Hilary Low

From: Christina Ward [christinaward@xtra.co.nz]
Sent: Friday, 1 December 2006 8:29 a.m.
To: Hilary Low
Subject: FW: I submit Hone Harawera's speach as my submission

COPY

From: Gaille Boyd [mailto:gailleboyd@yahoo.co.nz]
Sent: Thursday, 30 November 2006 1:17 a.m.
To: projectfeedback@tki.org.nz
Subject: I submit Hone Harawera's speach as my submission

This is my submission. To do anything short of this is a breech of the treaty.

United Nations Expert Seminar on Treaties, Agreements and other constructive arrangements between States and Indigenous Peoples **Hobbema**

Treaty 6 Territory Alberta, Canada - 14-17 November 2006

Te Tiriti o Waitangi

The means by which a nation promotes harmonious, just, and more positive relations between states and essential peoples

Preamble

The Treaty of Waitangi was signed in 1840 with our tupuna (ancestors), who had been previously recognised as indigenous people with sovereign rights.

The Treaty speaks of kawanatanga (governance by the Crown) in Article I, and tino rangatiratanga (Maori sovereignty) in Article II, as a natural tension by which Aotearoa

would be governed; a partnership which should be neither diminished or heightened for either party, for all time.

The MAORI PARTY, as the first independent parliamentary representative of the indigenou people of Aotearoa in 166 years, recognises the Treaty as the constitutional document for all people who live in Aotearoa (NZ).

The MAORI PARTY is born of the dreams and aspirations of tangata whenua (the people o the land) to achieve self-determination for whanau (families), hapu (subtribes) and iwi (tribes) within their own land; to speak with a strong, independent and united voice; and to live according to kaupapa (principles) handed down by their ancestors. The vision for the MAORI PARTY will be based on these aspirations, for they speak to us of whanau whose wairua (spirit) is strong and vibrant; who have fully developed their spiritual, intellectual, emotional and physical well-being; and who are confident, secure and pro-active in all aspects of their lives.

Our commitment to nationhood means that as well as understanding the heritage and the aspirations of our own people; we also actively encourage dialogue with all people who lay claim to Aotearoa as their homeland.

Report of the Special Rapporteur, Rodolfo Stavenhagen

The visit in November 2005, of the United Nations Special Rapporteur, Rodolfo Stavenhagen, to look at the nature and extent of our indigenous human rights issues shoul have been a serious warning to the New Zealand government.

The visit followed on from a UN report which was heavily critical of the Crown's passing of the Foreshore and Seabed Act 2004, extinguishing all Maori rights to the foreshore and seabed.

The Rapporteur confirmed the international standard that governments could not extinguish indigenous rights without the free, prior and informed consent of the indigenous peoples concerned, and recognised that Maori had not given that consent, and in fact had marched in their tens of thousands on parliament to oppose the passing of the Act.

The Rapporteur recommended that the Act be repealed, and that entrenching the Treaty of Waitangi constitutionally, would create:

"positive recognition and meaningful provision for Maori as a distinct people, possessing an alternative system of knowledge, philosophy and law".

The challenge for New Zealand society is to give substance to the Rapporteur's recommendations, particularly in light of the fact that Aotearoa has neither a written constitution, nor entrenched treaty rights, or even human rights.

Constitutional Change in Aotearoa

Maori believe strongly in the need for constitutional change, and the need to place Te Tiriti o Waitangi at the centre of those constitutional arrangements, but while a Treaty-based constitution has long been an aspiration of Maori, the Crown has steadfastly refused to consider it as an option.

In fact, a 'Building the Constitution' conference held in 2000 strove to maintain state sovereignty as paramount, with the Treaty and it's affirmation of Maori sovereignty, firmly sidelined as a subordinate rights document.

And a recent parliamentary review into New Zealand's constitutional arrangements, rather than taking as its starting point the centrality of the Treaty, instead questioned the relevance of the Treaty to the constitution.

There was, however, one important recommendation arising from this review, and that was that an independent institute would be an appropriate mechanism to co-ordinate constitutional debate.

Not surprisingly, the government did not agree.

One of the Maori Party's core statements on Te Tiriti o Waitangi and constitutional change is that an independent Nationhood Commission be established to facilitate constitutional review and change.

Treaty Jurisprudence

While constitutional debate remains off the government's agenda, Maori have long debated how to maximize the Treaty's contribution for the survival, development and flourishing of Maori people, and the nation of Aotearoa.

The Treaty Principles were developed by the courts and government ten years ago to mediate between the two language versions of the Treaty.

The 'parentage' of those principles is problematic, and differences in their interpretation and application continue to vex our society today, but inclusion of the principles in legislation, has afforded a measure of legal protection to Maori Treaty rights, and led to the development of a Treaty jurisprudence.

Central to any understanding of Treaty jurisprudence, are some basic points defined in Court of Appeal judgements, that the Treaty provides for:

the acquisition of governance in exchange for the protection of rangatiratanga;

a partnership between Maori and the Crown;

the duty for both parties to act reasonably and in good faith;

a duty of reasonable co-operation;

a duty to consult;

the freedom of the Crown to govern;

active protection of Maori in the use of their lands, forests and waters;

Maori to retain rangatiratanga over resources and taonga; and

Maori to have all the rights and privileges of citizenship;

Unfortunately however, for all their good intentions, implicit in these principles is the incorrect assumption that Maori ceded sovereignty to the Crown, leading to a continued belief in the paramount sovereignty of the state.

Consequently, government policy, legislation, and court decisions do not allow for the expression of Maori political authority in its own terms.

And so, despite the appearance of progress, the colonial framework has not changed much at all.

The Treaty Settlement Process

The Treaty settlements process has been a contentious issue for iwi ever since Maori rejected what became known as the 'fiscal envelope'; a one billion dollar offer by the Crowr to settle all claims relating to breaches of the Treaty of Waitangi since its signing in 1840.

To put this amount in context, one billion dollars is how much money Maori owe for tertiary education alone, over the past 12 years.

Since 1992, nearly twenty claims have been settled for about $735 million. $100 million is on the table for claims under negotiation, and $304 million has been set aside to complete the rest.

However, since the initiation of the process, claimants and lawyers have expressed grave concerns about the process itself, the terms of settlement, the amount set aside for settlement, and the agency charged with managing the settlement process.

It is because of the seriousness of these concerns that the Maori Party decided to ask iwi a round the country to consider suspending all treaty settlements until a full review of the Treaty settlement process could be done.

Those concerns are as follows:

Treaty settlements should be about settling grievances which have arisen from Treaty breaches, and as such, the process should be agreed to by both parties. The Crown, however, has already pre-determined all of the terms of settlements;

The Waitangi Tribunal was established to consider Treaty claims. However, tribunal hearings are often long and costly affairs; and the Crown refuses to be bound by the

Tribunal rulings, and to properly fund the work of the tribunal. Because of these constraints, claimant groups are being pressured into direct negotiations with the Crown;

- The Quantum of $1.3 billion has already been rejected by iwi at the Hirangi hui in 1992. The offer is insultingly low.

The appointment of iwi negotiators is subject to approval by the Crown. It is not appropriate for one party to determine who has the right to represent the other party in a settlement process.

The value of settlements is at most, only 2% of the real value of claims; leaving Maori to settle for far less than their claims are worth;

- Settlement groupings are being imposed by government. The requirement is that settlements be with 'large, natural groupings' to limit the number of settlements. This has meant that smaller hapu and iwi are denied due process.

Settlement governance entities are largely determined by Crown requirements, creating entities which often bear little relationship to traditional structures;

A full and final settlement is being demanded by the Crown.

The practical implementation of unfair and unjust settlements which create a whole new se of grievances, simply reinforces the comments made by the Special Rapporteur, Miguel Alfonso Martinez in his 1999 report, ***"owing to their special relationship, spiritual and material, with***

their lands, the Special Rapporteur believes that very little or no progress can be made in this regard without tackling, solving and redressing – in a way acceptable to the indigenous peoples concerned – the question of the uninterrupted dispossession of these unique resources, vital to their lives and survival".

The Maori Party has received very clear feedback that claimant groups want to settle grievances in a manner that will enable them to move forward in a positive way. But the question of iwi being forced to accept ludicrously low settlements or 'go to the back of the queue' is an issue that Maori will demand be redressed at some point in the future.

A 2005 poll said that 57% of all New Zealanders wanted early Treaty settlement deadlines. But we know that if unfair settlements are signed off today, government will simply be consigning future generations to deal with that which this generation could not resolve.

Compounding the problem is the fact that many of our elders have devoted the last years o their lives to fighting for justice for their people, and are pushing for settlements, often in opposition to the wishes of their own people.

Under these circumstances, the Maori Party has called on Maori to reflect on the settlement process and the very real constraints and concerns identified above.

The Case of Ngati Whatua

One of our esteemed leaders, Sir Hugh Kawharu, recently passed away. I want to draw on his leadership in illustrating how the Treaty could work – and how the Foreshore and Seabed Act exists as a breach of the Treaty in action.

The model that Sir Hugh led, where Maori can demonstrate customary use rights, where ownership is vested in Maori but access is guaranteed for all; is evident in the waterfront of Aotearoa's biggest city, Auckland.

The land is jointly administered by Ngati Whatua and the Auckland City Council under the 1991 Orakei Act. That Act, which followed a watershed Waitangi Tribunal ruling of 1987, gave the Ngati Whatua O Orakei Maori Trust Board title to sixty hectares including the marae, church and ancillary buildings reserved for hapu development.

But the rest of the implicated land was set aside as Maori reservation, known as **whenua rangatira** (noble or chiefly land) for the common use and benefit of the members of the hapu and the citizens of Auckland.

The model worked, for as Sir Hugh explained:

"What should be required is that Maori must have an effective say in respect of the ongoing control, administration and management of the area of land, and should be the registered proprietor. ***The key is the retention of mana (authority).***

In case there should be any doubt as to the workability of such an arrangement, Sir Hugh continued:

If the Crown's proposals for the Foreshore and Seabed are implemented, then that will result in a direct loss of mana which flies directly in the face of that which I have set out earlier in relation to the Orakei Reserves Board. Clearly that is a prejudice which Ngati Whatua will suffer, and one which cannot be remedied by monetary compensation or mere recognition of use rights."

What this example of Ngati Whatua demonstrates is that the ability for iwi to be able to resolve their Treaty claims expeditiously, with settlements that are fair, affordable, timely and durable, is a key issue in nation-building; in moving the nation forward both from the perspective of the indigenous peoples, but also other citizens of Aotearoa.

The key lies in the commitment of both parties, to continue to work honourably, to achieve enduring resolutions.

It is devastating then that only a few short months after his death, we find that government has been negotiating with developers and the local council to build a sports stadium on the whenua rangatira lands – without the courtesy of involving, or even notifying Ngati Whatua.

It would seem that in spite of Sir Hugh's magnanimous offer, government intends to hold true to its history of duplicity, dishonesty and deception.

Te Arawa Lakes Settlement Bill

Unlike other nations, Te Tiriti o Waitangi is not enforceable in New Zealand domestic law.

Since the mid 1980s however, and as briefly referred to earlier, Parliament has made some progress in referring to the principles of the Treaty of Waitangi in some legislation, which has been interpreted broadly by the Courts, without any real effect on the Government's da to day policy programme.

This is, in part, because such interpretation is made without recognising that Maori did not cede sovereignty under the Treaty, or indeed that Maori have continuing rights to self-determination.

Indeed, the Court of Appeal ruled that:

"The principles of the Treaty do not authorise unreasonable restrictions on the right of a dul elected government to follow its chosen policy. Indeed, to try to shackle the Government unreasonably would itself be inconsistent with those principles.

The test of reasonableness is necessarily a broad one, and necessarily has to be applied b the Court in the end in a reasonable way. The parties owe each other co-operation.

To test the notion of 'reasonableness', the spirit of co-operation between government and Maori, I turn to the most recent Treaty Settlement Bill to go before the House.

That Bill, the Te Arawa Lakes Settlement Bill, concludes a negotiation between the Te Arawa people and the Crown which has been ongoing since 1921, when Te Arawa's ancestors secured Lake Okataina and the surrounding lands as a reserve. Amongst those ancestors were a number who passionately objected to the Te Arawa Lakes Settlement negotiation of the time.

The current settlement recognises:

The savage depletion of the fishlife upon which Te Arawa relied;

The senseless prosecution of Te Arawa for fishing in their own lands;

The devastation of the wetlands around the lakes; and

The deliberate delays to hinder Te Arawa's preparation for the Land Court.

But the compensation offered by the Crown falls well short of acceptable redress. Indeed the State itself acknowledges "it is not possible to compensate Te Arawa fully for the extent of loss".

These lakes were once rich in indigenous flora and fauna, in fisheries and aquatic life, an ever-bountiful supply for economic development, tourism, travel, hospitality and trade.

Once described as the glittering jewels of the nation, the lakes have become polluted and degraded through the allowance of timber-milling, farming and domestic sewage, resulting in the growth of algae, weeds, waste discharge and sewage, and the devastation of indigenous species of fish.

The cost to remedy that contamination by successive local bodies and governments is understood to total more than $200 million, and yet all Te Arawa were offered was $2.7m ir cash, and $7.3m for annuity redress.

The lakes are also part of the very essence of Te Arawa identity. They are the foundation for Te Arawa spirituality, values, principles, and cultural integrity. The survival of Te Arawa as a people is intrinsically linked to the survival of their lakes.

As a political party, the Maori Party was caught in a no-win situation. How to respect the decision of Te Arawa to claim redress, without supporting the wrongful confiscation and theft of Te Arawa territories, the pitiful compensation, and a settlement process designed tc further divide the people?

In our speeches, our releases, and our questions of the government, we challenged the audacity of the Crown acting as the thief, the policeman, the judge and the jury, for handing down a ruling that was patronising, self-serving and insulting.

The local Member of Parliament for that area, my Maori Party colleague, Te Ururoa Flavell, fought hard to insert clauses that might grant some justice for Te Arawa, to achieve at least some positive outcomes for those concerned.

But clause by clause, each and every amendment was voted down by the government, and another settlement bill was passed through the House.

In his closing speech on the matter, Mr Flavell harked back to one of his Te Arawa ancestors, Tunohopu, who said: ***He aha au te mate noa ake ai, i taku pakarito, ka tupu***

That I should die means nothing, my descendants shall survive and grow, thrive and prosper.

Furthermore, the question of those who can assert mana whenua, literally those who have mana, political control and authority over the land, became highly contentious through the passage of this Bill.

Various sub-tribes spoke to the select committee: hapu who said there was no mandate given by their people; hapu who said they had not ratified the settlement; hapu who said that, in fact, their people had been excluded from voting on the settlement.

And so, on top of everything else, the 2006 settlement also caused intense injury within and across the peoples of Te Arawa.

Crown stratum

But not content with despoiling the waters, and disrupting the relationship of the Te Arawa

peoples to their lakes, government also introduced a new concept to the context of Treaty settlements.

Crown stratum - the concept that the water column and airspace of the Te Arawa lakes should be owned by the Crown. Crown stratum is defined in the Te Arawa Lakes Settlemen Bill as "the space occupied by water and the space occupied by air above each Te Arawa lakebed" (Part 1, c/1).

No law vesting lake water in Crown ownership has ever been passed in New Zealand. Previous settlements have separated lake beds from lake water, vesting ownership of the lake bed with iwi (as in the Ngai Tahu Claim, and the Ngati Tuwharetoa Deed of Agreemen but these agreements contain no provisions in respect of the ownership of lake water.

What is different in the Te Arawa Bill is the provision for Crown ownership of the water column – but in the absence of any law that demonstrates the Crown has any such entitlement.

The definition of Crown stratum has been slipped in, under the noses of the people, in muc the same underhand way as the Foreshore and Seabed Act which extinguished Maori right and confiscated customary title, despite widespread Maori opposition and international criticism and censure.

The confiscation of the Te Arawa lake waters brings a new low to the many other iwi and hapu settling Treaty claims. It is a bitter irony that the process of settling Crown breaches o the Treaty of Waitangi not only maintains those grievances, but also creates fresh grievances that future generations will be left to deal with.

Deletion of the Treaty Principles

The Maori Party views Te Tiriti o Waitangi as a powerful blueprint for affirming and building relationships between tangata whenua and others, and for advancing self-determination. It is disturbing to see other parties dismissing its value when its signing gave consent to their very existence.

A recent Bill has been presented by a minor party (New Zealand First) which the government has supported, to eliminate all references to the expressions of 'Treaty of Waitangi and its principles' from all statutes.

The Maori Party believes that the Treaty gives shape to our nation, a key source of government's moral and political claim to legitimacy; a document of which the late Sir Robir Cooke, President of the Court of Appeal said

"It is simply the most important document in New Zealand's history....a nation cannot cast adrift from its own foundations".

Our position on the Treaty is unequivocal. Its intentions, its articles, and the original spirit ir which it was entered into by both Treaty partners, should inform the making of all legislatior and policy in this country.

Concluding Comments

The case studies provided in the situations for Ngati Whatua and Te Arawa, offer two differing scenarios of iwi struggling to work within the constraints of government's Treaty Settlement process.

They and others are to be congratulated for the tenacity with which they have pursued their claims, under intense pressure from the Crown and even more intense scrutiny from their own people.

And yet, in the midst of their fierce determination to do the very best by their people, government continues to shift the benchmarks. The recent invention of new concepts of confiscation; the willingness to remove Treaty principles from legislation; the constantly changing of Treaty policies; and the unequivocal opposition of the New Zealand Government to the Declaration of the Rights of Indigenous People, leaves Aotearoa's international reputation in tatters.

Such then is the challenge for the Maori Party, indeed for Maori people themselves – to complete that which the NZ government is clearly unable to do - to defend Maori rights and

to advance Maori interests, for the benefit of all who live in Aotearoa.

Hone Harawira

Maori Party Member of Parliament for Te Tai Tokerau

------ End of Forwarded Message