



TE RUNANGA O TE RARAWA
28 South Rd, P.O. Box 361, KAITAIA

*Tinana, Kurahaupo, Ngatokimatawhaorua me Maamari nga waka
Tumoana, Puhi, Nukutawhiti me Ruanui nga tangata
Panguru, Whakakoro me Whangatauatia nga maunga,
Hokianga, Whangape me Karirikura nga moana
Te Rarawa te iwi.*

14 Paenga-whā-whā / April 2005

The Secretariat
Constitutional Arrangements Select Committee
Parliament Buildings
WELLINGTON
By email: constitutionalarrangements@parliament.govt.nz

RE: REVIEW OF NEW ZEALAND'S EXISTING CONSTITUTIONAL ARRANGEMENTS

Tena koe,

Introduction

Our Organisation

1. Te Rūnanga O Te Rarawa (the Rūnanga) is the iwi authority for the region from North Hokianga through to Kaitaia, up to Hukatere and bound by Te Oneroa a Tohe (Ninety Mile Beach) to the West. We represent twenty-seven marae in eighteen communities, which in turn service more than 12,000 descendants. Our neighbouring iwi are Ngapuhi to the south, Ngati Kahu to the east and Ngaitakoto, Te Aupouri and Ngati Kuri to the north.
2. The Rūnanga makes these submissions on behalf of the whanau, hapu and iwi of Te Rarawa: past, present, and those future generations to come. As representatives of our respective hapu and collectively as Te Rarawa Iwi, we reiterate that we are the mana whenua, the principal spokespeople, protectors and custodians over all our taonga, as is our inherited right and responsibility.

Our Contact Details

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Te Rūnanga o Te Rarawa Submissions

Comments on Process

The Process of Review of New Zealand's Constitutional Arrangements

3. The Rūnanga supports the view that the Crown has the right, by virtue of Article I of Te Tiriti o Waitangi / Treaty of Waitangi (the Treaty), to govern in New Zealand (including the right to make laws). However, such governance is not unfettered: the Crown's right is qualified by Article II, which states that:
 - 3.1 *“Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira – ki nga hapu ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa.”*A fair translation of which reads as follows¹:
 - 3.2 *“The Queen of England agrees to protect the Chiefs, the Subtribes and all the people of New Zealand in the unqualified exercise of their paramount authority over their lands, villages and all their treasures.”*
4. The Crown is responsible for ensuring that this process of review of New Zealand's Constitutional Arrangements:
 - 4.1 Protects te tino rangatiratanga of hapu (including Te Rarawa customary rights and obligations), and
 - 4.2 Recognises Crown Treaty obligations to hapu.
5. Any review of the constitutional arrangements of New Zealand must therefore be underpinned by the Treaty. Moreover, to the extent that the two aforementioned aspects of the review process are not met, Te Rarawa will view the Crown as being in breach of the Treaty, in particular its fiduciary duty of good governance.

Confidence in Constitutional Review Process

6. There is considerable cynicism in Te Rarawa regarding Government processes of inquiry and review generally, including Select Committee processes. This stems from widespread dissatisfaction among our members in terms of their ability to participate in, be heard and influence the outcome of the same.²
7. Te Rarawa considers that an independent Royal Commission of Inquiry - *with a Terms of reference approved through meaningful input from representatives of both parties to the Treaty* - would improve objectivity of the process. However, Te Rarawa goes further to support the establishment of a Constitutional Review Commission led by a suitable independent party chosen from the international community³:
 - 7.1 Whose experience includes the areas of indigenous human rights protection, constitutional change, negotiation and dispute resolution; and
 - 7.2 Who has proven credibility and a track record of success.

¹ Translation by Margaret Mutu, Appendix 2, "Te Whanau Moana" (McCully Matiu and Margaret Mutu, 2003).

² Te Rarawa members' experience in relation to the Foreshore and Seabed Bill is a recent case in point.

³ The Rūnanga notes that there are a number of examples of such an approach. For instance, Sir Paul Reeves was the Chairman of the Constitutional Review Commission whose recommendations formed the basis of the 1997 Fijian Constitution.

8. The Rūnanga would also suggest that confidence in the Review Process would be improved by enhancing the informed decision-making by the general public participating in it. Therefore, a Treaty education program should be undertaken before submissions are invited on the substantive aspects of any proposed constitutional change. Again, the content and delivery of any such education program must be designed and implemented with sufficient input from both parties to the Treaty of Waitangi – Māori and the Crown.
9. We note that the Human Rights Commission drafted a Discussion Paper “Te Mana I Waitangi: Human Rights and the Treaty of Waitangi”, and has implemented a strategy including facilitated community dialogue, symposia and presentations. We would suggest that models like these should be considered when designing an education model concerning the Treaty and New Zealand’s constitutional arrangements. In addition Māori should be accorded a status in this process that reflects their views as tangata whenua, and their significance as collectively both surviving representatives of signatories to the Treaty and as the holders of Treaty rights and obligations. Māori should not be merely subsumed into the greater pool of “the public” to be consulted, as experience has shown us that the Māori voice more likely than not will be silenced in the face of the majority view.

Particular Constitutional Issues

Separation of Powers

10. Te Rarawa viewed the Government’s reaction to the Ngati Apa decision on foreshore and seabed⁴ as unconstitutionally interventionist. It raised serious questions in our view as to whether it can be said that there exists a sufficient separation of powers⁵ in New Zealand between the Executive, Judiciary and the Legislature. The Rūnanga would therefore like the Constitutional Review to clarify the accepted standards with regard to bounds and limits of the powers of the three respective arms of Government, and to analyse whether those branches have exercised their powers constitutionally.

Protection from the Power of the State

11. As indigenous people, Te Rarawa are aware that there exist internationally recognized conventions, principles and other instruments that protect indigenous rights. However, in our view the Government has demonstrated a high disregard for them. This has produced confusion over the status of such mechanisms in New Zealand, but we understand that those conventions, principles and instruments bind Government to some extent. In so far as they limit the powers of the state, we consider that the place of those international protections ought to be clarified and included in the Constitutional Review.

Wish to be heard

12. The Rūnanga understands that the Committee is only seeking written submissions at this time. However, we would welcome the opportunity to be heard should it arise.

⁴ *Ngati Apa and others v Attorney-General and others* (Unreported, 19 June 2003, Court of Appeal, Wellington, CA173/01).

⁵ The Rūnanga acknowledges that the separation of powers can never be absolute. However, there must be standards by which it can be judged whether and under what circumstances such power has been exercised unconstitutionally.

Naku noa na,

A handwritten signature in black ink, appearing to be 'KR', written in a cursive style.

Kevin Robinson
Executive Officer