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SUBMISSION: NEW ZEALAND GOVERNMENT REPORT TO 71st SESSION, UNITED NATIONS COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION – NGO SHADOW REPORT

WHO WE ARE

1. This Shadow Report is made on behalf of a collective of iwi Māori /indigenous peoples' Authorities in Tai Tokerau[1] (the North of the North Island) of Aotearoa, New Zealand.

2. We write this submission having perused the Advance Unedited Version of the New Zealand Government's 15th, 16th and 17th Consolidated Periodic Report to the CERD (the NZ Report) which covers the period 1 January 2000 to 22 December 2005.[2]

3. Contact details in regards to this Shadow Report are:

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[1] The four iwi included in this collective submission are Ngāpuhi, Te Rarawa, Ngāti Kahu and Ngāti Kahu ki Whaingaroa (2006 census populations being 122,911, 14,895, 8,313 and 1,746 respectively).
[2] CERD/C/NZL/17 16 May 2006 refers.

GOVERNMENT POLICY AND GENERAL LEGAL FRAMEWORK (paras 5-10 of the NZ Report)

4. It has recently been observed that evidence today places New Zealand in the context of *"a significant and disturbing increase of inequality".*[3] The Government's fundamentalist policy of eliminating discrimination in New Zealand is harming Māori (for example, see commentary below on paras 54 and 55 of the NZ Report). The policy ignores the fact that groups sometimes need to be treated differently in order to achieve an equal outcome – as is acknowledged in Article 1.4 of the ICERD.

5. It is interesting that there is no mention in the NZ Report of the significance of New Zealand's constitutional arrangements in relation to issues of discrimination. It has been observed that "*our Parliament is unusual in its claim of unlimited legislative power*", and that the absence of a constitution or an upper house allows Parliament to operate in an unconstrained way.[4] For Māori this often translates into expropriation, erosion or violation of our Treaty of Waitangi and indigenous rights. However, in its 2005 report to Parliament, the Committee of Inquiry to review New Zealand's constitutional arrangements stated that "*New Zealand's constitution is not in crisis*"[5] – an assessment determined by the Committee despite numerous submissions from Māori and others urgently calling for change. One of the changes called for was, and continues to be, the entrenchment of the Treaty of Waitangi, a move supported by the United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People (Special Rapporteur).[6] Māori see this as necessary to protect our rights because despite New Zealand having a Human Rights Act 1993 and Bill of Rights Act 1990, Māori Treaty rights are still being violated and Māori are still experiencing unacceptable and alarming levels of inequalities across all socio-economic indicators of wellbeing in New Zealand. Albeit insufficient, meaningful improvement of the constitutional arrangements of New Zealand is still necessary to end institutionalized discrimination against Māori in Aotearoa.

6. Another generic issue concerns the 2005 Government Budget. The Government's 2000 Budget speech seemed to be justifying a "*perceived over-expenditure on Māori and race relations*":[7]

> "*First it is an issue of simple social justice. Second, for Māori, it is a Treaty issue. Third, for all New Zealanders, it is important that the*

[3] J Sundaram 'Flat World Big Gaps', January 2007 by Zed Books ISBN: 1-84277-834-X.
[4] N Tanczos, "Single House has far too much power", New Zealand Herald, 10 June 2004.
[5] Report, p7, available at http://www.constitutional.parliament.govt.nz/ .
[6] Paras 85 and 86, p20, E/CN.4/2006/78/Add.3.
[7] T Turia, Māori Party Co-Leader, "Reading the Budget 2005", 23 May 2005.

growing proportion of our population which is Māori and pacific Island peoples not be locked into economic and social disadvantage because if they are, our whole community is going to be very much the poorer for it".[8]

7. Compare this with the 2005 Minister of Finance's Budget speech where "*the word 'Māori' doesn't appear once (compared to 'kiwi' which is uttered 26 times).*"[9] The Budget was criticized as "*smoke and mirrors*"[10] in terms of addressing Māori needs, and trying to "*appeal to middle New Zealand, just like the Government did with the foreshore and seabed debacle.*"[11] The New Zealand Medical Journal further criticized the Budget for omitting any specific funding for Māori health programmes "*despite the evidence favouring culturally appropriate prevention programmes and healthcare services designed to address Māori health needs.*"[12] Many commentators have noted the sharp shift in a number of government Māori policy areas since the National Party's 'Nationhood' Speech in Orewa in 2004 and the National Party's subsequent rise in the popularity polls.[13]

DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (para 16 of the NZ Report)

8. We will not detail our concerns here regarding the Government position. Suffice to say we have several concerns and Māori have made requests to the Government, asking that it:[14]
   a. Refrain from its current unhelpful stance, and decline to make any further interventions opposing the Declaration at the UN Human Rights Council or other fora.
   b. Re-open meaningful dialogue with Maori in regard to the Declaration and the Chair's text.
   c. Assist Maori to hold appropriate dialogue on the issues.

9. It is difficult to see how failing to engage with the people who will be most affected by the DDRIP meets any standard, under the Treaty of Waitangi or internationally, of proper consultation. The Government is hypocritical to

[8] The Prime Minister, Helen Clark, as reported in T Turia, Māori Party Co-Leader, "Reading the Budget 2005", 23 May 2005.
[9] T Turia, Māori Party Co-Leader, "Reading the Budget 2005", 23 May 2005.
[10] Te Mana Akonga, "Budget 2005: Nothing for Māori", Press release, Scoop Independent News, 19 May 2005.
[11] R Berry, "Budget 2005: Turia attacks the Budget as 'visionless' ", New Zealand Herald, 20 May 2005.
[12] Journal of the New Zealand Medical Association, "The New Zealand Government's 2005 Budget: missed opportunities for significant public health progress", 3 June 2005, Vol 118 No. 1216.
[13] Summary of that speech is attached. The full version of that speech can be found at http://www.national.org.nz/Article.aspx?ArticleID=1614 .
[14] Letter to Minister of Foreign Affairs 22 June 2006 from Moana Jackson, on behalf of over 60 participants at the DDRIP seminar during the International Conference on Traditional Knowledge, 17 June 2006.

infer that it has the best interests of Māori at heart while treating Māori in this way.

TREATY OF WAITANGI AND HISTORICAL TREATY SETTLEMENTS (paras 27-34 of the NZ Report)

Treaty of Waitangi Settlements Process

10. The Special Rapporteur recommended that "*The Crown should engage in negotiations with Maori to reach agreement on a more fair and equitable settlement policy and process*".[15]

11. This is in recognition of a number of inequities including that the settlements process falls "*short of "just and adequate reparation or satisfaction for any damage suffered" (within the meaning of article 6 of the* [ICERD])"[16]; and to add insult to injury, from their 'non-market' settlement quantum Māori claimants must pay a market price to purchase assets back from the Crown. This is in stark contrast to other settlements involving 'non-Māori' which the Crown has agreed to on a market basis, such as:

    a. Market compensation to European Lessees of Māori Reserved Land for changes in the lease conditions (1997);[17]

    b. bailing out New Zealand's national bank for $1 billion;[18]

    c. bailing out our national airline for $885m (2001);[19]

    d. South Island High Country land reform/ tenure review (2006) resulting in the Crown purchase at market rates of the lessees' rights with a combination of cash and freehold land retained by the farmer. In response to one academic's criticism of the deal for "*giving away the Crown jewels and paying [farmers] to take them away*", the High Country Accord Co-chair remarked: "*She seems to believe that the Crown should*

[15] Para 95, p21, E/CN.4/2006/78/Add.3.

[16] Para 26, p9, E/CN.4/2006/78/Add.3: the value of Māori land claims settlements are at only about between 1-2% of their real value.

[17] Māori Reserved Land leases to European settlers involved terms and conditions that "*did not always take into account the wishes of the* [Māori] *landowners*". Māori received peppercorn rentals; the rent review period was fixed at 21 years; and the European lessees had a perpetual right of renewal. "*The Maori Reserved Land Amendment Act 1997 sought to remedy this situation by placing the relationship between owners and lessees on a more commercial level and returning the landowner rights to the owners, whilst at the same time providing protection for the property rights of the lessees"* (J Luxton, Minister of Māori Affairs, News Release, 5 August 1996). The Māori landowners received market compensation also. However, it has been speculated that this only happened because to compensate the European lessees only would be outright racist.

[18] H Harawira, Member of Parliament for Te Tai Tokerau, "Using the Treaty of Waitangi as a basis for Maori / New Zealand political relations", speech to International Indigenous Nations Treaty Summit, Alberta Canada, November 12-13, 2006.

[19] On 27 November 2001 the New Zealand Government finalised an agreement to contribute $885 million to "*to secure the future viability of Air New Zealand*" (M Cullen, Minister of Finance, 4 October 2001, Media Statement).

be able to buy land of conservation value from lessees for any figure the minister of lands dreams up. This would be patently unfair and an abuse of executive power."[20] It is a shameful indictment on New Zealand when there is not the same public enthusiasm or political will to enforce an equivalent standard in regard to redress for Māori land claims against the Crown.

Justifications for Discriminatory Treatment

12. The Government continues to use "the national interest" to justify the disparity between Māori and non-Māori settlement values. However, these days it seems that anything that has significant potential to empower Māori (including the potential to generate economic growth or wealth) is a matter of national interest. What is acceptable law or policy regarding the issue at hand is therefore determined by the tyranny of the non-Māori majority as expressed through mainstream political will (or lack thereof as the case may be). The national interest 'justification' appears to have become the standard textbook reaction which is all too often acceptable (and even expected) among mainstream political parties which is swiftly deployed in the event of any Tribunal finding in favour of Māori claimants concerning economic advancement.[21]

13. Added to the national interest is the argument the Labour Government appears to have picked up on22 that Māori should not be receiving special privileges due to the Treaty of Waitangi. However, applying one law for all in a bicultural / multicultural society where the law itself is predominantly of one culture leads to unequal treatment and outcomes,23 systematic discrimination and the loss of Māori control over things Māori. In doing so, a most insidious discriminatory act is being ignored by the masses: why is it that the general public fully expect any contracts made in today's New Zealand society to be enforceable under law. But when it comes to the 'contract' which founded our Nation, the public majority and mainstream politicians are willing to accept and even aggressively promote the idea that the protection of Māori rights under the Treaty of Waitangi is undeserving of

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[20] Press Release: High Country Accord, "High Country academic "ill-informed" ", Wednesday, 17 January 2007.

[21] For example, "*Act MP Stephen Franks said ruling claims invalid because of the public interest should be immediately applied to "claims for native plants and animals, foreshore and riverbed, radio spectrum…*": A Young, "Turia cleared to support Waitangi Tribunal oil and gas report", New Zealand Herald, 22 May 2003. Commentators have also observed that "*the Government's response is positive when the recommendation is easy to implement but negative when it is financially exorbitant or politically inconvenient*" (J Armstrong, "Clark digs in over oil and gas", New Zealand Herald, 24 May 2003).

[22] The Government has stated that "no government can accept the notion of creating different classes of citizenship." (Statement by Australia, New Zealand and the United States of America on the DDRIP, at the UN PFII, New York, 17 May 2006).

[23] For further elaboration, see the Joint Methodist-Presbyterian Public Questions Committee "Towards a Māori Criminal Justice System" as referred to by Te Ururoa Flavel, MP for Waiariki, Speech to the House, 28 June 2006.

the same standard of enforcement. This is outright social and politically institutionalized racism. The sum result is that Māori are being forced to go without our lands and resources which are instead used to disproportionately subsidise the economic and infrastructural growth of Aotearoa.

WAI 262 Flora and Fauna Claim

14. The Wai 262 claim[24] to indigenous flora and fauna and associated cultural and intellectual property rights (to which three Northern Tribes, including Te Rarawa, are claimants) has been described by an international expert on indigenous peoples rights as one of the most important claims of its kind anywhere in the world.[25] Despite its widely recognised significance, the claim has suffered many setbacks including a serious lack of funding, significant opposition from the government and ongoing unreasonable delays. Almost 15 years after the claim was filed, and notwithstanding that urgency was granted to it being heard in 1995, the claim up until December 2005 still remained uncompleted in the Waitangi Tribunal. However, three of the original elders who filed the claim in 1991 have since passed away. While final claim inquiry hearings are thankfully being held this year, due to questions about Tribunal resourcing it is unclear as to when the Tribunal will be able to report on its findings and recommendations. Neither are we certain about what resources the Crown will commit to the timely negotiation of a Wai 262 settlement with Māori after the release of the Tribunal's report.

15. Meanwhile, the government is engaged in negotiations at the international level regarding development of processes and principles governing traditional knowledge, access to genetic resources and intellectual property rights. The governments' stance regarding recognizing and protecting the rights of indigenous peoples in fora such as the Convention on Biological Diversity, the World Intellectual Property Organisation and Draft Declaration on the Rights of Indigenous Peoples, has become increasingly hostile in recent years. This can be attributed to the negative 'backlash' experienced over the foreshore and seabed issue and the increasing politicization of racial and Treaty issues in New Zealand. Unfortunately, Maori are only on the very fringes of those international fora and processes and have little or no influence.

16. The Wai 262 claimants continue to look to their Treaty with the Crown for recognition and protection of their rights guaranteed under Te Tititi o Waitangi. For these claimants, it is certainly the case that 'justice delayed is justice denied'.

Moves to Delete the Principles of the Treaty of Waitangi from Legislation

[24] Filed with the Waitangi Tribunal Commission of Inquiry in 1991.
[25] Evidence given by the late Dr Darrell Posey to the Waitangi Tribunal considering the Wai 262 claim, Rotorua ,1998.

17. The NZ Report (para 27) recognizes the Treaty of Waitangi as "*the founding document for the ongoing and evolving relationship between Māori and the* Crown". However, it fails to mention that in 2006 the Labour Party supported political party New Zealand First in introducing its Bill to eliminate all references to…"*the Treaty of Waitangi and its principles*" from New Zealand Statutes.[26] This is significant in that the Treaty protections for Māori can only be effected to the extent that the Treaty is recognised under statute. It also raises huge concerns as to what effect the Bill, if made into law, would have on institutions such as the Waitangi Tribunal and ramifications for Māori Settlement legislation which include Treaty references. By its own admission, the Labour Party has voiced that removal of all references to Treaty principles as proposed under this Bill is unnecessary,[27] may give rise to "*significant potential risk and negative impact on the relationship between many Māori and the Crown*" and "*would undermine the good-faith relationship between the Crown and those it settled with*",[28] and is "*deliberately ignorant and morally repugnant*."[29] The Bill is also indefensible by international indigenous human rights standards.

18. Government has announced that it will not support the Bill past the First Reading because of the damage it would do to the Crown-Māori relationship.[30] However, in supporting the Bill even at this preliminary stage, much 'lack of good faith' damage to the relationship is already done. It sends ambiguous messages to the public about the importance of the Treaty and the principles. It leads to speculation about what policies the Government might support or implement in future to stay in power.

THE WAITANGI TRIBUNAL (paras 35-38 of the NZ Report)

19. The Special Rapporteur recommended that the Waitangi Tribunal should be:[31]

    a. "*granted legally binding and enforceable powers to adjudicate Treaty matters with the force of law*"; and

    b. "*allocated more resources to enable it to carry out its work more efficiently and complete its inquiries within a foreseeable time fra*me".

20. The NZ Report (para 38) admits that the Crown "*has not always followed Waitangi Tribunal reports on contemporary matters*". For example, in 2003 the Government refused to accept the Tribunal's finding[32] that the manner in which the Crown nationalized oil and gas resources in 1937 was a Treaty

[26] R Doug Woolerton, Principles of the Treaty of Waitangi Deletion Bill – Explanatory Note.
[27] Note 17 above.
[28] Hon Mark Burton, Questions in the House on Treaty of Waitangi – Legislation, 25 July 2006.
[29] Note 17 above.
[30] New Zealand Herald, "Treaty bill passes first reading but won't go any further" (26 July 2006).
[31] Paras 89 and 90 respectively, p20, E/CN.4/2006/78/Add.3.
[32] Waitangi Tribunal, "The Petroleum Report ", Wai 796, 2003.

breach requiring the provision of royalties to the original Māori land owners. This despite recognition under the International Labour Organisation Indigenous and Tribal Peoples Convention No. 169 (ILO 169) and the Draft Declaration on the Rights of Indigenous Peoples (DDRIP) that indigenous peoples have rights that need to be protected, including:

a. To own, use, manage, conserve and control their natural resources;[33]

b. To benefit from exploitation of their resources;[34]

c. To compensation or redress for resources confiscated, taken, occupied, used or damaged;[35] and

d. To development of their resources.[36]

21. In terms of the lack of agreement with non-binding Tribunal findings and recommendations, it is unhelpful that the Government has so far refused to sign the ILO 169 and continues to oppose the DDRIP (see submissions above re DDRIP for further information), despite the Special Rapporteur's recommendations that the Government should:[37]

a. "*continue to support efforts to achieve a United Nations declaration on the rights of indigenous peoples by consensus, including the right to self-determination*"; and

b. "*ratify ILO Convention No.169 concerning Indigenous and Tribal Peoples in Independent Countries*".

MĀORI LAND COURT (para 40 of the NZ Report)

22. The NZ Report omits mention of the Government's attitude and behaviour towards the Māori Land Court (MLC) which raises questions of discrimination. In March 2004 MLC judge Caren Wickliffe ruled that a claim by 11 Māori groups seeking the granting of freehold title over 200km of coastline could proceed.

23. As with the 2003 foreshore and seabed Court of Appeal ruling (see also Foreshore and Seabed Act 2004 below), the Government was quick to respond to this development. The Prime Minister criticized the MLC judge on national television citing as the rationale a foreshore and seabed-related appeal to the Privy Council and Government foreshore and seabed legislation being drafted. The Prime Minister also raised her concern that the judge who presided over the MLC case was of the same iwi as one of the

[33] See Article 15, International Labour Organisation Indigenous and Tribal Peoples Convention No. 169, and Article 26(1) of the Draft Declaration on the Rights of Indigenous Peoples.
[34] Article 15, International Labour Organisation Indigenous and Tribal Peoples Convention No. 169, and Article 28 of the Draft Declaration on the Rights of Indigenous Peoples.
[35] Article 28 of the Draft Declaration on the Rights of Indigenous Peoples.
[36] Article 26 of the Draft Declaration on the Rights of Indigenous Peoples.
[37] Paras 102 and 103 respectively, p22, E/CN.4/2006/78/Add.3.

Māori applicant groups.[38] The Crown then applied for a judicial review of the MLC decision. In her written judgment, Judge Wickliffe stated that it was "*unfortunate*" that she had to remind parties of the convention that politicians do not criticize judges, and that if a party is unhappy with a court decision they should apply for a review or appeal.[39]

24. The Crown subsequently dropped its application for review, but only after having drawn criticism that the Executive's breach of convention was a political move to delay the MLC claims until after the foreshore and seabed legislation was passed[40]; and that it illustrated "*the need for our particular brand of parliamentary sovereignty to have some constitutional constraints*", especially in regards to "*laws which tend to trample on the rights of minority groups "because there isn't a lot of electoral damage in doing so.""*[41] Regarding the matter of perceived bias, one Member of Parliament noted how patently unfair the criticism was against Māori: "*Given the sophisticated and complex networks of whakapapa* [geneology] *we possess as tangata whenua* [indigenous peoples]*, it would seem that there will be very few Māori judges who are able to hear a case.*"[42]

REVIEW OF TARGETTED POLICIES AND PROGRAMMES (paras 54 and 55 of the NZ Report)

25. "[C]*redibility and public acceptance*"[43] of the 'race-based' policies and programmes targeted in this Review only became an issue after the (now landmark and infamous) Orewa speech by the National Party leader. The speech included *"race-based"* attacks which unfortunately generated enough public support[44] to spark a request to the Race Relations Minister to review the targeted programmes.[45] Most of the proposed changes to the targeted policies and programmes - including cuts to a number of 'race-based' funds – were in education and health.

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[38] R Berry, "Helen Clark hits out at judge over East Coast claim", New Zealand, 13 March 2004.
[39] H Tunnah, "Judge rebukes Helen Clark for public criticism", New Zealand Herald, 12 April 2004.
[40] Retired Māori Land Court judge Ken Hingston commented that Judge Wickliffe "*didn't decide anything of moment*", was "*quite properly ruling according to the law as it was, not what it might become*" and that "*attacks on the Judiciary have become par for the course*" since the 2003 foreshore and seabed Court of Appeal ruling: T Misa, "A great Judiciary…if it does what it's supposed to do", New Zealand Herald, 8 September 2004.
[41] Comment by former Human Rights Commissioner and lawyer Chris Lawrence (ref T Misa, "A great Judiciary…if it does what it's supposed to do", New Zealand, 8 September 2004). He further
[42] R Berry, "Māori hit back at Wilson's review call", New Zealand Herald, 2 September 2004.
[43] Para 54, p18 of the NZ Report.
[44] This is perhaps what the Government is referring to when it states "*The existence of special measures for the development and protection of certain racial groups was the subject of much discussion in 2004*" (para 54 of the NZ Report).
[45] R Berry, "Government in retreat over race-based funding", New Zealand Herald, 24 June 2005.

26. The Review and the Government's associated decisions flew in the face of the widely accepted belief among scientists[46], sociologists and in some cases objections from its own Ministry of Health that ethnicity has a significant bearing on a range of health, education and other social outcomes. The Special Rapporteur recommended to the Government that "*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*".[47]

FORESHORE AND SEABED ACT 2004 (para 64 of the NZ Report)

27. It has been observed that "*the Government's* [foreshore and seabed] *approach fragments and fails to recognise the holistic Māori view of their relationship with the sea and the coast, which essentially includes significant ownership interests*."[48] Part of that policy includes that "*Any commercial development will be restricted to the volume of resource used for the customary usage*".[49] In other words, the Government is demanding that Māori commercial development associated with foreshore and seabed resources remains 'time-warped'. This has serious potential implications. For example, Māori are prevented from exploiting any newly discovered resource, or increasing the harvest volume of a resource: two scenarios which are most likely to occur given ever improving technology. It is uncertain who ought to have the rights to any such 'residual' commercial development opportunities that Māori are precluded from claiming. For the time being, however, the status quo is that the Government intends to regulate it – with a strong chance that it may decide to hand commercial rights back to itself or non-Māori third parties.

28. In 2005 the CERD recommended that the Crown consider "*broadening of the scope of redress available to…Māori*".[50] The Special Rapporteur has recommended that "*The Foreshore and Seabed Act should be repealed or amended by Parliament and the Crown should engage in Treaty settlement negotiations with Māori that would recognise the inherent rights of Māori in the foreshore and seabed and establish regulatory mechanisms allowing for the free and full access by the general public to the country's beaches and coastal area without discrimination of any kind*".[51] In 2006 the Māori Party also introduced a Bill to repeal the Foreshore and Seabed Act.

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[46] See also T Blakely, S Ajwani, B Robson, M Tobias, M Bonné, "Decades of disparity: widening ethnic mortality gaps from 1980 to 1999", Journal of the New Zealand Medical Association, 06-August-2004, Vol 117 No 1199; and Ministry of Social Development, "New Zealand Living Standards 2004" (2004).
[47] Para 101, p22, E/CN.4/2006/78/Add.3.
[48] R Berry, "Muddying the waters", New Zealand Herald, 12 February 2004.
[49] Hon Dr Michael Cullen, "Even political desperation no excuse for this", Press release, 27 January 2004: http://www.beehive.govt.nz/Print/PrintDocument.aspx?DocumentID=18789
[50] Para 8, CERD/C/66/NZL/Dec.1 refers.
[51] Para 92, p21, E/CN.4/2006/78/Add.3.

29. However, as applications for customary rights orders and territorial customary rights negotiations[52] are still in progress, there is no evidence that that the Government intends to adjust its foreshore and seabed policy. On the contrary, any foreshore and seabed settlement outcomes will be similarly unjust given the following factors:

    a. The Government's public reaction to the CERD decision was dismissive[53]; and

    b. The fundamental unfairness and discriminatory aspects of Māori land claims settlement negotiations will in all likelihood be carried over to foreshore and seabed negotiations.

MĀORI EDUCATION (paras 101-112 of the NZ Report)

Statistics - Māori School Leavers

30. The Government's reported decrease (para 111) in Māori school leavers with little or no qualifications glosses over the unacceptable degree to which Māori are still failing. In 2005, 53% of Māori boys left school with no qualifications compared with 20% of Pākehā boys.[54] While the Professor responsible for the research described the statistics as a ticking "*time bomb*",[55] the Minister of Education refuses to accept this as evidence of a "*crisis of…underachievement and lost potential*."[56]

31. On the other hand, in 2005 "*Māori students in year 11, who attended schools where teaching was in te reo Māori for between 51 to 100% of the time, had a higher rate of attaining* [National Certificate of Educational Achievement] *qualification than Māori in other schools.*"[57] This supports the Special Rapporteur's recommendation that "*more resources should be put at the disposal of Māori education at all levels, including teacher training programmes and the development of culturally appropriate teaching materials*." [58]

Tertiary Education

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[52] It has been reported in the media that two of the three claimant iwi the Crown is currently negotiating with - Ngati Porou and Te Whānau-a-Apanui - are in fact the iwi of the Minister of Maori Affairs: Newztel News: RNZ "Morning Report", 14 March 2005.

[53] "[The CERD] is *a committee on the outer edges of the UN system. ... It did not follow any rigorous process as we would understand one. In fact, the process itself would not withstand scrutiny at all*": Prime Minister Helen Clark, Newztel News: TRN 3ZB "Breakfast Show", 14 March 2005.

[54] T U Flavell, Education Spokesperson, Māori Party "Education Ministry heading for bankruptcy", Scoop Independent News, 12 February 2007.

[55] "NZ's education time bomb", Stuff.co.nz, 22 February 2007.

[56] "NZ's education time bomb", Stuff.co.nz, 22 February 2007.

[57] T U Flavell, Education Spokesperson, Māori Party "Education Ministry heading for bankruptcy", Scoop Independent News, 12 February 2007.

[58] Para 97, p21, E/CN.4/2006/78/Add.3.

32. The NZ Report celebrates the fact that "*Māori participate in tertiary education at a much higher rate than non-Māori*" (para 111). What is not mentioned is that[59]:

    a. 80% of Māori students start their studies at certificate and diploma level;

    b. The Māori educational Institution, Te Wananga o Aotearoa, was running most of the courses; and

    c. In 2005 government announced that it would be cutting funding to certificate and diploma level courses. The hardest hit by this cut were therefore Māori students – Māori who have been failed by mainstream education, but had risen again under the guidance of the wānanga.

33. Te Wānanga o Aotearoa and two other Māori Wānanga "*were set up by Māori despite concerted opposition by successive governments and by mainstream educational institutions.* [They] *had to go to the Privy Council in England to win the right to exist and to receive funding like other tertiary institutions in New Zealand.*"[60] Despite winning the right to be funded, however, the New Zealand Government still provided the three Wānanga in total less than a single mainstream provincial polytechnic gets for capital works.[61] Yet the Wānanga are incredibly successful for its Māori (and non-Māori) students: 40% go on to graduate compared with 32% of University and 29% of polytechnic students.

Removal of Treaty References in the 2006 Draft Curriculum

34. This Government policy issue arises outside the current NZ CERD reporting period, so we only flag it here for completeness' sake. The NZ Report celebrates the Government's Māori Education Strategy and changes to its National Administration Guidelines, while in 2006 the Government released a Curriculum Draft that in both obvious and subtle ways devalues the significance of the Treaty of Waitangi as the founding document of this nation not only in constitutional terms but also in terms of our social, cultural and historical heritage. The Draft ignores the Special Rapporteur's recommendation to the Crown that "*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*".[62]

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[59] H Harawira, Member for Te Tai Tokerau, Maori Party, Speech: Te Wananga o Aotearoa graduation, Manukau Campus, Te Wananga o Aotearoa Manukau Campus Graduation, Genesis Energy Theatre; Telstra Clear Pacific, Auckland, 8 July 2006.

[60] M McCarten, "Education initiatives solution to underachievement", New Zealand Herald, 18 February 2007.

[61] M McCarten, "Education initiatives solution to underachievement", New Zealand Herald, 18 February 2007.

[62] Para 100, p 21, E/CN.4/2006/78/Add.3.

35. When questioned about the removal of the Treaty from the Curriculum, the Minister of Education (despite the obvious evidence to the contrary) denied it had been removed, and said "*it will be embodied in a Maori version of the curriculum next year*."[63] In this way the Crown is conveying its view that the Treaty is only of interest to Māori, further diminishing the Treaty's value in the eyes of the public. In so devaluing the Treaty the Draft becomes an insidious tool employed through our schools to shape and manipulate the hearts and minds of our children to their and their country's detriment. This is a breach of good faith by the Crown towards its Treaty partner, and will ultimately contribute to an exacerbation of racial tensions in Aotearoa.

HEALTH STATUS OF MĀORI (paras 133-135 of the NZ Report)

36. Recent evidence from both within Government[64] and internationally[65] shows that racial discrimination contributes to inequalities in health outcomes between Māori and Europeans. This demonstrates a clear link between ethnicity and Māori wellbeing, one that the Crown chooses to ignore[66] but which UN experts themselves consider can only be adequately addressed through special policy measures targeting Māori.[67] A fair model of recognising and protecting Māori rights in the future that acknowledges and addresses the cumulative effects of past Crown policy and practice of discrimination and neglect needs to be developed and implemented.

Heoi anō,

Haami Piripi
For Tai Tokerau Iwi Collective

cc:

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[63] Hansard uncorrected transcript, Tuesday, 12 September 2006, Question by Dr Pita Sharples to Steve Maharey, Minister of Education, re Democracy—Participation.

[64] For example, see Ministry of Social Development "New Zealand Living Standards 2004 Report" (11 July 2006).

[65] See Bhopal R, "Racism, socioeconomic deprivation, and health in New Zealand", The Lancet - Vol. 367, Issue 9527, 17 June 2006, p1958; Harris R, Tobias M, Jeffreys M, Waldegrave K, Karlsen S, Nazroo J "Effects of self-reported racial discrimination and deprivation on Māori health and inequalities in New Zealand: cross-sectional study", The Lancet 2006; p367.

[66] There was no mention of "Māori" at all in the Ministry of Social Development's media release about its Living Standards 2004 Report.

[67] The UN Special Rapporteur stated that "*There appears to be a need for the continuation of specific measures based on ethnicity in order to strengthen the social, economic and cultural rights of Maori as is consistent with the* [CERD]." (E/CN.4/2006/78/Add.3, 13 March 2006, para 80, p19). The Report of the International Expert Group Meeting on the Millenium Development Goals, Indigenous Participation and Good Governance also states that "the respect for indigenous peoples' specific rights is an essential element of good governance, and…for achieving the [MDGs]" E/C.19/2006/7, p4. The MDGs include goals relating to peoples' health and wellbeing.

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