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Māori Issues

The Foreshore and Seabed Act 2004, passed into law against almost unanimous opposition and protest from Māori, has continued to have ongoing repercussions both nationally and internationally. Māori are the group most directly affected by the act’s provisions, yet our submissions and protests were ignored, with our spokespeople and leaders vilified as they sought international support against
the ongoing racial discrimination practiced against Māori in New Zealand.

In international forums in particular, governments in New Zealand have always denied that they discriminate against Māori. Yet even the attorney general was forced to admit that the Foreshore and Seabed Act is discriminatory in terms of the New Zealand Bill of Rights. However, with the same arrogance and disregard that governments have always had for the property rights of Māori, the attorney general declared that such discrimination was justified. In other words, the Māori owners are legislatively forbidden from deriving benefit from their own foreshores and seabed throughout the country while others may do so. The government had been unable to prove that it owns the foreshore and seabed in the Court of Appeal. It nevertheless saw fit to abuse its powers in order to confiscate the foreshore and seabed for the benefit of non-Māori New Zealanders using legislative theft. Some iwi (tribal groupings) issued statements after its enactment stating that they did not recognize the legislation and would not allow it to be implemented in their territories.

The government’s behavior in respect to the foreshore and seabed has now proven embarrassing for the country. Since the legislation was passed in 2004, two reports have been issued by committees of the United Nations criticizing the New Zealand government for its ongoing and active discrimination against Māori. They highlight the urgent need to address deeply ingrained institutionalized racism. In March 2005 the United Nations Committee on the Elimination of Racial Discrimination issued a report on the compliance of the Foreshore and Seabed Act with New Zealand’s obligations under the International Convention on the Elimination of All Forms of Racial Discrimination. The report concluded that the act discriminated against Māori. The process for issuing the report had been instigated by Te Rūnanga o Ngai Tahu, the Treaty Tribes Coalition, and the Taranaki Māori Trust Board, who called on the committee to urge the government to withdraw the legislation. The decision of the committee included a number of critical comments, including the hope that “all actors in New Zealand will refrain from exploiting racial tensions for their own political advantage”; concern at the “apparent haste with which the legislation was enacted and that insufficient consideration may have been given to alternative responses to the Ngati Apa decision which might have accommodated Māori rights within a framework more acceptable to both Māori and all other New Zealanders”; regret that “the processes of consultation did not appreciably narrow the differences between various parties on this issue”; and concern at “the scale of opposition to the legislation amongst the group most directly affected by its provisions—the Māori—and their strong perception that the legislation discriminates against them.” The committee concluded that the act contained “discriminatory aspects against the Māori, in particular its extinguishment of the possibility of establishing Māori customary title over the foreshore and seabed and its
failure to provide a guaranteed right of redress, notwithstanding the State party’s obligations under articles 5 and 6 of the Convention” (Bennion 2005 [March], 7).

In March 2006 a report critical of both the government and mainstream media was issued by Professor Rodolfo Stavenhagen, the United Nation Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, regarding his mission to New Zealand in November 2005. It considered a large number of areas in which Māori experience difficulty and discrimination. While there were positive aspects to the report, it urged important changes. It noted that Māori continue to be denied their right to self-determination and even to collective citizenship as tribes, including actual decision-making capacity of tribal collectives over ancestrally or culturally significant sites.

Regarding the Foreshore and Seabed Act, Professor Stavenhagen relied mainly on the comments of the New Zealand human rights commissioner and the attorney general to conclude that the act is discriminatory against Māori: “the Act clearly extinguishes the inherent property rights of Māori to the foreshore and seabed without sufficient redress or compensation, but excludes certain properties already held in individual freehold”; in other words, it removes the property rights held by Māori but protects those of non-Māori. “In the view of the Special Rapporteur, the Act can be seen as a step backwards for Māori in the progressive recognition of their rights through the Treaty Settlements Process over recent years.” Stavenhagen recommended that the act “be repealed or amended by Parliament and the Crown should engage in treaty settlement negotiation with Māori that will recognise the inherent rights of Māori in the foreshore and seabed.”

On constitutional issues, the special rapporteur recommended that “a convention should be convened to design a constitutional reform in order to clearly regulate the relationship between Government and Māori people on the basis of the Treaty of Waitangi and the internationally recognised right of all people to self-determination.” Further, he recommended, “The Treaty of Waitangi should be entrenched constitutionally in a form that respects the pluralism of New Zealand society, creating positive recognition and meaningful provision for Māori as a distinct people, possessing an alternative system of knowledge, philosophy and law.”

With regard to human rights and the Waitangi Tribunal, Stavenhagen wrote, “The Waitangi Tribunal should be granted legally binding and enforceable powers to adjudicate Treaty matters with the force of the law.” The tribunal does have legally binding powers over large areas of land, which the Crown transferred to state-owned enterprises and also Crown forest lands. However, political pressure exerted by governments on claimants has ensured that these have not been used, with the tribunal only exercising its powers once, over one small piece of land. (Ministers in charge of Treaty of Waitangi negotiations in both National and Labour governments have warned claimants that should they attempt to use the
provisions for binding recommendations, not only will they face financially crippling High Court action, but the relevant sections of the act will also be repealed and the tribunal’s powers reduced to even less than what they have now. The author, as chief negotiator for Ngāti Kahu, has been issued such [verbal] warnings by two successive ministers.) Given that all major recommendations to the government issued by the tribunal in recent years have been ignored, particularly those recommending the return of lands and natural resources, it is important in terms of governmental accountability that this recommendation be followed. However, given also that the wealth and prosperity of non-Māori New Zealanders is dependent on their being able to freely and exclusively exploit Māori land and resources without any consideration for Māori rights in those properties, it seems very unlikely that they will willingly give up such privilege.

Professor Stavenhagen also recommended that “the Crown should engage in negotiations with Māori to reach agreement on a more fair and equitable settlement policy and process.” This recommendation arises from the fact that the current government settlement policy was unilaterally determined by the Crown. It is the Crown that has been proven to be the guilty party in all treaty breaches. Yet it has used the absence of any constitutional fetter on its powers that would force it to abide by its Treaty of Waitangi and international human rights obligations, to set itself up to judge and determine what settlements shall be. There have been numerous complaints that none of the treaty settlements to date have been fair and equitable, with claimants forced to choose between very little and nothing at all. It has been calculated that settlements to date average less than 0.6 percent of the estimated value of lands lost (Mutu 2004). Yet despite this, a further five settlements have been recorded in the past year. Deeds of settlement or legislation confirming settlement were completed for the claims of Ngā Rauru, Ngāti Mutunga, Ngāti Awa, Ngāti Tūwharetoa ki Kawerau, and Te Rūroa. Whether these and other treaty claims settlements are full and final remains to be seen.

On education, Professor Stavenhagen recommended: “More resources should be put at the disposal of Māori education at all levels, including teacher training programmes and the development of appropriate teaching materials.” On culture: “The Māori cultural revival involving language, customs, knowledge systems, philosophy, values and arts should continue to be recognised and respected as part of the bicultural heritage of all New Zealanders through the appropriate cultural and educational channels.” On social policy: “Social delivery services, particularly health and housing, should continue to be specifically targeted and tailored to the needs of Māori, requiring more targeted research evaluation and statistical data bases.” This last recommendation is aimed at reversing the reduction in funding for Māori programs that has been implemented over the past few years.

On international indigenous rights, Professor Stavenhagen wrote, “The Government of New Zealand should
continue to support efforts to achieve a United Nations declaration on the rights of indigenous peoples by consensus, including the right to self-determination.” At the Permanent Forum for Indigenous Peoples held in New York in May 2006, the New Zealand government opposed indigenous people having self-determination and joined Canada and the United States to oppose the text of the draft Declaration on the Rights of Indigenous Peoples, which was subsequently supported by the United Nations Human Rights Committee. The New Zealand government took this stance without any consultation with Māori. However, Māori were present and made sure that the forum was informed that Māori opposed the New Zealand government’s stance and supported the rights of all indigenous peoples (Cat Davis, e-mail reports on the day-to-day proceedings at the UN Permanent Forum for Indigenous People, New York, May 2006).

Finally, the special rapporteur made two recommendations to the civil society: “Public media should be encouraged to provide a balanced, unbiased and non-racist picture of Māori in New Zealand society, and an independent commission should be established to monitor their performance and suggest remedial action”; and “Representatives and leaders of political parties and public organisations should refrain from using language that may incite racial or ethnic intolerance.”

Māori welcomed the report as accurate, insightful, and helpful, with several Māori academics and commentators having checked its draft for accuracy. In the months following its release, the Māori Party referred to its recommendations in almost every speech they made both inside and outside Parliament. The government, which also checked its draft, predictably tried to suppress the report, and when it was released, attacked its author and the committee he represented and claimed falsely that both had been dismissed from the United Nations. The government also claimed that the report was full of errors but was unable to demonstrate what those errors were. The government announced well before the report was released that it would ignore it.

One of the matters noted by the special rapporteur was the government’s ongoing reduction of Māori funding. The government used various attacks on Māori, which gathered momentum in 2003, to justify the cuts. Particular use was made of spurious claims that Māori are privileged over others—claims that the special rapporteur dismissed because he could find no evidence of any privilege granted to Māori but rather extensive evidence of deprivation and discrimination. Many programs that Māori had come to rely on for their own development have been abolished, while prison accommodation for inmates who are mainly Māori has been substantially increased. The extent of the government’s determination to deprive Māori of benefits of public funding became clear when the minister of Māori Affairs failed to seek any increase in the 2006 budget for Māori Affairs. And this was at a time when an increasing number of research reports into Māori well-being are becoming ever more strident in
their criticism of government policies and treatment of Māori. (See, for example, Harris and others [2006], which concludes that “Racism, both interpersonal and institutional, contributes to Māori health losses and leads to inequalities between Māori and Europeans in New Zealand” and “the combination of deprivation and discrimination as measured seems to account for much of the disparity in health outcomes assessed”; the Ministry of Health and University of Otago [2006], which highlighted alarming and disproportionately high mortality rates for Māori; the report of the Public Health Advisory Committee [2006], which concluded that being Māori or Pacific Islanders further increases the risk of death or ill-health across all socioeconomic categories; Stavenhagen 2006; and the many reports of the Waitangi Tribunal.)

Māori funding programs that have been abolished include the Manaaki Tauira fund for Māori tertiary students and several programs run by Māori tertiary institutions. Perhaps the most brutal attack was on one of these institutions, Te Wānanga o Aotearoa (twoa). Its aim is to give people access to education in such a way that they not only learn, but actually enjoy their learning. It targets those whom mainstream education has overlooked or discarded, and most of those are Māori. It had carried out government Māori education policy to the letter and as a result was able, in a very short period, to attract more students and hence government funding than any other tertiary institution. This raised the ire of the universities in particular, who quietly but successfully lobbied to discredit Te Wānanga and persuaded the government to launch a series of intensive audits, which eventually crippled the institution. When Te Wānanga o Aotearoa called itself a university, the universities took umbrage and sent Te Wānanga letters saying they were offended (Mana [April–May 2006], 67). Yet the universities could not acknowledge the irony in the fact that each of them calls itself whare wānanga (which Te Wānanga o Aotearoa is) on their Web sites and letterheads, while they have neither the expertise nor the qualifications to do so in terms of the standards required by traditional (Māori) whare wānanga.

As a result of government harassment, Te Wānanga took a claim to the Waitangi Tribunal, which was heard in December 2005. It was the second claim they had taken, with inquiry into the first one finding that the government had breached the Treaty of Waitangi by not giving whare wānanga the same capital establishment grants it had given mainstream tertiary education institutions such as universities, polytechnics, and colleges of education. The second claim was also upheld, finding that the Crown had sought to impose “unilateral, poorly co-ordinated, and, from the claimants’ perspective, apparently destructive” measures (Bennion 2006, 4).

Although the past few years have been depressing for Māori, we always find major national achievements worth celebrating. One was the Māori Party. It was born out of the 2004 Hīkoi, the huge protest against the foreshore and seabed legislation. The general election in September 2005 saw the party win four of the seven Māori seats, taking three from the
Labour Party. The same ability and expertise used to mobilize and organize Māori for the Hīkoi was used to organize Māori votes for the new Māori Party. Other parties lacked such ability and expertise and had no response to the Māori Party onslaught. As a result, for the first time in the history of the New Zealand Parliament, Māori have a party that gives first priority to the wishes and needs of Māori.

Mainstream politicians expected Māori Party parliamentarians to assume the roles that most Māori elected to Parliament are consigned to, either serving the more powerful mainstream parties, or being largely invisible, rarely participating in anything, and taking only minor peripheral roles. Much to their surprise, the four members of the Māori Party immediately took on huge and punishing workloads, responding to every bill presented in the House, traveling extensively to keep in contact with their constituents, and presenting views and opinions both inside and outside Parliament that reflected Māori wishes and thinking. As required by their constituents, they conduct themselves as rangatira (highly respected leaders), with dignity and respect for others, including their political enemies. They have refused to descend into the gratuitous trading of insults that degrades the New Zealand Parliament in Māori eyes. They have insisted that the status of Māori as an official language be given meaning by using it every day in the House. It has been interesting to see other Māori speakers in the House following their example in this respect.

On the sporting front, where Māori generally do well, it was with a huge sense of pride that the Māori world celebrated professional golfer, Michael Campbell, winning not only the US Open but also the HSBC World Match Play championship in 2005. Although Michael identifies himself strongly and proudly as Ngāti Ruanui and Ngā Rauuru of Taranaki, including having his own sportswear label featuring Māori patterns and designs, in most of the mainstream media he is only a New Zealander. He was the Māori Sportsman of the Year and won the Halberg Supreme Award for his achievements.

Another great achievement was that of Robert Hewitt, brother of the All Black Norm Hewitt, who was lost at sea in February 2006 for three days but miraculously survived. He accomplished that feat by drawing on both his navy diver training and knowledge derived from his Māori ancestors of the physical and spiritual aspects of the sea. Some members of the Pākehā media made no attempt to mask their racism when he talked of his use of karakia (Māori prayer); they claimed his loss at sea was a hoax. The rest of the country was in awe of his achievement. It took him more than six weeks to recover from the physical trauma, including his skin splitting, severe sunburn, and dehydration (Mana [April–May 2006], 20–23).

In the business world, the University of Auckland Business School honored Ngāti Tūwharetoa’s Peter Loughlin as the Outstanding Māori Business Leader for 2005 for his work in fashion design. Peter dresses some of the world’s most influential and wealthy women through his House of Arushi, based in Dubai. His clientele include the royal families of the Kuwait, Qatar, Saudi Arabia, and
Oman. Every year, through his foundation scholarships, a young Māori designer is supported to travel to Dubai to work alongside Peter (Te Aratai Productions 2006).

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This review covers a two-year period from mid-2004 to mid-2006.

References


Rapa Nui

The main issue of local politics on Rapa Nui during the review period was the proposal for a special administrative statute for the island. The proposal, officially presented in August 2005, found both support and protest among Islanders. The debate on the island’s political future was further boosted by Chile’s new president, Michelle Bachelet, who expressed her strong support for the proposal. Meanwhile the numbers of tourists are growing exorbitantly, raising expectations of a wealthy future as well as fears about being overwhelmed by outsiders. At the same time, plans to build a casino on the island remain highly controversial.

The special administrative status proposal must be seen against the background of the current political status of the island, which, with its administrative complexity and multiplicity of local institutions, has become the object of criticism from various sides. According to the 1966 Ley Pascua (Easter Island Law), Rapa