/NZIER%20%20Quantitative%20evaluation%20of%20proposed%20ETS.pdf>. Accessed on 02/17/12.

<sup>xi</sup> *Ibid*, at 42

<sup>xii</sup> See, NZ Government Statistics on Māori Population Estimates page. Statistics New Zealand website. [http://www.stats.govt.nz/browse\\_for\\_stats/population/estimates\\_and\\_projections/Māori-population-estimates.aspx](http://www.stats.govt.nz/browse_for_stats/population/estimates_and_projections/Māori-population-estimates.aspx). Accessed on 2/10/12.

<sup>xiii</sup> Te Ture Whenua Māori (Māori Land Act), 129(2)(a) (1993).

<sup>xiv</sup> Māori Land Act, at 129(2)(b) (1993); See also, "What is Māori Land?". Land Information New Zealand website. <http://www.linz.govt.nz/survey-titles/Māori-records/what-is-Māori-land>. Accessed on 03/26/12.

<sup>xv</sup> Asher, George T Waaka. "Insights into the Impact of the Emissions Trading Scheme (ETS) on Māori Land and Associated Forests." Lake Taupo and Rotoaira Forest Trusts, at 114.

<sup>xvi</sup> Māori Land Act, at 129(2)(c) (1993).

- <sup>xvii</sup> Asher, at 114.
- <sup>xviii</sup> Asher, at 116.
- <sup>xix</sup> Ibid
- <sup>xx</sup> Pre-1990 Forest Land: Allocations and Exemptions page. Ministry of Agriculture and Forestry website, <http://www.maf.govt.nz/forestry/forestry-in-the-ets/pre-1990-forest-land-allocations-and-exemptions>. Accessed on 02/17/12.
- <sup>xxi</sup> Asher, at 119
- <sup>xxii</sup> Māori hui are large social gatherings or assemblies held within a Māori community that serve a variety of functions, which may include marriage ceremonies, funeral services and policy discussions
- <sup>xxiii</sup> Bullock, David. "The New Zealand Emissions Trading Scheme: A step in the right direction?" Institute of Policy Studies; working paper. (March 2009), at 9.
- <sup>xxiv</sup> Above n 7, at 3.
- <sup>xxv</sup> Ibid, at 6
- <sup>xxvi</sup> See, <http://www.climatechange.govt.nz>. Accessed on 02/12/12.
- <sup>xxvii</sup> Above n 7, at 4
- <sup>xxviii</sup> Ibid
- <sup>xxix</sup> See, <http://www.climatechange.govt.nz/emissions-trading-scheme/ets-review-2011/supporting-info/>. Accessed on 02/12/12.
- <sup>xxx</sup> "Doing New Zealand's Fair Share: Emissions Trading Scheme Review 2011". <http://www.climatechange.govt.nz/emissions-trading-scheme/building/reports/index.html>. Accessed on 02/12/12.
- <sup>xxxi</sup> Abbot, Mick, et al. *Making our Place: exploring land-use tensions in Aotearoa New Zealand*. Otago University Press: Dunedin, New Zealand (2011), at 24-25
- <sup>xxxii</sup> Above n 7, at 7
- <sup>xxxiii</sup> "Māori Impacts from the Emissions Trading Scheme: Detailed Analysis and Conclusions." Climate Change Publications page. NZ Ministry of the Environment website (November 2007), Accessed 02/12/12, at. 31.
- <sup>xxxiv</sup> Ibid, at 30
- <sup>xxxv</sup> Asher, at 120
- <sup>xxxvi</sup> Bullock, at 17
- <sup>xxxvii</sup> Frazer, Stuart; Julia Hoare, and Chris Karama Insley. "Emissions Trading Scheme Review: Independent Specialist Adviser's Report". Specialist Advisers report to the ETS Review Committee. NZ Ministry for the Environment (June 2009), at 36.
- <sup>xxxviii</sup> Frazer, et al., 36.
- <sup>xxxix</sup> Asher, at 122
- <sup>xl</sup> "Consultation with Māori on Climate Change: Hui Report." Climate Change Publications page. NZ Ministry of the Environment. <http://www.mfe.govt.nz/publications/climate/index.html> (November 2007). Accessed on 02/12/12, at 22.
- <sup>xli</sup> Above n 7, at 30.
- <sup>xlii</sup> Above n 38, at 23.
- <sup>xliii</sup> Above n 7, at 29.
- <sup>xliv</sup> Ibid, at 29
- <sup>xlv</sup> For instance, the development of NZ's foreshore and seabed policy in August 2003 was filled with considerable controversy, in part, due to the uselessness of the consultation process. To many, including Māori stakeholders, it was widely understood that the process was too short, under inclusive and that the Government had already made its decision on the proposal. Despite holding a brief consultation, no significant changes to the bill were made. (See, <http://www.waitangi-tribunal.govt.nz/reports/summary.asp?reportid=838C5579-36C3-4CE2-A444-E6CFB1D4FA01>. Accessed on 2/10/12).
- <sup>xlvi</sup> Above n 38, at 23
- <sup>xlvii</sup> Noteworthy examples of Māori approved consultation processes include: Public Works Act procedures; National Māori network hui with the Environmental Risk Management Authority; ongoing Māori consultation with the Water Programme of Action; and Oceans Policy Forum.
- <sup>xlviii</sup> Above n 38, Appendix, at 125.